lumbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending June 30, 1974, and for other purposes.

By Mr. ANDERSON of California (for himself, Mr. BROWN of California, Mr. STARK, Mr. EDWARDS of California, Mr. REES, Mr. DANIELSON, Mr. WALDIE, Mr. BELL, Mr. KETCHUM, Mr. ROYBAL, Mr. HINSHAW, Mr. GOLDWATER, Mr. CHARLES H. WILSON of California, Mr. VEYSEY, Mr. PETTIS, Mr. LEGGETT, Mr. DON H. CLAUSEN, Mr. MOORHEAD of California, and Mr. ROUSSELOT):

H.R. 8659. A bill to provide for a Federal income tax credit for the cost of certain motor vehicle emission controls on 1975 model motor vehicles sold in the State of California; to the Committee on Ways and Means.

By Mr. CLAY:

H.R. 8660. A bill to amend title 5 of the United States Code (relating to Government Organization and employees) to assist Federal employees in meeting their tax obligations under city ordinances; to the Committee on Post Office and Civil Service.

By Mr. MAZZOLI:

H.R. 8661. A bill to establish a U.S. Fire Administration and a National Fire Academy in the Department of Housing and Urban Development, to assist State and local governments in reducing the incidence of death, personal injury, and property damage from fire, to increase the effectiveness and coordination of fire prevention and control agencies at all levels of government, and for other purposes; to the Committee on Science and Astronautics.

By Mr. PRICE of Illinois (for himself, Mr. HOLIFIELD, and Mr. HOSMER):

H.R. 8662. A bill to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes; to the Joint Committee on Atomic Energy.

By Mr. RONCALIO of Wyoming:

H.R. 8663. A bill to amend section 613(c)(4)(F) of the Internal Revenue Code; to the Committee on Ways and Means.

By Mr. St GERMAIN:

H.R. 8664. A bill to make the provisions of the Federal Employees' Compensation Act providing cost-of-living increases applicable to employees of the Federal Civil Works Administration and certain other agencies not now in existence, and for other purposes; to the Committee on Education and Labor.

By Mr. STUDDS:

H.R. 8665. A bill to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. HANSEN of Idaho:

H.J. Res. 615. Joint resolution authorizing the President to declare the third week in June of each year as "National Fiddle Week"; to the Committee on the Judiciary.

By Mr. SEIBERLING:

H.J. Res. 616. Joint resolution proposing an amendment to the Constitution of the United States with respect to the offering of prayer in public buildings; to the Committee on the Judiciary.

By Mr. HANLEY:

H. Con. Res. 250. Concurrent resolution expressing the sense of Congress that the Holy Crown of Saint Stephen should remain in the safekeeping of the U.S. Government until Hungary once again functions as a constitutional government established by the Hungarian people through free choice; to the Committee on Foreign Affairs.

By Mr. STUDDS:

H. Con. Res. 251. Concurrent resolution relating to the U.S. fishing industry; to the Committee on Merchant Marine and Fisheries.

By Mr. GIBBONS:

H. Res. 439. Resolution to amend the Rules of the House of Representatives to establish as a standing committee of the House Committee on Energy, and for other purposes; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. HINSHAW:

H.R. 8666. A bill for the relief of Ola Belle Meredith; to the Committee on the Judiciary.

By Mr. McKINNEY:

H.R. 8667. A bill for the relief of William J. Walsh; to the Committee on the Judiciary.

By Mr. ROE:

H.R. 8668. A bill for the relief of Giovanni Battista and Caterina Asaro; to the Committee on the Judiciary.

H.R. 8669. A bill for the relief of Carmelo Andolina; to the Committee on the Judiciary.

H.R. 8670. A bill for the relief of Emanuel Licitra; to the Committee on the Judiciary.

H.R. 8671. A bill for the relief of Giuseppe Cappello; to the Committee on the Judiciary.

H.R. 8672. A bill for the relief of Anna D'Angelo; to the Committee on the Judiciary.

By Mr. WALDIE:

H.R. 8673. A bill for the relief of George L. Smith; to the Committee on the Judiciary.

SENATE—*Wednesday, June 13, 1973*

The Senate met at 12 o'clock noon and was called to order by the President pro tempore (Mr. EASTLAND).

PRAYER

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

Let us pray in the words of the first Psalm:

Blessed is the man that walketh not in the counsel of the ungodly, nor standeth in the way of sinners, nor sitteth in the seat of the scornful.

But his delight is in the law of the Lord; and in his law doth he meditate day and night.

And he shall be like a tree planted by the rivers of water, that bringeth forth his fruit in his season; his leaf also shall not wither; and whatsoever he doeth shall prosper.

The ungodly are not so: but are like the chaff which the wind driveth away.

Therefore the ungodly shall not stand in the judgment, nor sinners in the congregation of the righteous.

For the Lord knoweth the way of the righteous: but the way of the ungodly shall perish.

O Lord, our God, lead us ever in the way of the righteous man. Amen.

REPORT OF A COMMITTEE SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of June 12, 1973, Mr. JACKSON, from the Committee on Interior and Insular Affairs, reported favorably, with an amendment, on June 12, 1973, the bill (S. 1081) to authorize the Secretary of the Interior to grant rights-of-way across Federal lands where the use of such rights-of-way is in the public interest and the applicant for the right-of-way demonstrates the financial and technical capability to use the right-of-way in a manner which will protect the environment, and submitted a report (No. 93–207) thereon, which was printed.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, June 12, 1973, be dispensed with.

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

MESSAGES FROM THE PRESIDENT

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

REPORT OF COMMODITY CREDIT CORPORATION—MESSAGE FROM THE PRESIDENT

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which, with the accompanying report, was referred to the Committee on Agriculture and Forestry. The message is as follows:

To the Congress of the United States:

In accordance with the provisions of section 13, Public Law 806, 80th Congress, I transmit herewith for the information of the Congress the report of the Commodity Credit Corporation for the fiscal year ended June 30, 1972.

RICHARD NIXON.

THE WHITE HOUSE, *June 13, 1973.*

EXECUTIVE MESSAGES REFERRED

As in executive session, the President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House insisted upon its amendments to the bill (S. 504) to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency medical services systems, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. STAGGERS, Mr.

ROGERS, Mr. SATTERFIELD, Mr. NELSEN, and Mr. HASTINGS were appointed managers on the part of the House at the conference.

The message also announced that the House had passed the bill (S. 1423) to amend the Labor Management Relations Act, 1947, to permit employer contributions to jointly administered trust funds established by labor organizations to defray costs of legal services, with an amendment, in which it requested the concurrence of the Senate; that the House insisted upon its amendment to the bill and asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. THOMPSON of New Jersey, Mr. CLAY, Mr. BRADEMAS, Mr. O'HARA, Mr. WILLIAM D. FORD, Mr. QUIE, Mr. ASHBROOK, Mr. DELLENBACK, and Mr. ESCH were appointed managers on the part of the House at the conference.

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

DISPOSAL OF CERTAIN ABACA AND SISAL CORDAGE FIBER HELD IN THE NATIONAL STOCKPILE

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 190, H.R. 4682.

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

The assistant legislative clerk read as follows:

H.R. 4682, to provide for the immediate disposal of certain abaca and sisal cordage fiber now held in national stockpile.

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

There being no objection, the Senate proceeded to consider the bill, which was ordered to a third reading, was read the third time, and passed.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session.

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on those nominations which were confirmed by the Senate on the last day it was in executive session, the President be notified.

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

Mr. MANSFIELD. Now, Mr. President, I move that the Senate proceed to the consideration of nominations on the Executive Calendar, beginning with New Reports.

The motion was agreed to, and the Senate proceeded to the consideration of the nominations on the Executive Calendar, beginning with New Reports.

DEPARTMENT OF COMMERCE

The second assistant legislative clerk read the nominations in the Department of Commerce, as follows:

John K. Tabor, of Pennsylvania, to be Under Secretary of Commerce.

Tilton H. Dobbin, of Maryland, to be an Assistant Secretary of Commerce.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

U.S. COAST GUARD

The second assistant legislative clerk proceeded to read sundry nominations in the U.S. Coast Guard.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the nominations be considered en bloc.

The PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

ORDER OF BUSINESS

The PRESIDENT pro tempore. Does the distinguished Senator from Michigan desire to be heard?

Mr. GRIFFIN. No, Mr. President.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

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

The second assistant legislative clerk proceeded to call the roll.

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

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

COMPENSATION OF VICTIMS OF VIOLENT CRIME

Mr. MANSFIELD. Mr. President, a young law student, Mr. Robert Ian Gruber, has been in contact with me concerning my proposal to compensate victims of violent crime.

Mr. Gruber attends the Fordham University School of Law, and in his studies he has undertaken an examination of the crime victim bill that passed the Senate. The bill is now pending before the House Committee on the Judiciary. Based on his examination, Mr. Gruber prepared an evaluation of the proposal, together with "Comments" published in the spring issue of the Fordham Urban Law Journal.

I think that Mr. Gruber's work represents a contribution to the dialog on the issue of compensating victims of violent crime; therefore, I ask unanimous consent that these articles be printed in the RECORD.

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

STATEMENT ON TITLE I OF S. 800, THE PROPOSED VICTIMS OF CRIME ACT OF 1973

(Submitted by Robert Ian Gruber)

This proposed legislation is necessary, salutary, and long overdue. In providing for the compensation of the "victims" of crime, Title I has focused attention on the rights of the victim, where heretofore the law has only recognized and provided for the rights of those accused of crime. In classifying two groups of people, "victims" and "intervenors", the proposal is seeking to encourage citizens to become involved, and to avoid the apathy which has existed in the past, reflected in cases where citizens have looked on while a fellow citizen is the object of violent criminal attack. Accordingly, it is apparent from the provisions of Title I, that in terms of the type of losses recoverable, i.e., property damage and personal injury, the amount of recovery, and the conditions precedent to recovery itself, the "intervenor" is favored over the "victim".

The proposal is for the most part comprehensive in scope and coverage and in its provisions reflects the benefits of experience learned from the operation of presently existing state crime victims compensation statutes. However, there are a few areas in Title I which in my opinion should be scrutinized for possible modification and amendment. These areas are discussed more fully in the appending article; however, I would like to briefly highlight three of them.

Title I provides that a "victim" will not recover unless he can show "financial stress" as a result of his victimization. This is not a requirement for the "intervenor". Whether or not there should be such a requirement for both intervenors and victims is beyond the scope of this statement. However, the existing financial stress requirements for victims indicates that those victims who are in lower income brackets have a greater possibility of receiving an award than those in higher brackets, since the former group will more likely suffer "financial stress". Yet, this legislation is aimed at compensating all victims, to the extent that they do not receive outside sources of reimbursement for their losses, e.g., insurance, workmen's compensation, and the availability of a civil action in tort. Since the purpose seems to be to avoid double recovery to any claimant at the Board's expense, and since sources of recovery reduce the amount of an award, it seems that making "financial stress" a condition precedent to recovery could produce harsh results to that victim who does not quite suffer financial stress, but who does not have an income in an amount sufficient to absorb his losses. Therefore, it is suggested that the test be not one of financial stress, absolutely, but rather one of his standard of living being reduced coupled with the consideration of the extent and permanence of the injury and the depletion of the victim's personal funds expended for recovery from his injury. In this way, the seeming purpose of Title I, that of

making the victim whole and preventing the possibility of his having to seek public assistance, i.e., welfare, could be more effectively accomplished.

Secondly, the "intervenor" may recover losses for property damage as well as for personal injury whereas a "victim" can only recover for personal injury. This statement will not discuss whether or not the victim should also be permitted recovery for property damage, as it obviously is in keeping with the proposal's favored treatment of the intervenor to recover for property damage. However, there are possibilities for abuse inherent in allowing for recovery of property damage. For example, Citizen A intervenes while Citizen B is being robbed. Citizen A is also robbed and claims from the Board reimbursement for the $10,000 in cash he was carrying in his wallet. While this is an extreme example, it points out the difficulties for the Board in determining the amount of cash the intervenor in fact had in his wallet. Hence, it is suggested that a maximum amount be fixed for the recovery of cash and other negotiable property.

The third area I shall discuss relates to the exclusion from recovery of family members of the offender. If a father with three infant children shoots and kills his wife and is imprisoned, under the present exclusion the children may not recover. Since another provision of Title I would deny altogether a claim if it were found that the claimant was "a substantial contributing factor" to the crime giving rise to the claim, it is suggested that the family member exclusion which can lead to harsh results is unnecessary in trying to prevent fraud and collusion between victims and claimants.

As mentioned above, these are only a few of the areas of Title I that bear reviewing. However, this legislation is so necessary and urgent that it is my opinion that it should be passed in its present form as soon as possible, and any modifications deemed necessary should be made pursuant to the Board's rulemaking power, or if necessary, by subsequent amendment.

Thank you very much for this opportunity to express my views on this proposed legislation.

[COMMENTS]

CRIME VICTIMS' COMPENSATION—TITLE I OF THE PROPOSED VICTIMS OF CRIME ACT OF 1973: AN ANALYSIS

I. INTRODUCTION

[I]n directing our full attention to how we can best combat the alarming crime rise we have ignored, unfortunately, certain aspects of the problem. The point has been reached, for example, where we must give consideration to the victim of crime. . . . For him, society has failed miserably. Society has failed to protect its members adequately. To those who suffer, society has an obligation.[1]

The concept that society has an obligation to help meet the needs of victims of criminal violence arose almost 4,000 years ago.[2] The Code of Hammurabi provided that if the criminal was not apprehended "the man who has been robbed, shall . . . make an itemized statement of his loss, and the city and the governor . . . shall compensate him for whatever was lost."[3] However, modern law has been more concerned with the offense against society than with the compensation of the vicitim; the criminal is thought to owe a debt to society which must be paid.[4] Since the offense is deemed to be against the state, it is the state which prosecutes the offender. The victim is not party to the proceeding; his recourse against the offender is to initiate a private action in tort. Unfortunately, the expenses of litigation, the difficulties of apprehending the alleged offender and the judgment-proof status of many of those apprehended are factors which militate against the adequacy of the victim's civil remedy.

The inadequacy of the victim's remedy in tort led Margery Fry, an English penal reformer, to propose the first practical scheme of governmental compensation to victims of crime in modern times.[5] In 1963, nine years after Fry's proposals, New Zealand enacted the first crime victims compensation statute.[6] The New Zealand statute established a crime compensation tribunal which had discretionary power to award public compensation from an indemnity fund to the victim or his dependents, when he had been injured or killed through the commission of certain specified offenses, including homicides, assault and woundings, and sexual offenses of violence.[7] Compensation was authorized for out-of-pocket expenses, loss of earnings, and pain and suffering, and the tribunal was empowered to order the victim to refund all or part of an award if he subsequently recovered damages from the wrongdoer.[8]

In 1964, Great Britain put into operation a program somewhat similar to the New Zealand statute.[9] In the United States, the first jurisdiction to adopt a compensation scheme for the victims of crime was California [10] in 1965. Subsequently, crime victims compensation statutes were enacted in New York [11] in 1966; Hawaii [12] and Massachusetts [13] in 1967; Maryland [14] in 1968; Nevada [15] in 1969; New Jersey [16] in 1971; and most recently, Rhode Island [17] and Alaska [18] in 1972.

There are three main theories upon which these modern compensation statutes have been based.[19] At one extreme is the social welfare theory of compensation. This theory is not based on any "inherent" obligation on the part of the sovereign, but rather rests upon the idea that the "twentieth century conscience cannot tolerate the suffering" which befalls the victim of crime.[20] At the other extreme is a theory of compensation which assumes that there is an inherent duty of the sovereign to indemnify those members of its society whom it fails to protect from criminal victimization.[21] This might be termed the legal right theory which is founded on an implied contract between the state and its citizens.[22] The citizen undertakes to pay his taxes; the state undertakes to protect him from criminal violence.[23] Thus, in failing to protect the victim from criminal violence the state breaches the implied contract and is obligated to compensate the victim for injuries resulting from the breach. A third theory, which might be called one of legislative grace—lying somewhere between the extremes—is that the sovereign has a moral obligation to deal "mercifully with individuals" who are the innocent victims of crime.[24] While all compensation statutes rest on one of the aforementioned theories, in practice the statutes can best be distinguished by (1) the presence or absence of a requirement of financial need, and (2) the nature of the proceeding through which the claimant receives his award—*i.e.*, administrative or judicial.

II. PROPOSED FEDERAL LEGISLATION

In the United States, proposals for legislation in this area have also been made on the federal level.[25] Unfortunately, none of these proposals has been enacted.[26] Title I of the proposed Victims of Crime Act of 1973,[27] which is based upon the legislative grace or moral obligation theory,[28] is the latest and most comprehensive in scope of the federal proposals. It possibly could become law in the first session of the Ninety-Third Congress.[29]

The purpose of this comment is to analyze and explain the operation of the major provisions of Title I. The provisions discussed are those relating to the scope of compensation, limitations and requirements for recovery, and procedures for the disposition of claims. Where useful, the federal proposal will be compared with existing statutes in New York,[30] Hawaii [31] and Massachusetts.[32] These laws are representative of the various state compensation statutes in that New York employs an administrative proceeding and requires financial need; [33] Hawaii utilizes an administrative proceeding but does not require financial need; [34] and Massachusetts uses a judicial proceeding.[35] [See chart pages *426–31.*] Where the comparison indicates that improvements can be made in Title I, they will be suggested.

Title I may be grouped with those crime victim compensation statutes which require a showing of financial need and have a proceeding which is administrative in nature.[36] It establishes a federal program of compensation for victims and intervenors where the crime takes place within the federal jurisdiction [37] and also grants reimbursement of up to 75 per cent of the costs to those states which have victim compensation statutes that are "substantially comparable in coverage and limitations" [38] to Title I. While the analysis that follows is limited to the program of direct federal compensation to those victimized by crime within the federal jurisdiction, it is clear that in light of the requirement of substantial comparability,[39] Title I will serve as a model for states which have not yet enacted compensation statutes.

Footnotes at end of article.

FEDERAL AND STATE CRIME COMPENSATION STATUTES: MAJOR FEATURES [1]

1. GENERAL

Government	Authority	Administration	Jurisdiction
United States	Victims of Crime Act of 1973 [Proposed]	Violent Crimes Compensation Board (Department of Justice).	Crimes or other acts giving rise to the claim must occur (1) within the maritime or territorial jurisdiction of the United States; (2) within the District of Columbia; or (3) within Indian Country.
Hawaii	Criminal Injuries Compensation Act of 1967	Criminal Injuries Compensation Commission (independent)	Coextensive with jurisdiction to prosecute crimes giving rise to the claim.
Massachusetts	Compensation of Victims of Violent Crimes Act of 1967	District Courts of the Commonwealth	Situs of crime giving rise to the claim must be within the Commonwealth.
New York	Crime Victims Compensation Act of 1966	Crime Victims Compensation Board (independent)	Situs of crime giving rise to the claim must be within the State.

See footnote at end of table.

FEDERAL AND STATE CRIME COMPENSATION STATUTES: MAJOR FEATURES [1]—Continued

2. SCOPE OF COMPENSATION

Government	Claimants recognized	Losses recognized	Need requirement	Maximum compensation
United States	(1) Victim; (2) Intervenor or their surviving dependents.	(1) Pecuniary losses of victims; (2) Net losses of intervenors.	Victim must show "financial stress." Not applicable to intervenors.	$50,000 as to victims. Not applicable to intervenors.
Hawaii	(1) Victim: dependents, individual bearing loss; (2) "Private citizen" (intervenors): individual bearing loss.	(1) Pecuniary losses; (2) earning power; and (3) pain and suffering.	None	$10,000 plus any recovery from criminal.
Massachusetts	Victim: dependents	(1) Out of pocket expenses; (2) earnings; (3) support.	None	$10,000.
New York	Victim: spouse, child, dependents	(1) Out of pocket expenses; (2) loss of earnings; or (3) support.	"Serious financial hardship."	$15,000 as to support or income. No ceiling on out of pocket expenses, including medical expenses.

3. LIMITATIONS

Government	Crimes covered	Period of limitations (filing)	Members of household	Deductible feature (minimum)	Collateral recovery
United States	List of crimes and "any other crime which poses a substantial threat of personal injury."	1 year. Extended upon showing of "good cause."	No claim if person is member of the family or household or maintaining continuing unlawful sexual relations with offender or accomplice.	Loss must be over $100 or equivalent to 2 weeks' earnings or support.	"Net losses" reduced by amounts recovered or recoverable from "public or private means." "Pecuniary losses' are derived from net losses." If suit gives rise to collateral recovery amount is first deducted from "gross losses."
Hawaii	Lists specific offenses	18 months	No claim allowed if person is relative or member of household of offender.	None	Compensation reduced by money received from offender or agency of State or Federal Government.
Massachusetts	Crimes of force committed in the Commonwealth. Motor vehicle crimes are covered only if intentional.	1 year or 90 days after death, whichever is earlier.	No claim allowed if person is a member of the family or household or maintaining sexual relations with the offender.	Loss must be over $100 or 2 weeks' earnings or support.	Compensation reduced by "insurance, amounts received from offender and other public funds."
New York	Crimes under State law. Motor vehicle crimes are covered if intentional.	90 days. Extended to 1 year upon showing of "good cause."	do	do	Compensation reduced by collateral recovery.

4. REQUIREMENTS

Government	Duty to report	Duty to cooperate	Responsibile claimant
United States	Must be reported within 72 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause."	May reduce, deny, or withdraw compensation if claimant does not substantially cooperate with law enforcement officials incident to act giving rise to claim.	Compensation may be reduced in proportion to responsibility of claimant for act giving rise to claim, or deny compensation if claimant's behavior is substantial contributing factor.
Hawaii	Must be arrest or report of crime to trigger statute. No personal duty for claimant.	None	Compensation may be reduced or denied in proportion to responsibility of claimant for act giving rise to claim.
Massachusetts	Crime must be reported within 48 hours, but not necessarily by victim or claimant.	do	Do.
New York	Crime must be reported within 48 hours, but not necessarily by victim or claimant. Waived upon showing of "good cause."	do	Do.

5. PROCEDURES

Government	Hearings	Burden of proof	Attorneys' fees	Standards of review
United States	Initially determined by 1 member. Hearing en banc (of record) is a matter of right.	"Preponderance of the evidence" is burden to be met by claimants.	Authorized in accord with Criminal Justice Act. Do not diminish recovery and are not subject to ceiling.	"Substantial evidence" is standard for sustaining Board.
Hawaii	Hearing (not of record) is a matter of right.	None set forth in statute	Up to 15 percent of award, but subject to maximum. Do diminish recovery.	None.
Massachusetts	Proceeds as civil action in which State attorney general defends suit.	do	do	Do.
New York	Hearing optional with disposition by individual member. Matter of right if claimant requests subsequent hearing en banc.	do	Not authorized	Do.

6. MISCELLANEOUS FEATURES

Government	Emergency payments	Subrogation	Indemnity fund
United States	Maximum of $1,500 which is subsequently deducted from final award or repaid if award is denied. Repayment may be waived.	Claim of victim against offender to extent of compensation paid may be pursued by the Attorney General for the United States.	Fund established which is the repository of (1) fines; (2) appropriated funds; (3) subrogation recovery; and (4) contributions.
Hawaii	Commission must have determined claim and immediate need must exist. Deducted from final award.	Claim of victim against offender may be pursued by the State to extent compensation is paid and recovery is to the State.	Fund established from which emergency payments are made.
Massachusetts	Not authorized	do	None authorized.
New York	Maximum of $500 which is subsequently deducted from final award or repaid if claim is denied.	do	Do.

[1] This chart, with the exception of some minor changes, appears in the Congressional Record, vol. 118, pt.24, pp. 30998–31001.

III. TITLE I OF THE VICTIMS OF CRIME ACT OF 1973

A. Scope of Compensation

It is the declared purpose of Congress in this title to promote the public welfare by establishing a means of meeting the financial needs of the innocent victims of violent crime or their surviving dependents and intervenors acting to prevent the commission of crime or to assist in the apprehension of suspected criminals.[40]

While Title I compensates the innocent victim and the intervenor, it makes three significant distinctions between the two classes of claimants, each of which favors the intervenor. The distinctions concern (1) the type of loss each may recover, (2) the requirements of financial stress for victims and (3) the existence of a maximum recovery

Footnotes at end of article.

for victims. Although the proposal is silent as to the purpose of these distinctions, one must conclude that Congress has set out to encourage third parties to assist fellow citizens and to aid law enforcement officials. Each of these distinctions shall now be examined.

The first significant distinction is that a victim can recover "pecuniary losses" [41] whereas an intervenor can recover "net losses." [42] "Pecuniary losses" are those net losses "which cover" the list of enumerated damages. They are generally all reasonable and necessary medical, hospital and rehabilitation expenses, actual loss of past earnings, anticipated loss of future earnings and reasonable and necessary child care expenses enabling either the victim or his or her spouse to continue gainful employment.[43] "Net losses" are gross losses, excluding pain and suffering.[44] Since "gross losses" are defined as "all damages, including pain and suffering and including property losses." [45] it appears that, despite clumsy language, the significant distinction is that net losses include property losses whereas pecuniary losses do not. While Title I does not define "property losses," the words are probably used in the traditional sense, *i.e.*, damages other than personal injury.

The definition of pecuniary losses creates some confusion as to whether they include *only* those losses enumerated or whether the list is intended to be merely illustrative. If the prior meaning is the intended one, the ambiguity can be removed by changing the word "cover" to "cover exclusively;" if the latter meaning is intended, the word "cover" can be replaced by "cover, but not limited to."

The second significant distinction between intervenors and victims is that a victim must establish "financial stress" as a result of his pecuniary loss, whereas an intervenor's net losses are recoverable without such stress.[46] "Financial stress" is defined as: the undue financial strain experienced by a victim or his surviving dependent or dependents as the result of pecuniary loss from an act, omission, or possession giving rise to a claim. . . .[47]

Failure of the Board to find such financial stress will result in a denial of the victim's claim.[48] While New York also requires a showing of financial need, its test is "serious financial hardship." [49] Whether any difference will develop between the federal and New York tests of financial stress and serious financial hardship cannot be determined at this time. Hawaii [50] and Massachusetts [51] have no such requirement since recovery in these states is a matter of legal right.[52]

It is noteworthy that Hawaii is the only state that compensates the victim for pain and suffering.[53] New York and Title I do not, presumably because pain and suffering, no matter how great, do not cause "serious financial hardship" or "financial stress."

The third and final distinction between the victim and the intervenor in the federal proposal is the provision for a $50,000 maximum on any claim by a "victim" or his surviving dependents.[54] Since this section mentions only "victims" it would appear that, on its face, the statute permits an intervenor to recover all his net losses up to and exceeding the maximum otherwise applicable to victims. The state statutes have a lower maximum recovery schedule than does the federal legislation. In New York the maximum recovery for losses of support and income is $15,000,[55] although significantly, there is no ceiling on the amount of compensation the Board will grant for out-of-pocket expenses.[56] Hawaii and Massachusetts limit recovery to $10,000 for all losses.[57] Since Title I provides for direct grants to the states of up to 75 per cent of the costs of their compensation statutes,[58] it is submitted that the states can raise their maximums on awards to reduce still further the possibility of hardship to a victim and his dependents.

The federal proposal, New York and Massachusetts require a minimum loss in order to exclude frivolous claims that would otherwise consume a substantial part of the Board's time.[59] The federal minimum is the equivalent of a week's earnings or support.[60] New York and Massachusetts require the claimant's loss to exceed $100 or two weeks' earnings or support.[61] Hawaii has no such minimum.[62]

Recovery of an award by the claimant under Title I would result in double recovery if the claimant has been or will be compensated by collateral sources. Accordingly, Title I provides for set-offs of such recoveries,[63] as do all state statutes in varying ways.[64] Collateral sources under Title I include monies recovered or recoverable:

(A) under insurance programs mandated by law;

(B) from the United States, a State, or unit of general local government for a personal injury or death otherwise compensable under this part;

(C) under contract or insurance wherein the claimant is the insured or beneficiary; or

(D) by other public or private means. . . .[65]

However, the effects of the set-offs are often alleviated by the fact that collateral source recovery is "first used to offset gross losses that do not qualify as net or pecuniary. . . ." [66] The above language will permit a victim to use collateral sources to compensate for his property losses and pain and suffering, the two most important non-compensable losses. New York and Massachusetts simply set-off any collateral payment from the award.[67] Hawaii permits a claimant to add to the award any sum recovered from the criminal to the extent his losses exceed the maximum award.[68] Perhaps the best scheme is a recently proposed, but unsuccessful, amendment in Massachusetts which offsets compensation from collateral sources, "but only to the extent that the sum of such payments and any award . . . are in excess of the total compensable injuries suffered by the victim. . . ." [69] The Massachusetts proposal would prevent double recovery and, unlike the other statutes,[70] would permit a victim to recover under these circumstances the full amount of his losses. Thus the Massachusetts proposed amendment more simply and consistently accomplishes the desired result, *i.e.*, preventing double recovery and excessive drain on the government's funds, while at the same time permitting the claimant to, as nearly as possible, be made whole.

There remain two further provisions that affect the scope of compensation. The first seems reasonable enough in that it gives the Board discretion to consider the claimant's behavior and contribution to the crime,[71] and to reduce the award "in accordance with its assessment of the degree of" that contribution [72] or deny altogether any award if his behavior was a "substantial contributing factor." [73] However, the second provision provides that "[n]o order for compensation . . . shall be made to . . . a member of the family or household" of the wrongdoer.[74] While the rationale for both exclusions is to prevent one from profiting from his own wrongdoing and to prevent fraud and collusion, the second is not only unnecessary but can also result in significant hardship:

Those family members who provoke, or are in part responsible, for the violence should of course be dealt with as [provided]. But I would suggest no more is needed. If a father shoots and disables a small child, surely that child is as deserving as a child who lives next door.[75]

B. Requirements and Limitations

The threshold requirement to recovery under any compensation statute is that there be a nexus between the sovereign and either the crime or the victim. New York requires simply that the crime occur within the state; [76] no distinction is made between residents and non-residents. California, on the other hand, will grant compensation to a "domiciliary" wherever the crime occurs, and to a "resident" only if the crime occurs within the state.[77] While neither "domiciliary" nor "resident" is defined in the statute it appears that California would not compensate "transients" injured in the state. Hawaii compensates a victim for injury resulting from conduct "within the criminal jurisdiction of the State. . . ." [78] Thus, Hawaii will only compensate the victim if it could have prosecuted the assailant. Massachusetts, like New York, requires that the crime occur within the state; [79] and by requiring that "claims shall be brought in a district court within the territorial jurisdiction in which the claimant lives," it limits compensation to residents of the state.[80] Title I follows the New York approach in that it requires the crime to occur within the federal jurisdiction— the District of Columbia, the maritime or territorial jurisdiction of the United States and Indian country.[81]

The second fundamental requirement to recovery under any compensation statute is that the crime be a violent one. Hawaii lists the specific crimes to which its statute applies.[82] Massachusetts requires only that the crime involve "the application of force or violence or the threat of force or violence. . . ." [83] New York requires merely that the victim suffer "personal physical injury" [84] from a crime "proscribed by the penal law. . . ." [85] Title I lists specific crimes [86] and adds a catch-all provision—"any other crime, including poisoning, which poses a substantial threat of personal injury. . . ." [87] This is perhaps the preferable approach in that it avoids the vagueness that can result from a broad and general definition of crimes; and at the same time, the use of a catch-all provision overcomes the disadvantages inherent in a closed-end listing of specific crimes which cannot deal with changes in the criminal law. It is interesting to note that while victims injured inadvertently by an intervenor may recover under Title I, a victim injured by a would-be intervenor who acts recklessly will not.[88] This results from Congress' intent to deny recovery to those who act recklessly.[89] But while this intent is equitable when applied to the reckless would-be intervenor, it is inequitable to deny recovery to the victim of such recklessness. This result could be avoided by expanding the definition of victim to include those injured by would-be intervenors.

Under Title I, the victim must also comply with three additional requirements. The crime must be reported "to law enforcement officials within seventy-two hours after its occurrence." [90] Moreover, the claimant must have "substantially cooperated with all law enforcement agencies." [91] If the claimant breaches this duty the Board is empowered to "reduce, deny or withdraw any order for compensation." [92] Finally, unless otherwise justified by good cause, the claim must be filed within one year of the date of the occurrence.[93] California [94] and Maryland [95] also require cooperation with law enforcement officials, and New York,[96] Hawaii [97] and Massachusetts [98] have similar filing provisions, ranging in time from ninety days to eighteen months.

C. Procedures

Title I establishes an administrative body within the Department of Justice, to be known as the "Violent Crimes Compensation Board" [99] which "shall order the payment of compensation" [100] in appropriate cases. The Board is authorized to "promulgate such rules and regulations as may be required" [101] and to "establish a program to assure extensive and continuing publicity [of the Title's existence] . . . including information on the right to file a claim, the scope of coverage, and procedures. . . ." [102]

The statute in New York creates an auton-

omous administrative body within the Executive Department, known as the Crime Victims Compensation Board,[103] which has the power "[t]o adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes" of the statute.[104] The Hawaii statute establishes an independent administrative agency, the Criminal Injuries Compensation Commission [105] which may adopt rules and regulations to aid in the performance of its functions.[106] In Massachusetts, on the other hand, the "district courts of the commonwealth shall . . . have jurisdiction to determine and award compensation to victims of crimes." [107]

Title I has some distinct procedural advantages over a statute that looks to the judiciary for its administration. For example, the Board will have the freedom to relax some of the formalities that ordinarily attend a judicial proceeding. The Board may likewise avoid the delays of the crowded courts of our larger cities, where presumably most victims would be found. Since the Board is independent and is intended to deal with only one problem, *i.e.*, crime victim's compensation, it need not be burdened by extraneous rules as it might be if it were part of a larger, pre-existing agency.

The authority of the Board to promulgate its own rules and regulations [108] helps to assure that any expertise gained in administering the statute will be tangibly implemented in the form of substantive and procedural guidelines. The power of the Board to establish a program of extensive and continuing publicity of the statute's existence, operation, and coverage [109] is clearly desirable since the usefulness of any such statute is predicated upon the people's knowledge of its existence.[110]

Under Title I, when the claim is filed, the Chairman of the Board may assign one member to evaluate the claim.[111] If the claimant is not satisfied with the evaluation he is entitled, as a matter of right, to a de novo hearing by the full three-man Board [112] where he must prove his claim by a "preponderance of the evidence." [113] Once the Board renders a final order, the claimant may obtain judicial review [114] in the United States Court of Appeals for the District of Columbia.[115] "No finding of fact supported by substantial evidence" will be set aside on review.[116]

At the conclusion of the Board's proceeding, an attorney may file with the Board a statement for a fee for services rendered.[117] The Board will award a fee on substantially similar terms as provided in the Criminal Justice Act.[118] The payment of a fee to an attorney does not diminish the claimant's award.[119] Hawaii and Massachusetts permit payment of attorney fees up to 15 per cent of the award,[120] but the fees diminish the claimant's award.[121] In New York, the Board is authorized to adopt "suitable rules . . . for the approval of attorneys' fees . . . ." [122]

Prior to final action, the Board may authorize emergency compensation not to exceed $1,500 if it determines that the claim "probably" will result in an order of compensation.[123] The amount of the emergency payment is deducted from the final award; [124] and if the claimant is ultimately denied compensation, he is liable to the Board for its repayment [125] unless the Board waives it.[126]

New York [127] and Hawaii [128] also provide for emergency payments, whereas Massachusetts [129] does not, presumably because it employs a judicial proceeding rather than an administrative one.

Once compensation has been awarded to a victim, both the federal proposal [130] and the state statutes [131] provide for subrogation to the rights of the recipient of the award. The Attorney General of the United States may, within three years from the date the order of compensation was made, institute an action against the offenders.[132]

Title I provides for a Criminal Victim Indemnity Fund [133] which will be funded by subrogation recoveries,[134] and in addition: [T]he Fund shall be the repository of (1) criminal fines paid in the various courts of the United States, (2) additional amounts that may be appropriated to the Fund as provided by law and (3) such other sums as may be contributed to the Fund by public or private agencies, organizations, or persons.[135]

The state statutes differ from Title I in that in all but two there is no separate indemnity fund established into which subrogation recoveries, criminal fines, additional appropriations, and public or private contributions may be deposited.[136]

IV. CONCLUSION

Title I is more comprehensive in scope and coverage than any presently existing crime victims compensation statute. The drafters of Title I, to be sure, have benefited from the experience gained by the other jurisdictions in administering their own respective statues.

The federal statute is salutary, necessary, and long overdue. If and when it does become law, an initial problem for the Board will be to inform the public of the statute's existence. Once this is accomplished, it appears that the statute can effectively and efficiently accomplish its purpose—compensating the victims of crime.

FOOTNOTES

[1] 117 Cong. Rec. 2633 (1971) (remarks of Senator Mansfield).

[2] Childres, Compensation for Criminally Inflicted Personal Injury, 39 N.Y. U.L. Rev. 444 (1964) [hereinafter cited as Childres].

[3] Code of Hammurabi §§ 22–24 (c. 2250 B.C.) quoted in Harper, The Code of Hammurabi 19 (1904).

[4] 118 Cong Rec. 15087 (daily ed. Sept. 18, 1972) (remarks of Senator McClellan).

[5] Id. See Childres, supra note 2, at 451–55. A compensation scheme was published in a report of a distinguished committee of justice—the British Section of International Commission of Jurists—in Justice, Compensation for Victims of Crimes of Violence 2 (1962); Childres, supra note 2, at 446 n.12, 451 n.39. This report has been favorably discussed in Griew, Compensation for Victims of Crimes of Violence, 1962 Crim. L. Rev. (Eng.) 801. See also Compensation for Victims of Criminal Violence: A Round Table, 8 J. Pub. L. 191 (1959), which consists of reactions and criticisms from commentators to Fry's proposal for governmental compensation to victims of crimes of violence.

[6] Pub. Act No. 134 [N.Z. 1963]. For a commentary on the New Zealand program see Cameron, Compensation for Victims of Crime: The New Zealand Experiment, 12 Pub. L. 367 (1963) [hereinafter cited as Cameron].

[7] Cameron, supra note 6, at 370–71 n. 16.

[8] Id. at 373–74.

[9] Home Office and Scottish Home & Health Dep't, Compensation for Victims of Crimes of Violence, Cmnd. No. 2323 (1964). For commentary on this compensation scheme see Samuels, Compensation for Criminal Injuries in Britain, 17 U. Tor. L.J. 20 (1967); Note, 78 Harv. L. Rev. 1683 (1965). Criminal victims compensation legislation has also been proposed and enacted in a few Canadian provinces and Australia. See generally Chappell, Compensating Australian Victims of Violent Crimes, 41 Aust. L.J. 3 (1967); Note, Awards of the Crimes Compensation Board, 33 Sask. L. Rev. 209 (1968).

[10] Cal. Gov't Code §§ 13960–66 13970–74 (West Supp. 1972). Sections 13960–66 provide for indemnification of private citizens who are victims of crime. Sections 13970–74 grant compensation to citizens who are victimized when they attempt to prevent the commission of crime, apprehend a criminal or rescue a person in immediate danger, on the theory that these citizens are benefiting the public.

[11] N.Y. Exec. Law §§ 620–35 (McKinney 1972), as amended, (McKinney Supp. 1972).

[12] Hawaii Rev. Stat. §§ 351–1 to –70 (1968), as amended, (Supp. 1972).

[13] Mass. Ann. Laws ch. 258A §§ 1–7 (1968).

[14] Md. Ann. Code art. 26A §§ 1–17 (Supp. 1971), as amended, (Interim Supp. 1972).

[15] Nev. Rev. Stat. §§[1] 217.010 to .260 (1971).

[16] N.J. Stat. Ann. §§ 52:4B–1 to –21 (Supp 1972).

[17] R.I. Gen. Laws Ann. §§ 12–25–1 to –12 (Supp 1972) [effective one hundred twenty days following enactment of the federal statute].

[18] Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972).

[19] Report of the Special Comm'n on the Compensation of Victims of Violent Crimes, Mass. H. Doc. No. 5151, 10–14 (1967) [hereinafter cited as 1967 Mass. Report].

[20] Id. at 11.

[21] Id. at 10–11.

[22] Kutner, Crime-Torts: Due Process of Compensation for Crime Victims, 41 Notre Dame Law. 487, 497–98 (1966).

[23] Id.

[24] 1967 Mass. Report at 12.

[25] E.g., S. 2994, 92d Cong., 1st Sess. (1971); S. 750, 92d Cong., 1st Sess. (1971); H.R. 3963, 92d Cong., 1st Sess. (1971); S. 4576, 91st Cong., 2d Sess. (1970); S. 9, 91st Cong., 1st Sess. (1969); S. 646, 90th Cong., 1st Sess. (1967); S. 2155, 89th Cong., 1st Sess. (1965); H.R. 11818, 89th Cong., 1st Sess. (1965); H.R. 11552, 89th Cong., 1st Sess. (1965); H.R. 11291, 89th Cong., 1st Sess. (1965); H.R 11211, 89th Cong., 1st Sess. (1965); H.R. 10896, 89th Cong., 1st Sess. 1965).

[26] Opposition to these proposals has centered around the belief that these proposals will quickly grow in expense, that the indemnity fund (see notes 133–36 infra and accompanying text) will in no way provide sufficient monies, and that the problem can best be left to the states. 118 Cong. Rec. 15092 (daily ed. Sept. 18, 1972). See generally Hearings on S. 16, S. 33, S. 750, S. 1946, S. 2087, S. 2426, S. 2748, S. 2856, S. 2994 and S. 2995 Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary, 92d Cong., 1st Sess. (1972) [hereinafter cited as Hearings].

[27] S. 800, 93d Cong., 1st Sess. (1973). The Victims of Crime Act of 1973 contains five titles. In addition to Title I [hereinafter cited as Title I]. Title II establishes a federal-state group life and disability insurance program for state and local public safety officers, including policemen, firefighters, and correctional guards. Title III establishes federal minimum death or disability benefits for public safety officers, their families or dependents, for death or disability in the line of duty as a result of a criminal offense. Title IV strengthens the procedural implementation of the civil remedies available to victims of racketeering activity under the Organized Crime Control Act of 1970. Title V [hereinafter cited as Title V] includes provisions for effective dates and authorization for appropriations for the other titles of the bill. 119 Cong. Rec. 2263–71 (daily ed. Feb. 7, 1973). Title I consists of §§ 101–07. Section 102 incorporates §§ 450–60 into Title I. Id. at 2263–66.

[28] Statement of Findings and Purpose, S. 800, 93d Cong., 1st Sess. (1973).

[29] The Victims of Crime Act of 1972 passed the Senate September 18, 1972 by a vote of 74 to 0, 118 Cong. Rec. 15148 (daily ed. Sept. 18, 1972). By the close of the 2d Session of the 92d Congress, the bill had not been presented on the House floor.

[30] N.Y. Exec. Law §§ 620–35 (McKinney 1972), as amended, (McKinney Supp. 1972).

[31] Hawaii Rev. Stat. §§ 351–1 to –70 (1968), as amended, (Supp. 1972).

[32] Mass. Ann. Laws ch. 258A §§ 1–7 (1968).

[33] N.Y. Exec. Law §§ 620, 622–23, 631 (McKinney 1972). See also Cal. Gov't Code §§ 13960, 13962–63 (West Supp. 1972); Md. Ann. Code art. 26A §§ 3, 12(f) (Supp. 1971).

[34] Hawaii Rev. Stat. § 351–11 to –13 (1968). See Hawaii Rev. Stat. § 351–31 (Supp. 1972). See also Alaska Stat. §§ 18.67.020, 18.67.080(c) (need is to be considered with other relevant circumstances) (Supp. 1972); Nev. Rev. Stat. §§ 217.030, 217.100, 217.160, 217.200 (1971); N.J. Stat. Ann. §§ 52:4B–3 to –10 (Supp. 1972).

[35] Mass. Ann. Laws ch. 258A § 2 (1968). See also R.I. Gen. Laws §§ 12–25–2(2) to –3 (Supp. 1972).

[36] See notes 30, 33 supra and accompanying text.

[37] Title I §§ 456(a)–(b). See 119 Cong. Rec. 2262 (daily ed. Feb. 7, 1973) (remarks of Senator McClellan).

[38] Title I § 105. See 119 Cong. Rec. 2262 (daily ed. Feb. 7, 1973) (remarks of Senator McClellan). It remains to be seen whether certain features of existing state statutes that are in conflict with the corresponding provisions in Title I i.e., no financial need requirement in Hawaii and Massachusetts, and compensation for pain and suffering in Hawaii, will prevent these statutes from meeting the test of substantial comparability S. 2994, a predecessor of S. 800 provided specific criteria for determining whether a state's program qualified for the federal grant. S. 2994, § 106 92d Cong., 1st Sess. (1971), 117 Cong. Rec. 21334 (daily ed. Dec. 11, 1971).

[39] Title I § 105.

[40] Id. § 101. Section 450(18) defines a victim as "a person who is killed or who suffers personal injury where the proximate cause of such death or personal injury is—(A) a crime enumerated in section 456 . . . or (B) the not reckless actions of an intervenor in attempting to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 . . . or in attempting to apprehend a person reasonably suspected of having committed such a crime." Section 450(7) defines dependent as "(A) a surviving spouse; (B) an individual who is a dependent of the deceased victim or intervenor within the meaning of section 152 of the Internal Revenue Code of 1954 (26 U.S.C. 152); or (C) a posthumous child of the deceased intervenor or victim. . . ." Section 450(11) defines intervenor as "a person who goes to the aid of another and is killed or injured while acting not recklessly to prevent the commission or reasonably suspected commission of a crime enumerated in section 456 . . . or while acting not recklessly to apprehend a person reasonably suspected of having committed such a crime. . . ."

[41] Id. § 453(b)(2).

[42] Id. § 453(b)(1).

[43] Id. § 450(16). Anticipated loss of future earnings and child care expenses are recoverable up to $150 and $30 per week, respectively.

[44] Id. § 450(15).

[45] Id. § 450(9).

[46] Id. § 454(a).

[47] Id. § 450(8).

[48] Id. § 454(a). However, the statute lists the following items, ownership of which will be disregarded in determining whether or not financial stress exists: a residence, normal household items and personal effects, an automobile, tools of trade, and liquid assets not in excess of one year's gross income or $10,000 in value, whichever is less. Id. §§ 450(8)(A)-(E). Whether or not there should be a requirement of a showing of financial need in a crime victims compensation statute has been discussed in Childres, supra note 2, at 462; Wolfgang, Victim Compensation in Crimes of Personal Violence, 50 Minn. L. Rev. 223, 234–35 (1965); Comment, Victims of Violent Crime: Should They Be an Object of Social Effection?, 40 Miss. L.J. 92, 120 (1968).

[49] N.Y. Exec. Law § 631(6) (McKinney 1972). The term "serious financial hardship" is not defined by the statute. However, "[t]he board shall establish specific standards by rule for determining such serious financial hardship." Id. For such standards, see Crime Victims Compensation Board [hereinafter cited as CVCB], Rules Governing Practice and Procedure [hereinafter cited as CVCB Rules] § 525.8 Rule VIII(8) (Nov. 1968, amending Rule VIII(8) of Sept. 1967). Under the New York rules the following are not considered in computing financial resources: a homestead, personal property consisting of clothing and strictly personal effects, household furniture, appliances and equipment, tools and equipment necessary for the claimant's trade, occupation or business, a family automobile, and life insurance, except in death claims. Id. The Amendments of May, 1971 have lessened the strictness of the need requirement somewhat and now provide that the "Board . . . shall exempt . . .[a]n amount not exceeding the victim's annual income." Furthermore, the Board may in its discretion consider the lowering of the victim's individual standard of living in determining "serious financial hardship." CVCB Rules § 525.8 Rule VIII (8(g)), (9) (May 1971, amending Rule VIII (8(a)), (9) of Nov. 1968). There is a "need" requirement in Md. Ann. Code art. 26 A § 12(f) (Supp. 1971), and one for "victims" only, in Cal. Gov't Code §§ 13960, 13963 (West Supp. 1972). However, there is no "need" requirement in California for "private citizens" (intervenors). See Cal. Gov't Code § 13972 (West Supp. 1972).

[50] See Hawaii Rev. Stat. §§ 351–31 (Supp. 1972).

[51] See Mass. Ann. Law ch. 258A §§ 3, 6 (1968).

[52] "Need" is a consideration, but not a requirement for compensation, in Alaska Stat. § 18.67.080(c) (Supp. 1972) and Nev. Rev. Stat. § 217.180(1) (1971). The Nevada statute compensates only intervenors. See Nev. Rev. Stat. §§ 217.070 & 217.160 (1971). The statutes in New Jersey and Rhode Island require no showing of "need" for recovery. See N.J. Stat. Ann. §§ 52:4B–1 to –21 (Supp. 1972); R.I. Gen. Laws Ann. §§ 12–25–1 to –12 (Supp. 1972).

[53] Hawaii Rev. Stat. §§ 351–33(4) & 351–52(2) (1968). Rhode Island is the only other enacted statute which allows recovery for pain and suffering. See R.I. Gen. Laws Ann. § 12-25-5(c) (Supp. 1972). However, the statute is not yet in operation. See note 17 supra. For a more complete discussion on whether or not recovery for pain and suffering should be granted, see Childres, Compensation for Criminally Inflicted Personal Injury, 50 Minn. L. Rev. 271, 278 (1965); Starrs, A Modest Proposal to Insure Justice for Victims of Crime, 50 Minn. L. Rev. 285, 306–08 (1965); Comment, Compensation for Victims of Crime—Some Practical Considerations, 15 Buffalo L. Rev. 645, 653 (1966); Comment, Compensation for Victims of Crimes of Violence, 30 Albany L. Rev. 325, 332 (1966); Comment, Crime Victim Compensation: The New York Solution, 35 Albany L. Rev. 717, 731 (1971).

[54] Title I § 454(e).

[55] N.Y. Exec. Law § 631(3) (McKinney 1972). The highest maximum recovery authorized among the states is $25,000 in Rhode Island. R.I. Gen. Laws Ann. § 12-25-6(b) (Supp. 1972).

[56] N.Y. Exec. Law § 631(2) (McKinney 1972).

[57] Hawaii Rev. Stat. § 351-62(b) (1968); Mass. Ann. Laws ch. 258A § 5 (1968).

[58] See note 38 supra and accompanying text. See also Title V, supra note 27, at §§ 501–02.

[59] Title I § 454(c); Mass. Ann. Laws ch. 258A § 5 (1958); N.Y. Exec. Law § 626 (McKinney 1972). For similar provisions, see Md. Ann. Code art. 26A § 7 (Supp. 1971); N.J. Stat. Ann. § 52:4B–18 (Supp. 1972). For application of this provision in New York see CVCB 3d Annual Rep. 35, N.Y. Leg. Doc. No. 97 (1970) (hereinafter cited as 1969 N.Y. Report).

[60] Title I § 454(c).

[61] Mass. Ann. Laws ch. 258A § 5 (1968); N.Y. Exec. Law § 626 (McKinney 1972).

[62] See Hawaii Rev. Stat. §§ 351–1 to –76 (1968), as amended, (Supp. 1972). Similarly see Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972); Cal. Gov't Code §§ 13960–66, 13970–74 (West. Supp. 1972); Nev. Rev. Stat. §§ 217.010 to .260 (1971); R.I. Gen. Laws Ann. §§ 12–25–1 to –12 (Supp. 1972).

[63] Title I § 453(g).

[64] E.g., Hawaii Rev. Stat. § 351–63(a) (Supp. 1972); Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(4) (McKinney 1972).

[65] Title I § 450(15).

[66] Id. § 453(g)(1).

[67] Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(4) (McKinney 1972). The collateral payments must have come from sources specified in the statutes.

[68] Hawaii Rev. Stat. § 351–35 (1968).

[69] Mass. H. Acvt No. 2854 (1972).

[70] See note 64 supra.

[71] Title I § 454(g).

[72] Id. § 454(g)(1). In the three states, as in Title I, the amount of compensation may be reduced or denied in proportion to the degree of the claimant's responsibility for the crime giving rise to the claim. See Hawaii Rev. Stat. § 351–31(c) (Supp. 1972); Mass. Ann. Laws ch. 258A § 6 (1968); N.Y. Exec. Law § 631(5) (McKinney 1972).

[73] Title I § 454(g)(2).

[74] Id. § 454(h). Despite this limitation, nowhere in Title I is the term "family" defined. New York and Massachusetts have similar family member exclusions, but define the term "family." See Mass. Ann. Laws ch. 258A §§ 1, 3 (1968); N.Y. Exec. Law §§ 621(4), 624(2) (McKinney 1972). See also Alaska Stat. §§ 18.67.130(b)(1)–(2) (Supp. 1972); Md. Ann. Code art. 26A §§ 2(d), 5(b) (Supp. 1971); Nev. Rev. Stat. § 217.220(1)(a), (b) (1971); N.J. Stat. Ann. §§ 52:4B–2 (Supp. 1972). There is no such restriction in Hawaii and California. See Cal. Gov't Code §§ 13960–66, 13970–74 (West Supp. 1972); Hawaii Rev. Stat. §§ 351–1 to –70 (1968), as amended, (Supp. 1972).

[75] Hearings, supra note 26, at 1005. The statute in Hawaii avoids this hardship. See Hawaii Rev. Stat. § 351–31(c) (Supp. 1972). For criticism of the family member exclusion see Comment, New York Crime Victims Compensation Board Act: Four Years Later, 7 Colum. J.L. & Soc. Prob. 25, 41 (1971). However, in New York during the period 1968 to 1970, only a comparatively small number of claims have been disallowed because of the family member exclusion. The figures are compiled from CVCB 2d Annual Rep. 7–8, N.Y. Leg. Doc. No. 100 (1969) [hereinafter cited as 1968 N.Y. Report]; N.Y. Report, supra note 59, at 10–11; CVCB 4th Annual Rep. 10–11, N.Y. Leg. Doc. No. 95 (1971) (hereinafter cited as 1970 N.Y. Report), and are as follows:

Year	Total awards	Total disallowed claims	Disallowed claims for family membership
1968	220	202	2
1969	336	490	9
1970	458	632	6

Yet the growing number of claims makes the exclusion a bar to compensation for a potentially large number of innocent, injured people. "The claims have increased each year since the inception of the Board." 1970 N.Y. Report 5.

[76] N.Y. Exec. Law § 621(3) (McKinney 1972).

[77] Cal. Gov't Code § 13962 (West Supp. 1972).

[78] Hawaii Rev. Stat. § 351–2 (1968).

[79] Mass. Ann. Laws ch. 258A § 1 (1968).

[80] Id. § 2.

[81] Title I § 456(a)(1)–(3).

[82] Hawaii Rev. Stat. § 351–32 (1968). These crimes are: (1) arson; (2) intermediate assault or battery; (3) aggravated assault or battery or any other aggravated assault offense enacted by law; (4) use of dangerous substances; (5) murder; (6) manslaughter; (7) kidnapping; (8) child-stealing; (9) unlawful use of explosives; (10) sexual intercourse with a female under sixteen; (11) assault with intent to rape or ravish; (12) indecent assault; (13) carnal abuse of female under twelve; (14) rape; and (15) attempted rape. The Alaska statute also specifies the crimes covered. See Alaska Stat. § 18.67.100 (2) (Supp. 1972).

[83] Mass. Ann. Laws ch. 258A § (1968).

[84] N.Y. Exec. Law § 621(5) (McKinney 1972).

[85] Id. § 621(3).

[86] Title I § 456(b)(1)–(18) specifies the following acts, omissions, or possessions: "(1) aggravated assault; (2) arson; (3) assault; (4) burglary; (5) forcible sodomy; (6) kidnapping; (7) manslaughter; (8) mayhem; (9) murder; (10) negligent homicide; (11) rape; (12) robbery; (13) riot; (14) unlawful sale or exchange of drugs; (15) unlawful use of explosives; (16) unlawful use of firearms; (17) any other crime including poisoning, which poses a substantial threat of personal injury; or (18) attempts to commit any of the foregoing." Section 456(c) reads: "For the purposes of this part, the operation of a motor vehicle, boat, or aircraft that results in an injury or death shall not constitute a crime unless the injuries were intentionally inflicted through the use of such vehicle, boat, or aircraft or unless such vehicle, boat, or aircraft is an implement of a crime to which this part applies."

[87] Id. § 456(b)(17). N.J. Stat. Ann. § 52:4B–11(b) (Supp. 1972) and R.I. Gen. Laws Ann. § 12–25–4 (Supp. 1972) are similar to Title I, in that in addition to listing the crimes, these statutes provide a catch-all clause which includes generally any other violent crime resulting in a personal injury or death.

[88] Title I § 450(18)(B).

[89] By definition, one who acts recklessly is not an intervenor. See id. § 450(11), supra note 40.

[90] Title I § 454(d). Failure to report within the specified time may be waived if good cause is shown. Id. Also the report does not necessarily have to be made by the victim or claimant. Id. For similar provisions see Mass. Ann. Laws ch. 258A § 5 (1968) (48 hours); N.J. Stat. Ann. § 52:4B-18 (Supp. 1972) (3 months); N.Y. Exec. Law § 631(1) (McKinney 1972) (48 hours). There is no such requirement in California, Hawaii or Rhode Island. See Cal. Gov't Code §§ 13960–66, 13970–74 (West Supp. 1972); Hawaii Rev. Stat. §§ 351–1 to –70 (1968), as amended, (Supp. 1972); R.I. Gen. Laws Ann. §§ 12–25–1 to –12 (Supp. 1972).

[91] Title I § 454(f). For similar provisions see Cal. Gov't Code § 13963 (West Supp. 1972); Md. Ann. Code art. 26A § 12(a)(3) (Supp. 1971). There is no such duty in most of the states. See Alaska Stat. §§ 18.67.010 to .180 (Supp. 1972); Hawaii Rev. Stat. §§ 351–1 to –70 (1968), as amended, (Supp. 1972); Mass. Ann. Laws ch. 258A §§ 1–7 (1968); N.J. Stat. Ann. §§ 52:4B-1 to -21 (Supp. 1972); N.Y. Exec. Law §§ 620–35 (McKinney 1972), as amended, (McKinney Supp. 1972).

[92] Title I § 454(f).

[93] Id. § 454(b).

[94] Cal. Gov't Code § 13963 (West Supp. 1972).

[95] Md. Ann. Code art. 26A § 12(a) (Supp. 1971).

[96] N.Y. Exec. Law § 625(2) (McKinney 1972) (90 days or up to one year for good cause shown).

[97] Hawaii Rev. Stat. § 351–62(a) (1968) (18 months).

[98] Mass. Ann. Laws ch. 258A § 4 (1968) (1 year from occurrence or 90 days from death, whichever is earlier). See also Alaska Stat. § 18.67.130(a) (Supp. 1972) (2 years); Md. Ann. Code art. 26A § 6(b) (Supp. 1971) (180 days or up to 2 years for good cause shown); N.J. Stat. Ann. § 52:4B–18 (Supp. 1972) (1 year).

[99] Title I § 451(a).

[100] Id § 453(a) reads: "(1) in the case of the personal injury of an intervenor or victim, to or on behalf of that person; or (2) in the case of the death of the intervenor or victim, to or on behalf of the surviving dependent or dependents of either of them." Since the compensation provided for under Title I is based on a moral obligation rather than on a legal right, there is a requirement that "need" be shown before compensation will be granted. See notes 24, 46–52 supra and accompanying text. The administrative functions of the board are detailed in Title I § 452(1)–(11).

[101] Id. § 452(3).

[102] Id. § 452(11).

[103] N.Y. Exec. Law § 622(1) (McKinney 1972).

[104] Id. § 623(3). There are similar rule making powers in other compensation statutes. See, e.g., Md. Ann. Code art. 26A § 4(b) (Supp. 1971).

[105] Hawaii Rev. Stat. § 351–11 (1968).

[106] Id. § 351–68.

[107] Mass. Ann. Laws ch. 258A § 2 (1968).

[108] Title I § 452(3).

[109] Id. § 452(11).

[110] In New York, for example, it has been commented that the public is not yet well informed as to the existence and operation of the New York statute. See Comment, Crime Compensation: The New York Solution, 35 Albany L. Rev. 717, 730 & nn.109 & 110, 730–31 & n.111, 731 & n.112. See also N.Y. Times, Mar. 15, 1973, at 45, col. 1–3, at 86, col. 1–3.

[111] Title I § 455(e)(1).

[112] Id. § 455(e)(2).

[113] Id. § 455(f).

[114] Id. § 455(h).

[115] Id.

[116] Id.

[117] Id. § 455(g)(1).

[118] Id. § 455(g)(2). The section of the Criminal Justice Act referred to is found in 18 U.S.C. § 3006A (1970). It deals with the rates and qualifications for payment of attorneys' fees for indigent clients. The rates are not to exceed $30 per hour for an attorney's time expended in court, and $20 per hour for his time expended out of court. Id. § 3006A(d)(1).

[119] See Title I, § 455(g)(2); 118 Cong. Rec. 15089 (daily ed. Sept. 18, 1972).

[120] Hawaii Rev. Stat. § 351–16 (1968); Mass. Ann. Laws ch. 258A § 4 (1968). In Hawaii, the 15 per cent maximum applies only to awards greater than $1,000, "provided that the amount of the attorney's fees shall not, in any event, exceed the award of compensation remaining after deducting that portion thereof for expenses actually incurred by the claimant." Hawaii Rev. Stat. § 351–16 (1968).

[121] Hawaii Rev. Stat. § 351–16 (1968); Mass. Ann. Laws ch. 258A § 4 (1968). See Title I § 455 (g)(1)–(3). See also 118 Cong. Rec. 15090 (daily ed. Sept. 18, 1972).

[122] N.Y. Exec. Law § 623(3) (McKinney 1972).

[123] Title I § 453(e)(1).

[124] Id. § 453(e)(2).

[125] Id. § 453(e)(3). If the emergency payment was greater than the amount of the final order, the recipient is liable only for the excess. Id.

[126] Id.

[127] N.Y. Exec. Law § 630 (McKinney 1972). In New York, "if it appears to the board member to whom a claim is assigned, prior to taking action upon such claim that, (a) such claim is one with respect to which an award probably will be made, and (b) undue hardship will result to the claimant if immediate payment is not made, such board member may make an emergency award to the claimant. . . ." Id. However, the award may not exceed $500. Id. The amount of the emergency award will be deducted from the final award; and in the event the claim is denied, the emergency payment must be refunded to the board. Id.

[128] Hawaii Rev. Stat. § 351–62.5 (Supp. 1972). The conditions for these emergency payments are that the Commission must have made an award and it then "determines that there is an immediate need of funds in order to meet expenses incurred as a direct or indirect result of injury or death. . . ." Id. The amount of the emergency payment is deducted from the amount of the final award and the amount deducted is redeposited in the emergency payment fund. Id. The only other states that provide for emergency payments are Alaska and Maryland. See Alaska Stat. § 18.67.120 (Supp. 1972); Md. Ann. Code art. 26A § 11 (Supp. 1971).

[129] Mass. Ann. Laws ch. 258A §§ 1–7 (1968).

[130] Title I § 457(a).

[131] Alaska Stat. § 18.67.140 (Supp. 1972); Cal. Gov't Code § 13963 (West Supp. 1972); Md. Ann. Code art. 26A § 15 (Supp. 1971); Mass. Ann. Laws ch. 258A § 7 (1968); Nev. Rev. Stat. § 217.240 (1971); N.J. Stat. Ann. § 52: 4B–20 (Supp. 1972); N.Y. Exec. Law § 634 (McKinney 1972); R.I. Gen. Laws Ann. § 12–25–10(a) (Supp. 1972). In Hawaii, the Commission may institute a derivative action in the name of the victim and recover such damages as may be recoverable at common law by the victim, without reference to the payment of compensation by the Commission to the victim. Hawaii Rev. Stat. § 351–35 (1968).

[132] Title I § 457(a).

[133] Title I § 458(a).

[134] Id. § 457(a).

[135] Id. § 458(a). Further, "[i]n any court of the United States . . . upon conviction of a person of an offense resulting in personal injury, property loss, or death, the court," after considering the financial condition of such person "may, in addition to any other penalty," order such person to be fined $10,000 or less. Id. § 104.

[136] Such a fund is authorized under the California, Hawaii and Rhode Island statutes. See Cal. Gov't Code § 13964 (West Supp. 1972); Hawaii Rev. Stat. § 351–62.5(a) (Supp. 1972); R.I. Gen. Laws Ann. § 12–25–12 (Supp. 1972). See also 118 Cong. Rec. 15091 (daily ed. Sept. 18, 1972).

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered.

WELCOME THE VISIT OF MR. BREZHNEV

Mr. HATFIELD. Mr. President, we are hopeful that the barriers that have for so long divided our postwar world may be broken down. In the past years we have seen significant progress toward

this end. The trips of President Nixon to the People's Republic of China and to the Soviet Union have been powerful signs that we are ending the era of the cold war. Important and courageous strides have been taken toward the reshaping of the international political environment.

The forthcoming trip of Mr. Brezhnev, Secretary of the Communist Party, to our country and his talks with President Nixon represent another crucial step in the process of attempting to overcome decades of paranoia and enmity, creating a sounder and more realistic relationship between our two nations. There has been the most careful preparation leading to this summit meeting between Mr. Brezhnev and President Nixon. Pressing issues between our two nations need to be resolved—issues relating to arms control and disarmament, trade, troop reductions, and other matters. I, for one, do not want 1 day to pass when any opportunity for resolving those issues is left unexplored. Thus, I welcome the coming visit of Mr. Brezhnev and have strong hopes that these days will be marked by historic steps toward improving understanding between the Russian people and the American people.

It has been suggested by some that the visit of Mr. Brezhnev should be delayed because of the current Watergate crisis. I could not disagree more with such a suggestion. On several occasions, I have stated that the truth in the Watergate matter must be followed fully to wherever it leads and to whatever conclusion. It is one of the marks of our strength and viability that our system, when faced with such devastating evidence of fundamental corruption, can conduct in public an investigation to reveal all the truth and bring the guilty to justice. In my judgment, it is, indeed, fortunate that Mr. Brezhnev is scheduled to come to Washington during the very course of one of the Government's most historic investigations of its own operation. If I were to have a foreigner learn of our country, I could not think of a better time for him to come and visit, observe the workings of our Government.

I am anxious to have Mr. Brezhnev visit America. I believe we have nothing to hide. On the contrary, I am committed to doing everything possible to expose the truth about all aspects of our Government to both the American people and the world. That is not something to be ashamed about, but something to encourage if we believe in the strength of democracy.

With deep anticipation, I look forward to the coming visit of Mr. Brezhnev to America and trust that it will be marked by substantial progress toward easing the tensions and fears that divide us and the world.

The President should be credited with the initiations that have made this historic encounter possible, and he deserves the encouragement of the Congress in pursuing these goals.

THE SUMMIT CONFERENCE SHOULD GO FORWARD

Mr. BROOKE. Mr. President, for some time, I have been concerned about the calls for postponement of the Brezhnev trip to Washington, and I share with my distinguished colleague, the senior Senator from Oregon (Mr. HATFIELD), the necessity for us to speak out in support of Mr. Brezhnev's visit.

Postponement of President Nixon's summit talks with Soviet Party Leader Leonid Brezhnev, as some have suggested, would be a distinct disservice not only to the American people but to nations throughout the world.

Suggestions that the President might bargain away vital American interests are contrary to both logic and history.

I believe the Russians have a healthy respect for Richard Nixon, who has dealt with them forcefully for over 20 years.

President Nixon knows how to bargain with the Russians and obtain agreements which are favorable to both sides, and favorable to building a structure of world peace. He is the first President in our history to visit Moscow. During his visit there in 1972, he negotiated the most comprehensive set of agreements with the Russians since the end of World War II. Among them were agreements on arms control, the environment, health, and joint space exploration.

I have confidence in President Nixon's skills as a diplomat. He understands that summits must be much more than cosmetics, creating "spirits" which waft away with the next summer breeze. Less than 3 weeks after he first took office, President Nixon made it clear that he opposed "instant summitry." He said then—and he maintains today—that he believes only in a "well-prepared summit meeting" where differences between countries can actually be negotiated, not simply discussed. Thus it was that 3 years of planning went into the President's first summit conference with the Russians and that summit proved to be the most successful of any held in more than a quarter of a century. During the past 4 years President Nixon has negotiated more agreements with the Russians than have been negotiated in all of the other postwar years combined.

The same painstaking preparation which went into the 1972 summit conference in Moscow has now entered into the planning for the current meeting. Both the President and his top advisers, Secretary Rogers and Henry Kissinger, have been engaged in extensive discussions with the Soviets since the Moscow trip last year, agreeing on tentative items for the 1973 summit agenda and mapping out areas where progress could be made. All of these discussions began long before the Watergate affair broke open this year and bear no relationship to it.

Mr. President, to postpone the summit now would jeopardize the progress which has already been made in Soviet-American relations and would probably diminish any hope of success in the vital subjects now under discussion with the Soviet leaders: new arms control measures, mutual reduction of forces in central Europe, and the opening of new trading lanes between our countries.

The President's forthcoming meeting with Soviet Party Leader Brezhnev is essential to maintain the increasing momentum for a firm structure of peace. This momentum must not be reduced or halted.

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. ROBERT C. BYRD. Mr. President, how much time remains for morning business?

The PRESIDING OFFICER. Two minutes.

ORDER FOR ADJOURNMENT UNTIL 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 o'clock tomorrow morning.

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

ORDER FOR RECOGNITION OF SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that following the remarks of the two leaders or their designees on tomorrow, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Mr. BROCK, Mr. GRIFFIN, Mr. CURTIS, and Mr. HANSEN.

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

THE DANGER OF RELYING ON ECONOMIC STATISTICS

Mr. PROXMIRE. Mr. President, in the morning hour, in the minute or so remaining, let me say that I have just chaired a hearing of the Joint Economic Committee at which we had some of the top statistical experts of the country appear.

An astonishing situation we have in this country now is that it would be possible—conceivable, at least for an incumbent administration—to rig the economic statistics to show falsely just before an election, that unemployment has declined sharply, or to falsify the inflation statistics to show that prices are no longer rising or are falling—and there is no law against it. In this way an election could literally be stolen by offering lies without breaking the law.

While many people may feel that this would be most unlikely, many unlikely things have happened in this country in recent months, as we all know.

For that reason I would like to inform the Senate that I am asking the Joint Economic Committee to authorize a study in depth as to precisely how we can prevent any kind of rigging, modifying, or changing the economic statistics in any way, how we can have a fail-safe system to assure credibility, reliability, accuracy, and honesty of our economic statistics. Under present circumstances that is essential. If persons in position of power are willing to burglarize committee files, fabricate phoney letters to discredit Presidential candidates and engage in other outrageous and illegal of-

fenses to help win advantage in an election, is it not perfectly realistic to expect that some future administration or zealots in it might rig the price or unemployment statistics to win an election. Such rigging could easily swing literally millions of votes far more surely than any Watergate-connected activity. And what chilling and disastrous consequences. The economic confidence factor could be reduced to zero.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, tomorrow after the orders for the recognition of Senators have been consummated, there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements limited therein to 3 minutes.

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

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

PROPOSED LEGISLATION FROM THE SECRETARY OF TRANSPORTATION

A letter from the Secretary of Transportation, transmitting a draft of proposed legislation to amend the Federal Railroad Safety Act of 1970 and other related acts to authorize additional appropriations and for other purposes (with accompanying papers). Referred to the Committee on Commerce.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A concurrent resolution of the Legislature of the State of Louisiana. Referred to the Committee on the Judiciary:

HOUSE CONCURRENT RESOLUTION No. 178

A concurrent resolution to memorialize the Congress of the United States to adopt, and submit to the states for ratification, an amendment to the United States Constitution which will guarantee the right of the unborn human to life throughout its development

Whereas, the United States Supreme Court on January 22, 1973, nullified the laws of the various states, including Louisiana, regarding abortion and interpreted the United States Constitution in a way which allows the destruction of unborn human life; and

Whereas, the sweeping judgment of the United States Supreme Court in the Texas and Georgia abortion cases is a flagrant rejection of the right of the unborn child to life through the full nine months of the gestation period; and

Whereas, unborn human life is entitled to the protection of laws which may not be abridged by act of any court or legislature or by any judicial interpretation of the Constitution of the United States.

Therefore, be it resolved by the House of Representatives of the Legislature of Louisiana, the Senate thereof concurring, that the Congress of the United States is memorialized, requested and urged to adopt, and to submit to the states for ratification, an amendment to the Constitution of the United States which will guarantee the explicit protection of all unborn human life throughout its development, except in such case as such protection would cause the death of the mother; will guarantee that no human being, born or unborn, shall be denied protection of law or shall be deprived of life on account of age, sickness or condition of dependency, and will provide that Congress and the several states shall have the power to enforce the provisions of such amendment by appropriate legislation.

Be it further resolved that copies of this resolution shall be transmitted to each member of the Louisiana congressional delegation, to the Secretary of the United States Senate, to the Clerk of the United States House of Representatives and to the President of the United States.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HUGHES, from the Committee on Labor and Public Welfare, with an amendment:

S. 1125. A bill 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 (Rept. No. 93-208), together with additional views.

By Mr. CANNON, from the Committee on Rules and Administration, without amendment:

S. Con. Res. 29. Concurrent resolution authorizing the printing of additional copies of Senate hearings on illegal, improper, or unethical activities during the Presidential election of 1972 (Rept. No. 93-209);

H. Con. Res. 110. Concurrent resolution providing for the printing, as a House document, of the eulogies and encomiums of the late President of the United States, Harry S. Truman (Rept. No. 93-210); and

H. Con. Res. 200. Concurrent resolution providing for the printing of the compilation of the social security laws (Rept. No. 93-211).

By Mr. CANNON, from the Committee on Rules and Administration, with amendments:

S. Res. 108. Resolution authorizing additional expenditures by the Committee on Commerce for inquiries and investigations (Rept. No. 93-212); and

H. Con. Res. 132. Concurrent resolution providing for the printing as a House document of a revised edition of "The Capitol" (Rept. No. 93-213).

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

S. Res. 67. Resolution calling on the President to promote negotiations for a comprehensive test ban treaty (Rept. No. 93-214).

By Mr. HATHAWAY, from the Committees on Labor and Public Welfare, and Finance, jointly, with amendments:

H.R. 7357. An act to amend section 5 (l) (1) of the Railroad Retirement Act of 1937 to simplify administration of the Act; and to amend section 226(e) of the Social Security Act to extend kidney disease medicare coverage to railroad employees, their spouses, and their dependent children; and for other purposes (Rept. No. 93-215).

By Mr. HATFIELD, from the Committee on Interior and Insular Affairs, with amendments:

H.R. 3867. An act to amend the Act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, and for other purposes (Rept. No. 93-216).

EXECUTIVE REPORTS OF COMMITTEES

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

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

Graham A. Martin, of North Carolina, a Foreign Service officer of the class of career minister, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Vietnam.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time, and, by unanimous consent, the second time, and referred as indicated:

By Mr. BAYH:

S. 1986. A bill to amend the Act of March 16, 1926 (relating to the Board of Public Welfare in the District of Columbia), to provide for an improved system of adoption of children in the District of Columbia, and for other purposes. Referred to the Committee on the District of Columbia.

By Mr. FONG:

S. 1987. A bill to amend the Internal Revenue Code of 1954 to allow a deduction for certain contributions to organizations providing services to the community. Referred to the Committee on Finance.

By Mr. MAGNUSON (for himself, Mr. COTTON, Mr. HOLLINGS, Mr. PASTORE, Mr. STEVENS, and Mr. JACKSON):

S. 1988. A bill to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes. Referred to the Committee on Commerce.

By Mr. McGEE (for himself and Mr. FONG):

S. 1989. A bill to amend section 225 of the Federal Salary Act of 1967 with respect to certain executive, legislative, and judicial salaries. Referred to the Committee on Post Office and Civil Service.

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

S. 1990. A bill to establish a Federal Legal Aid Corporation through which the government of the United States of America may render financial assistance to its respective States for the purpose of encouraging the provision of legal assistance to individual citizens who are in need of professional legal services for prosecution or defense of certain causes in law and equity. Referred to the Committee on the Judiciary.

By Mr. HANSEN (for himself and Mr. McGEE):

S. 1991. A bill to amend section 613 (c) (4) (F) of the Internal Revenue Code. Referred to the Committee on Finance.

By Mr. HATHAWAY:

S. 1992. A bill to amend title II of the Legislative Reorganization Act of 1970, to establish a central data bank for Federal fiscal, budgetary, and program-related data, and to improve the ability of all branches of government to specify, obtain and use such information, and for other purposes. Referred to the Committee on Government Operations.

By Mr. PASTORE (by request):

S. 1993. A bill to amend the EURATOM Cooperation Act of 1958, as amended. Referred to the Joint Committee on Atomic Energy.

By Mr. PASTORE:

S. 1994. A bill to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes. Referred to the Joint Committee on Atomic Energy.

By Mr. MATHIAS:

S. 1995. A bill for the relief of Ivy Mae Harding. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAYH:

S. 1986. A bill to amend the act of March 16, 1926 (relating to the Board of Public Welfare in the District of Columbia), to provide for an improved system of adoption of children in the District of Columbia, and for other purposes. Referred to the Committee on the District of Columbia.

ADOPTION SUBSIDY FOR THE DISTRICT OF COLUMBIA

Mr. BAYH. Mr. President, today I am introducing a bill which would provide for an improved system of adoption for children in the District of Columbia. This legislation aims to promote increased adoption of Washington children by providing financial aid subsidies to parents who want to adopt children considered "hard to place." It attempts to secure permanent homes for neglected and dependent children who are now receiving foster care in the District of Columbia.

Adoption subsidy plans, such as the one I am proposing today for the District, are currently in effect in 23 States. Over the past few years, total adoption placements in the District of Columbia have approximated 100 children per year, an extremely low number considering the fact that there currently are 2,700 dependent or neglected children under Welfare Department care in the District. These children receive various types of foster care, some living traditional home settings and others in group arrangements. The cost of foster care ranges from approximately $2,160 to $3,600 annually per child. Nearly 150 children, many of whom are hard to place, are being cared for in institutions outside the city at a cost of $4,000 to $8,000 a year. Since Junior Village was ordered closed in 1971 due to disclosures of inadequate care and supervision, the number of children in foster care and private institutions has greatly increased.

Under my bill, any child who has not been adopted within 6 months after he is available for adoption would be considered a "child with special needs." This will include children who are difficult to place because of age, racial or ethnic background, physical or mental condition, or membership in a sibling group which should be placed together. This legislation would enable the District of Columbia Department of Human Resources to provide adoption subsidy payments for these children with special needs. The amount that could be spent for an adoption subsidy cannot exceed the amount that the Department would be authorized to spend if the child continued in foster or institutional care. Payments will vary according to the special needs of the child, and will include such costs as medical, dental, and surgical expenses, and psychiatric and psychological expenses. The Commissioner of the District of Columbia is authorized to review periodically the continuing need for each family's subsidy and to make appropriate adjustments in payments based upon changes in the needs of the child.

Subsidized adoption plans have resulted in savings to the taxpayers in those States which have established this program. This legislation encourages adoption by requiring that the Commissioner make an annual report informing prospective adoptive families of the availability of adoptable children. Many States have reported that the publicity and specialized services made available under this plan have resulted in the adoption of children by families who did not need financial assistance, or who required such assistance for only a limited time.

My legislation is intended to help those children in the District of Columbia for whom the right to a family is not a reality. Provisions should be made for supplementing the income of families which have the essential qualifications required to meet the needs of adopted children but are unable to assume financial responsibility for the full cost of a child's care. The benefits of a permanent family and home to youngsters who otherwise are forced to live in institutions, hospitals, and foster-care facilities cannot be measured in monetary terms. These children deserve the love and care that only a family can provide. Subsidies that make it possible for a child to have both a permanent home and continuity of care and affection are clearly a more beneficial arrangement for the child, and in the long run would cost the community no more than the alternative of long-term foster care.

Mr. President, I ask unanimous consent that 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. 1986

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) sections 11 and 12 of the Act entitled "An Act to establish a Board of Public Welfare in and for the District of Columbia, to determine its functions, and for other purposes", approved March 16, 1926 (D.C. Code, secs. 3–114 and 3–115), are each amended to read as follows:

"SEC. 11. The Commissioner of the District of Columbia (hereinafter referred to as the 'Commissioner') is authorized to—

"(1) make temporary provision for the care of children pending investigation of their status;

"(2) have the care and legal guardianship, including the power to consent to or arrange for adoption in appropriate cases, of—

"(A) children who may be committed by courts of competent jurisdiction; and

"(B) children who are relinquished by their parents to the Commissioner or whose relinquishment is transferred to the Commissioner by a licensed child-placing agency under section 6 of the Act entitled 'An Act to regulate the placing of children in family homes, and for other purposes', approved April 22, 1944 (D.C. Code, sec. 32–786); and

"(3) make such provision for the care and maintenance of such children in private homes, under contract including adoption subsidy pursuant to section 12 of this Act (D.C. Code, sec. 3–115), or in public or private institutions, as the welfare of such children may require; and

"(4) provide care and maintenance for substantially retarded children who may be received upon application or upon court commitment, in institutions or homes or other facilities equipped to receive them, within or without the District of Columbia. The Commissioner shall cause the wards of the District of Columbia placed out under temporary care to be visited as often as may be required to safeguard their welfare and when children are placed in family homes or private institutions, so far as practicable such homes or private institutions, shall be in control of persons of like faith with the parents of such children, and whenever the Commissioner shall for any reason place a child with any organization, institution, or individual other than the same faith as that of the parents of that child, the Commissioner shall set forth the reasons for such action in the records of the case.

"SEC. 12. (a) The Commissioner shall have the power to conclude arrangements with persons or institutions at such rates as may be agreed upon.

"(b)(1) The Commissioner shall make adoption subsidy payments as needed on behalf of a child with special needs, where such child would in all likelihood go without adoption except for the acceptance of the child as a member of the adoptive family, and where the adoptive family has the capability of providing the permanent family relationships needed by such child in all areas except financial, as determined by the Commissioner.

"(2) For the purposes of this subsection—

"(A) The term 'child with special needs' includes any child who is difficult to place in adoption because of age, race, or ethnic background, physical or mental condition, or membership in a sibling group which should be placed together. A child for whom an adoptive placement has not been made within six months after he is available for adoptive placement shall be considered a child with special needs within the meaning of this section.

"(B) The term 'adoptive family' includes single persons able to meet the emotional needs of prospective adoptees.

No subsidy shall be paid under this section unless a tentative adoption subsidy agreement shall have been entered into prior to the completion of the child's legal adoption.

"(c) Any person, public agency or licensed childplacing agency having a child with special needs in foster care or institutional care may recommend to the Commissioner a subsidy for the adoption of such child, and may include in the recommendation advice as to the appropriate level of payments and any other information likely to assist the Commissioner in carrying out the provisions of this section. The Commissioner shall make the determination as to whether or not an appropriate adoptive home exists for the child, but in so doing the Commissioner shall refer to the recommendations of the referring agency. If the Commissioner concludes that the child referred is a child with special needs within the meaning of this section, and that an appropriate adoptive home exists for the child, the Commissioner is authorized to enter into a tentative adoption subsidy agreement with the prospective adoptive family and to accept a transfer of relinquishment of parental rights from the referring agency pursuant to section 6 of the Act entitled 'An Act to regulate the placing of children in family homes, and for other purposes', approved April 22, 1944 (D.C. Code, sec. 32–786).

"(d) If a child in the custody of the Commissioner or a licensed child-placing agency has been in foster care or institutional care for at least six months after the child is considered legally free for adoptive placement, the Commissioner or agency shall inform the family providing care of the possibility of financial aid for adoption under this section. If the family caring for the prospective adoptee applies to the Commissioner for adoption of the child, and if it appears to the Commissioner after study that the family would be an appropriate adoptive family for the child but for the family's economic inability to meet the child's needs, the Commissioner shall enter into a tentative agreement with the family concerning the amount and duration of a proposed subsidy in the event the child is placed for adoption with that family. Thereafter the Commissioner may accept a transfer of relinquishment of parental rights from the referring agency in appropriate cases, and shall in all cases take all steps necessary to assist the family in completing the legal and procedural requirements necessary to effectuate the adoption.

"(e) The amount and duration of adoption subsidy payments may vary according to the special needs of the child, and may include maintenance costs, medical, dental, and surgical expenses, psychiatric and psychological expenses, and other costs necessary for his care and well-being. A subsidy may be paid on a long-term basis, to help a family whose income is limited and is likely to remain so, on a time-limited basis, to help a family meet the cost of integrating a child into the family over a specified period of time, or on a special services basis, to help a family meet a specific anticipated expense of expenses when no other resource appears to be available. The Commissioner shall continue responsibility for adoption subsidy payments in the event that the adoptive family moves to another jurisdiction: *Provided*, That the family continues to meet the conditions of the adoption subsidy agreement. Eligibilty for payments shall continue until the child reaches eighteen.

"(f) The Commissioner is authorized to make payments under this section from appropriations for the care of children in foster homes and institutions, and to seek and accept funds from other sources including Federal, private, and other public funding sources, to carry out the purposes of this section. The amount expended by the Commissioner for any subsidy may not exceed the highest amount the Commissioner would be authorized to spend in providing or securing support and special services for the child if the child were in the legal custody of the Commissioner.

"(g) The Commissioner may periodically review the need for continuing each family's subsidy, not more often than once a year. At the time of such review and at other times during the year when changed conditions, including variations in medical opinions, prognosis, and costs are deemed by the Commissioner to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child. Any parent who is a party to a subsidy agreement may at any time in writing request, for reasons set forth in the request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of the request. Any adjustment may be made retroactive to the date the request was received by the Commissioner. If the request is not acted on within thirty days after it has been received by the Commissioner, or if the Commissoner modfies or terminates an agreement without the concurrence of all parties, any party to the agreement shall be entitled to a hearing under the applicable provisions of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1–1501–1–1510).

"(h) The Comissioner shall keep such records as are necessary to evaluate the effectiveness of adoption subsidy as a means of encouraging and promoting the adoption of children with special needs. The Commissioner shall make an annual progress report which shall be open to public inspection. The report shall include, but not be limited to—

"(1) the number of chidren placed in adoptive homes under subsidy agreements during the year preceding the annual report and the major characteristics of the children placed; and

"(2) the number of children currently in foster care with the Commissioner for six months or more, and the legal status of those children.

The Commissioner shall disseminate information to prospective adoptive families as to the availability of adoptable children and of the existence of aid to adoptive families under this section.

"(i) All rules and regulations adopted by the Commissioner pursuant to this section shall be published in the District of Columbia Register as required by section 6 of the District of Columbia Administrative Procedures Act (D.C. Code, sec. 1–1505)."

(b) Section 14 of such Act (D.C. Code, sec. 3–117) is amended to read as follows:

"SEC. 14. The Commissioner shall have full power to—

"(1) accept for care, custody, and guardianship dependent or neglected children whose custody or parental control has been transferred to the Commissioner, and to provide for the care and support of such children during their minority or during the term of their commitment, including the initiation of adoption proceedings and the provision of subsidy in appropriate cases under section 12 of this Act (D.C. Code, sec. 3–115);

"(2) with respect to all children accepted by him for care, place them in private families either without expense or with reimbursement for the cost of care, or in appropriate cases to place them in private families under an adoption subsidy agreement concluded under section 12 of this Act (D.C. Code, sec. 3–115) or to place them in institutions willing to receive them either without expense or with reimbursement for the cost of care; and

"(3) consent to arrange for or initiate court proceedings for the adoption of all children committed to the care of the Commissioner whose parents have been permanently deprived of custody by court order, or whose parents have relinquished a child to the Commissioner or to a licensed child-placing agency which has transferred the relinquishment to the Commissioner under section 6 of the Act entitled 'An Act to regulate the placing of children in family homes, and for other purposes', approved April 22, 1944 (D.C. Code, sec. 32–786)."

SEC. 2. (a) Section 307(b)(1)(D) of title 16 of the District of Columbia Code is amended by inserting immediately after "should have knowledge" the following: ", including the existence and terms of a tentative adoption subsidy agreement entered into prior to the filing of the adoption petition under section 12 of the Act of March 16, 1926 D.C. Code, sec. 3–115)".

(b) Section 309 (b) of title 16 of the District of Columbia Code is amended by adding at the end thereof the following new sentence: "In determining whether the petitioner will be able to give the prospective adoptee a proper home and education, the court shall give due consideration to any assurance by the Commissioner that he will provide or contribute funds for the necessary maintenance or medical care of the prospective adoptee under an adoption subsidy agreement under section 12 of the Act of March 16, 1926 (D.C. Code, sec. 3–115).".

By Mr. FONG:

S. 1987. A bill to amend the Internal Revenue Code of 1954 to allow a deduction for certain contributions to organizations providing services to the community. Referred to the Committee on Finance.

Mr. FONG. Mr. President, the bill which I introduce to amend the Internal Revenue Code would permit a taxpayer to take a tax deduction for contributions of up to $200 made to nonprofit organizations providing services to the community.

Under the present provisions of the tax law, "charitable contributions" can be made only to five categories of recipients. These are: First, governments in the United States or its possessions, if the gift is made exclusively for public purposes; second, nonprofit corporations, trusts, community chests, funds or foundations incorporated in the United States or its possessions, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of whose activities is carrying on propaganda or influencing legislation; third, nonprofit war veterans organizations; fourth, individual contributions to domestic lodges, if used for religious, charitable, scientific, literary, or education purposes, or for the prevention of cruelty to children or animals; and fifth, nonprofit cemetery companies or corporations.

This provision does not permit the deduction for tax purposes of contributions to such worthwhile activities as those of the community little league team or the community baseball team, or the community swimming team or for community festivals, parades, or other such worthwhile community activities.

Especially in these times, when it is necessary to channel the energies of the community, from its youth to its senior citizens, into worthwhile outlets, contributions from individuals, foundations, and corporations to support these activities should be encouraged to the utmost. Making such contributions deductible for tax purposes as "charitable contributions" would greatly enhance the giving to support such community activities.

So as to prevent a taxpayer taking a double deduction for such contribution, my bill excepts contributions which may be taken as a trade or business expense or which are deductible under the present provisions of the Internal Revenue Code as charitable deductions.

Also, so as to assure the contribution will not in any way enure to the benefit of the donor, my bill provides that the contribution may not be made as a condition of receiving services provided by the donee or by reason of which the donor is entitled to receive such services.

Furthermore, since the amounts needed for most community activities are not too great because of the participation of the people of the community, my bill limits the contribution to each such activity to $200, a most modest sum.

Mr. President, I urge the Senate to give this bill its prompt and careful consideration, and at this time ask unani-

mous consent that the text of the bill be printed in the RECORD.

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

S. 1987

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) part VI of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to itemized deductions) is amended by adding at the end thereof the following new section:

"Sec. 189. Contributions to community service organizations.

"(a) General Rule.—There shall be allowed as a deduction the amount of contributions made during the taxable year to nonprofit organizations, whether permanent or temporary, for use by such organizations in providing services to the communities in which they operate.

"(b) Limitations and Exceptions.—

"(1) $200 per organization.—Deduction shall be allowed under subsection (a) for contributions made during the taxable year to any organization only to the extent the amount of such contributions does not exceed $200.

"(2) Certain contributions excepted.—Subsection (a) shall not apply to any contribution which—

"(A) is allowable as a deduction under section 162 (relating to trade or business expenses),

"(B) is a charitable contribution (as defined in section 170(c)), or

"(C) is made as a condition of receiving services provided by the donee or by reason of which the donor is entitled to receive such services."

(b) The table of sections for such part VI is amended by adding at the end thereof the following new item:

"Sec. 189. Contributions to community service organizations."

(c) The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act, but only with respect to contributions made after such date.

By Mr. MAGNUSON (for himself, Mr. COTTON, Mr. HOLLINGS, Mr. PASTORE, Mr. STEVENS, and Mr. JACKSON):

S. 1988. A bill to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes. Referred to the Committee on Commerce.

Mr. MAGNUSON. Mr. President, as most of my colleagues in the Senate know, I have long been a supporter of a strong and healthy domestic fishing industry. The Commerce Committee, which I have the privilege to chair, has been the architect over the past several years of a number of important pieces of legislation designed to breathe some life into our declining fishing industry. Senate Concurrent Resolution 11, which recently passed the Senate without a single dissenting vote and which, when adopted by the House, would express a national policy in support of the domestic fishing industry, is the most recent example of the committee's deep concern about the future of America's fishermen and the resources they seek to catch.

In discussing Senate Concurrent Resolution 11, many members of the committee, including myself, raised and debated the dual questions of whether effective and timely steps were being taken internationally to reduce fishing pressure on the threatened stocks of fish and whether international arrangements had, to date, advanced the cause of rational fishery management and conservation. The consensus was that it had not been done, on both questions. Consequently, an amendment was adopted emphasizing the committee's alarm about our rapidly deteriorating resources. Another amendment was adopted which, in unequivocal terms, demonstrated the committee's willingness to discuss and, if necessary, legislate interim measures designed to protect our living ocean resources prior to effective international agreement in the Law of the Sea negotiations now underway.

Mr. President, I believe that the time is now ripe for the Senate's consideration of an interim measure. Today, I introduce for appropriate reference a bill to extend, on an interim basis only, the U.S. contiguous fishery zone from 12 to 200 nautical miles from our coast. The bill also provides special protection for anadromous species of fish which are hatched in this country and then migrate out into the high seas before returning to spawn in the streams of their origin.

As you will recall, I sponsored and actively supported a bill to create a 9-mile contiguous zone which became law just 7 years ago. Although this law has been extremely helpful to both our Atlantic and Pacific fisheries, it has simply not been enough. I said then that it would not be enough but I was hopeful that a viable conservation regime might be forthcoming on a worldwide basis. Regrettably, this has not occurred. Many foreign fishing nations still hunt fish, when we should all be joining together to farm them. Warnings of continued depletion from our fishery scientists are now more frequent and are cast in more urgent tones, but are still ignored by foreign nations fishing near our shores. The statistics which I am including with this statement describe better than I can this dangerous trend of overfishing.

While the world is debating conservation, management, and perhaps uppermost, who gets the fish, a number of our own adjacent resources are going the way of the California sardine. Although we hear cited most often as an example of Pacific Ocean perch off Oregon and Washington and the haddock of the Northwest Atlantic, National Marine Fisheries Service scientists and international scientific bodies concerned with fisheries management have, for biological reasons, recommended reduced levels of exploitation of a number of high value species such as Atlantic herring, yellowtail flounder, cod, Pacific halibut, Bering Sea groundfish and Atlantic mackeral. While we are discussing an orderly management and harvest regime at the United Nations, massive foreign fishing fleets, utilizing the "pulse fishing" technique are decimating our offshore resources.

This week the U.S. delegation at meetings in Copenhagen of the International Commission for the Northwest Atlantic Fisheries—ICNAF—are fighting a continuing battle for our resources which has been a losing one for far too long a time. Because of his concern, Secretary of Commerce Frederick Dent, on the eve of these meetings, has gone to the point of threatening U.S. withdrawal from ICNAF if something is not done soon about overfishing:

> We cannot continue to see the fishery resource or the livelihood of the U.S. fisherman threatened by a lack of affirmative action on the part of the members of ICNAF.

He went on to say—

> The precarious state of certain resources in the Northwest Atlantic calls for immediate restraint and enlightened conduct by all nations who share in their harvest.

Mr. President, I find I can no longer be silent on this imoprtant issue. Since I am a congressional adviser to the U.S. delegation attending the preliminary deliberations on a new Law of the Sea Treaty in the United Nations Seabeds Committee, there was some hesitation on my part to make this move at this point in time. However, I and many of my colleagues have been deeply concerned with the lack of progress toward achieving a measure of consensus on the many issues before the Seabeds Committee, including the fisheries questions. And, having been involved in the previous two Law of the Sea Conferences, I can say that even in the event of early agreement, conventions agreed to may not come into full force and effect for several years after signature by the parties. With 130 nations involved, the potential for delay is inherently high. I would be willing, as I am certain fishermen and others concerned with the oceans would be, to allow this debate and consideration to continue for as many years as necessary to achieve the best possible agreement with a hope that the agreed conventions might stand for years to come. However, other considerations, to which I alluded earlier, make protracted delay intolerable, indeed dangerous.

I ask unaimous consent to print the bill at this point in the RECORD together with some additional information on this question which I am submitting.

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

S. 1988

Be it enacted by the Senate and House of Representative of the United States of America in Congress assembled, That this Act may be cited as the "Interim Fisheries Zone Extension and Management Act of 1973."

FINDINGS AND STATEMENT OF PURPOSE

SEC. 2(a) The Congress finds—

(1) that valuable coastal and anadromous species of fish and marine life off the shores of the United States are in danger of being seriously depleted, and in some cases, of becoming extinct;

(2) that stocks of coastal and anadromous species within the nine-mile contiguous zone

and three-mile territorial sea of the United States are being seriously depleted by foreign fishing efforts beyond the existing twelve-mile fisheries zone near the coastline of the United States;

(3) that international negotiations have so far proved incapable of obtaining timely agreement on the protection and conservation of threatened species of fish and marine life;

(4) that there is further danger of irreversible depletion before efforts to achieve an international agreement on jurisdiction over coastal and anadromous fisheries result in an operative agreement; and

(5) that it is therefore necessary for the United States to take interim action to protect and conserve overfished stocks and to protect our domestic fishing industry.

(b) it is the purpose of this Act, as an interim measure, to extend the contiguous fisheries zone of the United States and certain authority over anadromous fish of the United States in order to provide proper conservation management for such zone and fish and to protect the domestic fishing industry until general agreement is reached in international negotiations on Law of the Sea with respect to the size of such zones and authority over such fish, and until an effective international regulatory regime comes into full force and effect.

EXTENSION OF CONTIGUOUS FISHERIES ZONE

SEC. 3. Section 2 of the Act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States," approved October 14, 1966 (80 Stat. 908), is amended by striking "nine nautical miles from the nearest point in the inner boundary." and inserting in lieu thereof "one hundred ninety-seven miles from the nearest point in the inner boundary."

EXTENSION OF JURISDICTION OVER ANADROMOUS FISH

SEC. 4. (a) The United States hereby extends its jurisdiction to its anadromous fish wherever they may range in the oceans to the same extent as the United States exercises jurisdiction over fish in its territorial waters and contiguous fisheries zone except that—

(1) such extension of jurisdiction shall not extend to the territorial waters or fishery zone of another country; and

(2) sixty days after written notice to the President of the Senate and the Speaker of the House of Representatives of intent to do so, the Secretary of the Treasury may authorize a vessel other than a vessel of the United States to engage in fishing for such fish in areas to which the United States has extended jurisdiction pursuant to this section upon determining, after consultation with the Secretary of State and the Secretary of Commerce, that such fishing would not result in depletion of such fish beyond the level necessary for proper conservation purposes.

(b) As used in this Act the term "anadromous fish" means all living resources originating in inland waters of the United States and migrating to and from waters outside the territorial waters and contiguous fisheries zone of the United States.

PROMOTION OF PURPOSES OF ACT BY TREATIES AND AGREEMENTS

SEC. 5. The Secretary of State shall—

(1) initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in commercial fishing operaitons for fish protectd by this Act, for the purpose of entering into treaties or agreements with such countries to carry out the policies and provisions of this Act;

(2) review and, if necessary, initiate the amendment of treaties, conventions, and agreements to which the United States is a party in order to make such treaties, conventions, and agreements consistent with the policies and provisions of this Act;

(3) seek treaties or agreements with appropriate contiguous foreign countries on the boundaries between the waters adjacent to the United States and waters adjacent to such foreign countries for the purpose of rational utilization and conservation of the resources covered by this Act and otherwise administering this Act; and

(4) seek treaties or agreements with appropriate foreign countries to provide for the rational use and conservation of—

(a) coastal fish common both to waters over which the United States has jurisdiction and to waters over which such foreign countries have jurisdiction through measures which will make possible development of the maximum yields from such fish;

(b) anadromous fish spending some part of their life cycles in waters over which such foreign countries have jurisdiction through measures which restrict high seas harvesting and make available to the fishermen of such foreign countries an equitable share of such anadromous fish which are found in their territorial waters;

(c) fish originating in the high seas through strengthening existing or, where needed, creating new international conservation organizations; and

(d) coastal fish in waters over which other countries have jurisdiction through measures which make possible the harvesting by United States fishermen of an appropriate share of such fish not being harvested by the coastal country, under users' fees, licenses and regulations which are nondiscriminatory and non-punitive and take United States traditional fishing into account.

RESEARCH

SEC. 6. The Secretary of Commerce is authorized to promote the conservation of fish originating in the United States territorial sea and contiguous fisheries zone and anadromous fish by carrying out such research, or providing financial assistance to public or private agencies, institutions, or persons to carry out research, as may be necessary.

REGULATIONS

SEC. 7. There are authorized to be promulgated such regulations as may be necessary to carry out the provisions of this Act, but the sums appropriated for any fiscal year shall not exceed $1,000,000.

EFFECTIVE DATE

SEC. 9. The provisions of this Act shall become effective on the date of enactment of this Act, except that the provisions of Sections 3 and 4 shall become effective after 90 days following such date or enactment.

TERMINATION DATE

SEC. 10. This Act shall cease to be in effect on the date the Law of the Sea Treaty or Treaties now being developed regarding fisheries jurisdiction and conservation shall enter into force.

SEC. 11. Nothing contained in this Act shall be construed to abrogate any treaty or convention to which the United States is a party on the date of the enactment of this Act.

HISTORY OF INCREASE OF FOREIGN FISHING OFF THE UNITED STATES COASTS *

During the last decade, foreign fishing off the coasts of the U.S., primarily by U.S.S.R. and Japan, has expanded rapidly.

PACIFIC COAST

From the late 1950's Japan and the Soviet Union have conducted extensive factoryship fishing operations in the Bering Sea and the Gulf of Alaska. In the late 1960's, the fleets extended their fishing operations southward to waters off Oregon and Washington. In 1972, vessels of Japan, the Soviet Union, and the Republic of Korea fished off the U.S. Pacific coast. The greatest activity was on the Continental Shelf in the eastern Bering Sea.

Japan began fishing in the eastern Bering Sea in 1930 for king crab. World War II temporarily halted this activity until 1952 when the Japanese began to fish salmon on the high seas west of 175°W. longitude. They began fishing in the eastern Bering Sea in 1953. In 1962, they extended operations to the Gulf of Alaska, and further southward in the late 1960's. It is estimated that in 1971 the Japanese landed approximately 2.0 million metric tons of fish, primarily pollock, from waters adjacent to the Pacific coast of the United States.

The Soviet Union began a limited fishery in the late 1950's. By 1961, over 150 Soviet vessels were observed by NMFS enforcement agents in the Bering Sea. In 1962, the Soviets expanded their operations to the Gulf of Alaska, and in 1966 to waters off the Pacific Northwest where they fish primarily Pacific hake. In 1971, the Soviet catch from waters adjacent to the Pacific Coast of the United States was 600,000 metric tons.

The South Koreans began fishing in the eastern Bering Sea in 1968. Their activity has been minimal so far; only up to a dozen vessels have been deployed in the Bering Sea. In 1973, a Korean longliner was observed for the first time in the Gulf of Alaska fishing blackcod.

Table 1 lists the numbers of Japanese vessels fishing off Alaska by types of vessels from 1952–1972 and table 2 shows the estimated number of Soviet vessels fishing off Alaska. The number of foreign fishery vessels off Alaska in 1972 ranged from 94 to a peak of 504; smaller foreign fleets, numbering up to 64 vessels engaged in fisheries off the Pacific Northwest (see table 3).

ATLANTIC COAST

In 1961, a Soviet fishing fleet entered the fisheries on Georges Bank off the New England coast. The Soviet Union has since maintained large, highly modernized fishing fleets operating off the New England coast and, at times, along the mid-Atlantic coast as far south as Cape Hatteras in North Carolina. In addition to the Soviet Union, Canada, Spain, the Federal Republic of Germany, Poland, Bulgaria, Romania, East Germany, Japan, Italy, and a few other nations now fish the waters off the east coast of the United States.

In 1972, the number of foreign fishery vessels sighted monthly ranged from 145 to a peak of 329 (see table 3). The largest number of vessels is from the U.S.S.R. and Eastern European countries (see table 4). Less than 10 percent of the foreign vessels come from Western European countries and Japan.

The fisheries catch of foreign fleets, operating from Maine to Cape Hatteras, amounted to 960,000 metric tons in 1971. This quantity was about equal to the total catch by the United States fishermen in that same area.

In the Gulf of Mexico, foreign fishing is limited. The Japanese fish tunas with longlines, while the Cubans trawl for snappers, groupers and other demersal species. The most intense foreign fishing in the Gulf of Mexico takes place during the spring and summer months (see table 3).

* Source: National Marine Fisheries Service, NOAA, U.S. Department of Commerce.

TABLE 1.—JAPANESE FISHING VESSELS OFF ALASKA, 1952–72

Year	Stern trawlers	Trawlers [1]	Longline	Gillnet	Crab catchers	Whale killers	Total	Year	Stern trawlers	Trawlers [1]	Longline	Gillnet	Crab catchers	Whale killers	Total
1952				57		4	61	1963	85	3	115	369	9	21	599
1953				105		4	109	1964	155	9	14	379	12	21	590
1954	9			205		10	224	1965	116	8	12	369	10	25	540
1955	6			247		14	367	1966	117	26	18	370	10	28	569
1956	13			447		15	475	1967	128	71	23	370	10	33	627
1957	13			405		17	435	1968	130	133	22	375	29	29	719
1958	20			460		15	495	1969	98	118	37	399	46	26	724
1959	44			460		15	519	1970	107	99	32	399	43	10	690
1960	125–135			410		15	600–615	1971	110	114	28	385	52	27	716
1961	125–135			410		15	600–615	1972	148	137	26	350	42	27	730
1962	149	2	37	369	19	21	597								

[1] Includes side trawlers, pair trawlers, and Danish seiners.

TABLE 2.—ESTIMATED NUMBER OF SOVIET FISHERY VESSELS OFF ALASKA, BY MONTH; 1963 TO 1972

Month	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	Month	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972
January	119	155	163	151	160	109	120	156	184	145	August	157	76	178	44	60	27	13	12	24	35
February	186	160	181	204	170	116	160	198	191	171	September	75	55	169	36	40	33	17	17	39	25
March	155	188	194	246	180	110	163	178	195	160	October	44	40	128	20	25	29	12	17	40	27
April	172	221	205	165	130	82	94	108	171	134	November	4	44	105	23	20	33	22	31	57	27
May	186	207	212	154	90	34	51	61	113	37	December	57	97	121	75	60	72	99	119	123	59
June	200	200	216	102	80	28	22	19	32	24											
July	211	99	182	30	75	23	15	14	23	30	Total	1,566	1,532	2,054	1,250	1,090	696	788	930	1,292	884

TABLE 3.—FOREIGN FISHING AND FISHERY SUPPORT VESSELS SIGHTED DURING 1972 OFF THE U.S. COASTS, BY MONTH AND AREA OF OPERATIONS

Month	Area of operations							Month	Area of operations						
	Alaska	Pacific Northwest	California	Gulf of Mexico	Atlantic coast	Hawaii	Total		Alaska	Pacific Northwest	California	Gulf of Mexico	Atlantic coast	Hawaii	Tota.
January	235		1	2	258		496	August	265	42	1	10	242		560
February	257	1	1	3	291		553	September	270	41	3		300	6	620
March	334	1		12	306		653	October	123	29	2	1	278		433
April	296	1	2	17	329		645	November	94	15	3		145		257
May	401	31	8	21	267		728	December	126		1		173		300
June	445	50		40	236		771								
July	504	64	3	18	187		776	Yearly total	3,350	275	25	124	3,012	6	6,792

Note: Monthly sighting exclude duplicate sightings; yearly total includes duplicate sightings. Source: National Marine Fisheries Service, NOAA, U.S. Department of Commerce.

TABLE 4.—FOREIGN FISHERY VESSELS, SIGHTED OFF U.S. ATLANTIC COAST DURING 1972

Country	Month												Total by country
	January	February	March	April	May	June	July	August	September	October	November	December	
Soviet Union	167	188	190	209	201	166	143	135	141	133	101	87	1,861
Poland	43	49	63	65	38	33	11	26	55	51	30	31	495
East Germany	21	18	27	27	11	22	16	30	49	50	10	18	299
Bulgaria	9	8	8	7	7	6	5	5	5	3	3	5	71
Romania			1	3	3			2	4	5		5	18
Cuba						1		1	1				3
Subtotal 1	240	263	289	311	260	228	175	199	255	242	144	141	2,747
West Germany							3	14	14	14	1	2	48
Spain	12	17	8	5	3	2	2	18	8	1		8	84
Japan	5	10	7	6		6	7	10	15	12		17	95
Italy	1	1										5	7
Norway			2										2
Greece				2	1								3
Denmark					3								3
France									1	2			3
Other													
Subtotal 2	18	28	17	13	7	8	12	42	38	29	1	32	245
Grand total, by month	258	291	306	324	267	236	187	241	293	271	145	173	2,992

Source: National Marine Fisheries Service, NOAA, U.S. Department of Commerce.

Foreign fishing fleets off the U.S. Atlantic Coast numbered 312 vessels in March 1973, or more than in March 1972 or in March 1971, when 306 and 258 foreign vessels were sighted, respectively. These totals include both fishing and support vessels.

The Soviet Union had exactly the same number of vessels (190) in March 1972 and 1973. To compare the numbers alone, however, can be misleading: in March 1972, a total of 136 Soviet fishing vessels were medium trawlers and 39 stern factory trawlers. However, in March 1973, the Soviets deployed only 52 medium trawlers, but operated 120 stern factory trawlers. Since the catches of a large Soviet stern factory trawler are on the average about 6 times greater than those of a medium side trawler, the total Soviet effort in March 1973 was considerably greater.

Poland and East Germany operated fewer vessels, 58 compared to 90 in March 1972.

Spain and Japan greatly increased their effort, deploying a total of 40 vessels as compared to 15 in March 1972. Both countries are also rapidly increasing the number of stern factory trawlers (9 stern trawlers in March 1972 versus 28 stern trawlers in March 1973).

Italy, which had no vessels fishing off New England in March 1972, deployed 6 stern trawlers and one side trawler in March 1973.

The above data (see table 5 for details) indicates that despite the poor condition of certain fishery stocks in the Northwest Atlantic off the U.S. coast, foreign fishing effort continues to be extremely heavy. Utilizing the estimate that a stern trawler catches about 6 times as many fish as a side trawler during the same period of time, then the foreign fishing effort as measured in numbers of vessels in March 1973 can be said to have been about 70 percent greater than in March 1972. (This assumes, of course that the surveillance was equally efficient in both years and the foreign fleets fished the same type of gear and same amount of time).

(By M. A. Kravanja).

TABLE 5.—FOREIGN STERN FACTORY AND FREEZER TRAWLERS AND MEDIUM SIDE TRAWLERS SIGHTED OFF U.S. ATLANTIC COAST IN MARCH 1972 AND 1973

[In number of vessels]

Nationality	March 1973		March 1972	
	Stern	Medium	Stern	Medium
Soviet	120	52	39	136
Polish	17	16	23	37
East German	9	8	10	15
Bulgarian	8		8	
Romanian	6		1	
Total	160	76	81	188
West German	1			
Spanish	14	12	2	6
Japanese	14		7	
Italian	6	1		
Other				
Total	35	13	9	6
Grand total	195	89	90	194
Estimated fishing effort in units of medium trawlers	1,170	89	540	194
Total	[1] 1,259		734	

[1] 72 percent greater than in March 1972.

TABLE 6.—FOREIGN FISHING AND FISHERY SUPPORT VESSELS SIGHTED DURING 1973 OFF THE U.S. COASTS, BY MONTH AND AREA OF OPERATIONS

Month	Area of operations						
	Alaska	Pacific Northwest	California	Gulf of Mexico	Atlantic coast	Hawaii	Total
January	172	2	1		198		373
February	173	2		4	220		399
March	323	3	1	1	312		640
April	336	1	25	3	280		645

Note: Monthly sighting exclude duplicate sightings; yearly total includes duplicate sightings.

TABLE 7.—FOREIGN FISHING AND FISHERY SUPPORT VESSELS SIGHTED DURING 1972 OFF THE U.S. COASTS, BY MONTH AND AREA OF OPERATIONS

Month	Area of operations						
	Alaska	Pacific Northwest	California	Gulf of Mexico	Atlantic coast	Hawaii	Total
January	235		1	2	258		496
February	257	1	1	3	291		553
March	334	1		12	306		653
April	296	1	2	17	329		645
May	401	31	8	21	267		728
June	445	50		40	236		771
July	504	64	3	18	187		776
August	265	42	1	10	242		560
September	270	41	3		300	6	620
October	123	29	2	1	278		433
November	94	15	3		145		257
December	126		1		173		300
Yearly total	3,350	275	25	124	3,012	6	6,792

Note: Monthly sightings exclude duplicate sightings; yearly total includes duplicate sightings.

TABLE 8.—FOREIGN FISHING AND FISHERY SUPPORT VESSELS SIGHTED DURING 1971 OFF THE U.S. COASTS, BY MONTH AND AREA OF OPERATIONS

Month	Area of operations						
	Alaska	Pacific Northwest	California	Gulf of Mexico	Atlantic coast	Hawaii	Total
January	248			7	123		378
February	247			9	259		515
March	364	2		9	258		633
April	346	11	2	25	288		672
May	372	57	3	18	310		760
June	413	70	1	65	185		734
July	549	81	1	61	126		818
August	237	64	4	12	241		558
September	238	82	4	7	277		608
October	107	39	8	1	271		426
November	124	10	2	5	218		359
December	176	1	2		247		426
Yearly total	3,421	417	27	219	2,803		6,887

Note: Monthly sighting exclude duplicate sightings; yearly total includes duplicate sightings.

TABLE 9.—JAPAN: BERING SEA TRAWL CATCH, BY SPECIES, TYPES OF FISHERIES, AND NUMBER OF VESSELS; 1969–71

Fishery, year	Number of vessels		Catch by species (metric tons)							
	Motherships	Trawlers	Alaska pollock	Flatfish	Cod	Sablefish	Rockfish	Herring	Others	Total
Motherships:										
1971	12	155	1,079,148	130,323	18,761	2,828	4,427	9,083	5,426	1,249,996
1970	11	137	1,030,826	89,495	46,736	3,114	2,226	9,392	2,649	1,184,438
1969	12	172	667,730	106,221	38,777	3,520	11,614	11,615	5,136	844,613
Independents:										
1971		42	432,696	31,035	15,962	8,743	69,354	9,585	12,576	579,951
1970		42	235,540	17,764	16,839	8,042	68,941	17,829	36,180	401,135
1969		42	199,983	12,141	11,332	10,006	89,066	23,035	14,943	360,506
Longline/gillnets:										
1971		22				23,428			3,731	27,159
1970		22				27,643			2,387	30,030
1969		21				19,992			302	20,294
Total, Bering Sea:										
1971	12	219	1,511,844	161,358	34,723	34,999	73,781	18,668	21,733	1,857,106
1970	11	201	1,266,366	107,259	63,575	38,799	71,167	27,221	41,216	1,615,603
1969	12	235	867,713	118,362	50,109	33,518	100,680	34,650	20,381	1,225,413

Source: Suisan Tsushin, June 12, 1972.

TABLE 10.—SOVIET FISHERY CATCH OFF CONTINENTAL U.S. COASTS AS PERCENT OF TOTAL SOVIET MARINE CATCH, 1966–73

[In thousand metric tons]

Year	Total Soviet marine catch [1]	Atlantic coast		Pacific coast		Continental U.S. coasts	
		Catch	Percent of total catch	Catch	Percent of total catch	Catch	Percent of total catch
1964	4,079.3	367.7	9.0	623.6	15.3	991.3	24.3
1965	4,623.0	551.4	11.9	685.4	14.8	1,236.8	26.8
1966	4,924.0	624.5	12.7	455.0	9.2	1,079.5	21.9
1967	5,315.7	338.9	6.4	476.7	9.0	815.6	15.3
1968	5,667.1	341.5	6.0	329.7	5.8	671.2	11.8
1969	6,092.5	492.4	8.1	408.2	6.7	900.6	14.8
1970	6,824.5	268.5	3.9	584.1	8.6	852.6	12.5
1971	6,849.2	206.7	5.9	602.8	8.8	1,009.5	14.7
1972	NA	[2] 489.0	NA	NA	NA	NA	NA
1973	NA	NA	NA	NA	NA	NA	NA

[1] Exclusive of freshwater species includes carps, other freshwater species, sturgeons and river eels, and marine mammals.
[2] Preliminary.

Sources: FAO Yearbooks of Fishery Statistics. For Atlantic coast: ICNAF Statistical Bulletins; for Pacific coast: data supplied at U.S.–U.S.S.R. scientific exchanges.

TABLE 11.—SOVIET FISHERIES CATCH FROM WATERS ADJACENT TO U.S. PACIFIC COAST, BY SPECIES; 1971

[In metric tons]

Species	Off Alaska				Total, off Alaska	Off Pacific Northwest	Off California [1]	Total, off U.S. Pacific Coast	Off British Columbia
	Eastern Bering Sea	Off Aleutian Islands	Western Gulf of Alaska	Southeastern Gulf of Alaska					
Flatfish	119,470				119,470			119,470	
Halibut and turbot	17,460				17,460			17,460	
Sablefish	2,830	170			3,000			3,000	
Herring	23,000				23,000			23,000	
Pollock	219,840				219,840			219,840	
Pacific Ocean perch		7,190			7,190			7,190	
Hake						[2] 146,726		146,726	5,021
Rockfishes [3]			21,600	8,100	29,700	2,462		32,162	900
Other	24,857	5,510	879	140	31,386	2,540		33,926	87
Total, fish	407,457	12,870	22,479	8,240	451,046	151,728		602,774	6,008

[1] No catches were reported off California by the Soviets, although their vessels fished off that State throughout 1971.
[2] Probably includes catches off California.
[3] Probably mostly Pacific ocean perch.

Source: Soviet Pacific Institute for Fisheries and Oceanography, Vladivostok (as submitted to United States during bilateral scientific meeting, Seattle).

TABLE 12.—FOREIGN FISHERIES CATCH OFF THE U.S. ATLANTIC COAST BY NEW LIVE SPECIES COMPARED WITH U.S. CATCH; 1971

[In metric tons]

Species	Country		Total foreign [3] catch	United States catch	United States as percent of foreign
	[1] Communist	[2] Non-communist			
Mackerel	342,468	3,870	346,338	2,406	0.7
Herring	195,736	87,314	283,050	35,313	12.5
Silver hake	91,435	152	91,587	16,321	17.8
Red hake	36,319	14	36,333	3,604	9.9
Shellfish	814	32,575	33,389	509,358	1,525.5
Alewife	23,027	5,398	23,027	12,804	55.6
Squid	6,228	14,800	21,028	1,182	5.6
Cod	1,542	10,741	12,283	23,558	191.8
Sharks	10,832	140	10,972	102	.9
Pollock	8,013	2,458	10,471	4,732	45.2
Argentine	1,895		7,293		
Butterfish	512	5,768	6,280	1,570	25.0
Skates	5,218	2	5,220	900	17.2
Redfish	3,494	273	3,767	16,267	431.8
Ocean pout	3,741	3,065	3,741	4,127	110.3
Haddock	603	5	3,668	8,500	231.7
Angler	3,644	2,890	3,649	88	2.4
Groundfish, n.s.	128	31	3,018	5,032	166.7
Witch	2,838		2,869	3,220	112.2
Atlantic saury	2,144		2,144		
Yellowtail	2,010	115	2,125	29,208	1,374.5
Winter flounder	2,060	62	2,122	11,841	558.0
Sculpin	1,538		1,538	1,156	75.2
Tunas	2	1,114	1,116	2,568	230.1
Scup	1,049		1,040	3,157	303.6
Summer flounder	840	42	882	2,470	280.0
American plaice	904		904	2,170	240.0
Searobin	792	20	812	110	13.5
Dogfish	754		754		
White hake		314	314	2,715	864.6
Wolfish		98	98	189	192.9
Halibut		38	38	81	213.2
Bluefish	23		23	1,718	7,469.6
Greenland halibut	22		22		
Menhaden				240,751	
Unspecified	37,467	303	37,770	17,509	215.7
Grand total	788,092	171,602	959,694	964,726	100.5

[1] Includes Soviet Union, Poland, East Germany, Bulgaria, Cuba, and Romania.
[2] Includes Canada, Federal Republic of Germany, Japan, and Spain.
[3] Does not include catches by Italy and Greece. Their vessels fished off the U.S. Atlantic coasts, but neither country submitted their catch statistics to ICNAF.

Source: ICNAF Statistical Bulletin, vol. 21, 1971.

TABLE 13.—FOREIGN FISHERIES CATCH OFF THE U.S. ATLANTIC COAST COMPARED WITH U.S. CATCH; BY QUANTITY AND VALUE; 1971

[In metric tons and millions of 1971 U.S. dollars]

Species	Quantity				Price, U.S. dollars per metric ton [2]	Value	
	Foreign	United States	Total	United States as percent total		Foreign	United States
Mackerel	346,338	2,406	348,744	0.7	110.08	38.12	0.26
Herring	283,050	35,313	318,363	11.1	43.09	12.20	1.52
Silver hake	91,587	16,321	107,908	15.1	139.84	12.81	2.28
Red hake	36,333	3,604	39,937	9.0	110.88	4.03	.40
Shellfish	33,389	509,358	542,747	93.8	824.66	27.53	420.05
Alewife	23,027	12,804	35,831	35.7	43.34	1.00	.55
Squid	21,028	1,182	22,210	5.3	48.59	1.20	.06
Cod	12,283	23,558	35,841	65.7	264.81	3.25	6.24
Sharks	10,972	102	11,074	.9	190.16	2.09	.02
Pollock	10,471	4,732	15,203	31.1	168.29	1.76	.80
Argentine	7,293		7,293		NA	[3] 1.19	

Footnotes at end of table.

TABLE 13.—FOREIGN FISHERIES CATCH OFF THE U.S. ATLANTIC COAST COMPARED WITH U.S. CATCH; BY QUANTITY AND VALUE; 1971—Continued

[In metric tons and millions of 1971 U.S. dollars]

Species	Quantity				Price, U.S dollars per metric ton [2]	Value	
	Foreign	United States	Total	United States as percent total		Foreign	United States
Butterfish	6,280	1,570	7,850	20.0	381.33	2.39	.60
Skates	5,220	900	6,120	14.7	NA	[3].85	[3].15
Redfish	3,767	16,267	20,034	81.2	112.23	.42	1.83
Ocean pout	3,741	4,126	7,867	52.4	NA	[3].61	[3].67
Haddock	3,668	8,500	12,168	69.9	573.64	2.10	4.88
Angler	3,649	88	3,737	2.4	NA	[3].60	[3].01
Groundfish, n. s	3,018	5,032	8,050	62.5	NA	[3].49	[3].82
Witch	2,869	3,220	6,089	52.9	NA	[3].47	[3].53
Atlantic saury	2,144		2,144		NA	[3].35	
Yellowtail	2,125	29,208	31,333	93.2	316.02	.67	9.23
Winter flounder	2,122	11,841	13,963	84.8	313.52	.67	3.71
Sculpin	1,538	1,156	2,694	42.9	NA	[3].25	[3].19
Tunas	1,116	2,568	3,684	69.7	NA	[3].18	[3].42
Scup	1,040	3,157	4,197	75.2	516.77	.54	1.63
Summer flounder	882	2,470	3,352	73.7	756.21	.67	1.87
American plaice	904	2,170	3,074	70.6	NA	[3].18	[3].35
Searobin	812	110	922	11.9	NA	[3].13	[3].02
Dogfish	754		754		NA	[3].12	
White hake	314	2,715	3,029	89.6	133.51	.04	.36
Wolffish	98	189	287	65.9	153.85	.02	.03
Halibut	38	81	119	68.1	516.24	.02	.04
Bluefish	23	1,718	1,741	98.7	264.60	.01	.45
Greenland halibut	22		22		NA	Negligible	
Menhaden		240,751	240,751	100.0	36.25		8.73
Other		[1] 11,918	11,918	100.0	NA		[3] 1.95
Unspecified	37,770	5,591	43,361	12.9	NA	[4] 6.18	[4].91
Grand total	959,685	964,726	1,924,411	50.1		123.14	471.56

[1] Includes small amounts of eels, smelt, striped bass, sea trout, Atlantic croaker, black bass, shad, spot, and white perch.

[2] The average U.S. price for species marked NA is not available. A weighted average price of $163.59 per metric ton was used to obtain the estimated value for these species. This average price was obtained by dividing the total value of U.S. landings by the total quantity. Both the quantity and value of shellfish and menhaden were excluded from this calculation since the U.S. catches are so large a proportion of these 2 species compared to foreign fleets that the average price would not be applicable.

[3] Estimates based on the weighted average price. (See footnote 2.)

Source: ICNAF Statistical Bulletin, Vol. 21, 1971.

TABLE 14.—FOREIGN FISHERIES CATCH OFF U.S. ATLANTIC COAST, 1971

[In metric tons]

Species	ICNAF Subarea 5				ICNAF Subarea 6				South of Cape Hatteras	Total, off U.S. coast
	5Y	5Ze	5Zw	Total	6A	6B	6C	Total		
Cod	282	10,600	1,148	12,182	75	24	2	101		12,283
Haddock	112	3,404	123	3,668						3,668
Redfish	121	3,449	17	3,767						3,767
Halibut	1	37		38						38
Silver hake	53	54,055	11,568	83,802	5,367	1,776	372	7,785		91,587
American plaice	4	426	252	882						882
Greenland halibut		22		22						22
Summer flounder		227	326	843	61			61		904
Winter flounder		885	707	2,008	112	2		114		2,122
Witch	16	918	1,100	2,745	114	2	8	124		2,869
Yellowtail		771	308	1,164	930	21		961		2,125
Angler		1,831	842	3,649						3,649
Pollock	5,326	4,059	142	9,585	886			886		10,471
Ocean pout		900	2,315	3,553	188			188		3,741
Red hake		5,858	11,578	26,823	9,225	87	3	9,510		36,333
Grenadier										
Sculpin		443	422	422	358	85		443		1,538
Scup		74	148	276	282	460	31	773		1,049
Searobin					355	250	207	812		812
White hake	18	187	4	209	7	53	45	105		314
Wolffish	2	96		98						98
Ground fish, n.s	124	2,256	68	2,448	205	296	69	570		3,018
Herring	19,498	207,796	10,403	242,520	21,841	14,031	2,988	40,530		283,050
Mackerel	464	64,621	38,592	114,847	98,915	116,406	13,929	231,491		346,338
Atlantic saury		2,144		2,144						2,144
Butterfish		612	655	1,374	1,296	3,105	505	4,906		6,280
Bluefish		6		6	2		1	2		23
Tunas		52	497	549	451		116	567		1,116
Alewife		2,825	9,489	13,613	3,730	3,296	2,388	9,414		23,027
Argentine	361	6,784	21	7,293						7,293
Capelin										
Dogfish	4	10	181	195	128	364	67	559		754
Sharks		3,188	4,596	7,899	1,891	1,133	49	3,073		10,972
Skates		2,561	2,243	5,005	215			215		5,220
O. fish, n.s	35	15,897	3,704	21,585	6,841	8,327	1,007	16,185		37,770
Squid		7,769	1,921	10,657	4,032	4,878	1,459	10,371		21,028
Shellfish		32,536	1	33,351	3	22	13	38		33,389
Total (added)	26,421	437,269	103,371	619,895	157,510	154,618	23,259	339,784		959,694
Total (ICNAF)	26,421	437,293	103,388	619,982	157,568	154,623	23,261	339,868		959,846

TABLE 15.—SOVIET CATCHES OFF U.S. ATLANTIC COAST, 1971

[In metric tons]

Species	ICNAF Subarea 5				ICNAF Subarea 6				South of Cape Hatteras	Total off U.S. coast	Total ICNAF (1–6)	5+6 as percent total ICNAF	6 as percent total off United States
	5Y	5Ze	5Zw	Total [1]	6A	6B	6C	Total [2]					
Cod		1,055	63	1,270						1,270	111,996	1	
Haddock		292	53	374						374	1,425	26	
Redfish		3,210	4	3,394						3,394	100,763	3	
Halibut											241		

Species	ICNAF Subarea 5				ICNAF Subarea 6				South of Cape Hatteras	Total off U.S. coast	Total ICNAF (1—6)	5+6 as percent total ICNAF	6 as percent total off United States
	5Y	5Ze	5Zw	Total [1]	6A	6B	6C	Total [2]					
Silver hake	53	52,191	11,145	81,515	4,710	1,719	362	7,061		88,576	217,209	41	7
American plaice		94	46	340						340	28,490	1	
Greenland halibut											9,813		
Summer flounder		227	326	843	61			61		904	904	100	7
Winter flounder		793	707	1,946	112	2		114		2,060	3,707	56	6
Witch		903	1,099	2,713	114	2	8	124		2,837	30,615	9	4
Yellowtail		532	308	925	806	13		829		1,754	15,584	11	47
Angler		1,830	838	3,644						3,644	17,181	21	
Pollock		1,088	17	1,163						1,163	2,322	51	
Ocean pout		900	2,315	3,553	186			186		3,739	3,911	96	4
Red hake		4,398	11,568	25,353	8,008	79	3	8,285		33,638	35,437	95	25
Grenadier											78,287		
Sculpin		443	422	1,095	358	85		443		1,538	1,538	100	29
Scup		22	117	193	178	165	29	372		565	570	100	66
Searobin					348	239	205	792		792	792	100	100
White hake											4,588		
Wolffish											2,596		
Ground fish n.s													
Herring		54,358	4,722	63,903	10,267	3,806	1,612	17,355		81,258	110,306	74	21
Mackerel		32,093	15,811	59,074	32,070	23,523	10,920	68,754		127,828	137,320	93	54
Atlantic saury		2,144		2,144						2,144	2,144	100	
Butterfish		61	232	400	72	14		86		486	486	100	18
Bluefish					1		1	1		16	16	100	100
Tunas													
Alewife		389	7,326	9,014	1,047	420	808	2,275		11,289	11,289	100	20
Argentine	7	1,738	21	1,893						1,893	5,535	34	
Capelin											750		
Dogfish													
Sharks		3,086	4,594	7,795	1,877	1,104	16	2,997		10,792	10,792	100	28
Skates		2,556	2,243	5,000						5,000	22,673	22	
O. fish n.s	3	4,829	1,910	8,691	2,206	1,054	461	3,731		12,422	32,681	38	30
Squid		4,148	544	5,659	363	114		479		6,138	13,364	46	8
Molluscs	NA	NA	NA	814						814	814	100	100
Total (added)	63	173,380	66,431	292,708	62,784	32,339	14,425	113,945		406,668	1,016,139		
Total (ICNAF)	63	173,380	66,431	292,754	62,784	32,339	14,425	113,960		406,714	1,016,185	40	30

[1] Includes, according to source, 52,950 tons of fish caught in unknown divisions of subarea 5 (however, subtraction of the sum of the totals of division 5Y, 5Ze and 5Zw from the total of subarea 5 amounts to 52,880 tons).

[2] Includes, according to source, 4,412 tons of fish caught in unknown divisions of subarea 6 (270 tons of silver hake, 10 tons of yellowtail flounder, 195 tons of red hake, 1,670 tons of herring, 14 tons of bluefish, 2,241 tons of mackerel, 10 tons of other fish, and 2 tons of squid).

Source: ICNAF Statistical Bulletin, vol. 21, 1971.

TABLE 16—SOVIET, EAST EUROPEAN AND CUBAN FISHERIES CATCH OFF ATLANTIC COAST, 1971

[In metric tons]

Species	ICNAF Subarea 5				ICNAF Subarea 6				South of Cape Hatteras	Total, off U.S. coast
	5Y	5Ze	5Zw	Total	6A	6B	6C	Total		
Cod		1,208	81	1,441	75	24	2	101		1,542
Haddock		521	53	603						603
Redfish	1	3,296	17	3,494						3,494
Halibut										
Silver hake	53	53,973	11,574	83,699	5,339	1,765	362	7,736		91,435
American plaice		388	252	840						840
Greenland halibut		22		22						22
Summer flounder		227	326	843	61			61		904
Winter flounder		793	707	946	112	2		114		2,060
Witch		903	1,100	2,714	114	2	8	124		2,838
Yellowtail		663	308	1,056	923	21		954		2,010
Angler		1,830	838	3,644						3,644
Pollock	4,761	2,291	17	7,127	886			886		8,013
Ocean pout		900	2,315	3,553	188			188		3,741
Red hake		5,852	11,577	26,816	9,224	81	3	9,503		36,319
Grenadier										
Sculpin		443	422	1,095	358	85		443		1,538
Scup		74	148	276	282	460	31	773		1,049
Searobin					348	239	205	792		792
White hake										
Wolffish										
Ground fish, n.s		57	14	71	36	21		57		128
Herring	2,257	138,418	9,740	155,238	21,811	14,029	2,988	40,498		195,736
Mackerel	72	63,936	38,219	113,397	96,800	116,117	13,913	229,071		342,468
Atlantic saury		2,144		2,144						2,144
Butterfish		62	232	401	81	30		111		512
Bluefish		6		6	2		1	2		23
Tunas		2		2						2
Alewife		2,825	9,489	13,613	3,730	3,296	2,388	9,414		23,027
Argentine	7	1,740	21	1,895						1,895
Capelin										
Dogfish	4	10	181	195	128	364	67	559		754
Sharks		3,126	4,594	7,835	1,877	1,104	16	2,997		10,832
Skates		2,559	2,243	5,003	215			215		5,218
O. fish, n.s	27	15,854	3,681	21,511	6,771	8,201	974	15,956		37,467
Squid		4,228	544	5,739	373	114		489		6,228
Shellfish				814						814
Total (added)	7,182	308,351	98,666	467,033	149,734	145,955	20,958	321,044		788,092
Total (ICNAF)	7,182	308,374	98,674	467,110	149,787	145,955	20,958	321,112		788,222

TABLE 17.—U.S. PERCENTAGE OF ATLANTIC CATCH

In 1960, the U.S. was taking 93+% of its offshore resources, with the remainder being taken by Canada.

In 1971, the U.S. was taking only about 50% of the total catch.

Georges Bank: 1960, U.S. took 100%; 1970, U.S. took 15%.

Southern New England: 1960, U.S. took 100%; 1970, U.S. took 20%.

Gulf of Maine: 1960, U.S. took 96%; 1971, U.S. took 84%.

Mid Atlantic Bight: 1963, U.S. took 100%; 1971, U.S. took 68%.

REPORT ON FOREIGN FISHING OFF U.S. COASTS (APRIL 1973) *

Summary: The number of foreign fishing vessels sighted by the National Marine Fish-

* Prepared by the International Activities Staff of the National Marine Fisheries Service, Washington, D.C.

eries Service (NMFS) surveillance patrols, conducted in cooperation with the U.S. Coast Guard, remained stable at about 640 vessels, the same as in March 1973. Table 1 shows the detailed composition of foreign fleets by country and vessel type.

The largest concentration of foreign vessels in April was off Alaska, where their number continued to increase, but only slightly (from 323 vessels in March to 336 in April). During March, it doubled due to a rapid expansion of Japanese fishing operations (see March 1973 monthly report), which also remained the largest in April (188 vessels). The Japanese were taking primarily Alaska pollock and Bering Sea crab; smaller fisheries for Pacific ocean perch and sablefish were conducted in the Gulf of Alaska. Soviet effort also increased, from 124 vessels in March to 146 in April; however, since the increase was in the number of large stern factory and freezer trawlers, rather than in medium trawlers, the expanded fishing effort was greater than the figures alone suggest. It should be noted that a Soviet stern trawler may catch several times the amount of fish that one of their medium trawlers can. In April, Soviet fishermen caught herring, flounders, ocean perch, shrimp, and various groundfish species. Figure 1 shows the fishing grounds of the foreign fleets. On May 1, NMFS Regional Director Rietze met with the Soviet Fleet Commander to discuss the prevention of conflicts between the Soviet mobile trawl gear and U.S. fixed gear near Kodiak Island.

Off the Pacific Northwest, only one single Japanese longliner was sighted fishing. The NMFS fishery surveillance personnel in Alaska, however, reported that some Soviet vessels began moving southward towards the Washington coast in late April. It is expected that in May, the Soviet will begin a large-scale fishery for Pacific hake off Washington and Oregon as they have done since 1966.

Off central California, a fleet of about 20 Soviet trawlers suddenly appeared to fish for hake. It is not known whether these vessels were part of the Soviet fleet operating off Alaska, or whether they came directly from the Soviet Union.

Foreign fishing in the Gulf of Mexico was minimal—only 3 Cuban shrimp boats were sighted.

In the Northwest Atlantic, off New England states and in the Mid-Atlantic Bight, the number of foreign vessels decreased somewhat (to 280 vessels) from the high March level (312 vessels). The principal species sought by foreign fishermen were mackerel, sea herring and Atlantic hakes, but they were observed taking also other species, such as argentine, scup, sea robin, flounder, and squid. Figures 5 and 6 show in greater detail country catches by species and locality. Mexico and Venezuela, each for the first time, deployed 2 trawlers on Georges Bank, bringing the number of countries which fished off the U.S. Atlantic coast in April 1973 to 10. Spain, Italy, and Japan continue to fish off New England and mid-Atlantic states with more vessels than during 1972. Several violations of ICNAF conservation regulations by Soviet fishermen were reported.

Estimates of April 1973 fish and shellfish catches made by foreign fleets on the Continental Shelf adjacent to the United States are not available.

TABLE 1.—FOREIGN FISHERY VESSELS OPERATING OFF U.S. COASTS DURING APRIL 1973 (EXCLUDING DUPLICATE SIGHTINGS); BY TYPE OF VESSEL AND COUNTRY

Fishing grounds	Stern trawlers [1]	Medium trawlers [2]	Other fishing vessels	Processing and transport vessels	Support vessels [3]	Research vessels [4]	Total
Off Pacific coast:							
Off Alaska:							
Japan	35	94	41	17	1		188
Soviet Union	41	79		15	7	4	146
Republic of Korea	1		1				2
Total	77	173	42	32	8	4	336
Off Pacific Northwest:							
Japan			1				1
Soviet Union							
Other							
Total			1				1
Off California:							
Soviet Union	17	5				2	24
Japan			1				1
Total	17	5	1			2	25
In the Gulf of Mexico:							
Mexican							
Cuban			3				3
Soviet							
Japanese							
Other							
Total			3				3
Off Atlantic coast:							
Soviet Union	89	31	[5] 29	18	4	2	173
Poland	14	17		5			36
East Germany	7	12		2			21
Federal Republic of Germany							
Bulgaria	7			1			8
Romania	6						6
Spain	13	10					23
Japan	7						7
Italy	1	1					2
Mexcio	2						2
Canada							
Other (Venezuela)			[6] 2				2
Total	146	71	31	26	4	2	280
Grand total	240	249	78	58	12	8	645

[1] Includes all classes of stern factory and stern freezer trawlers.
[2] Includes all classes of medium side trawlers (nonrefrigerated, refrigerated, and freezer trawlers).
[3] Includes fuel and water carriers, tugs, cargo vessels, etc.
[4] Includes exploratory, research and enforcement (E) vessels.
[5] Rigged as purse seiners.
[6] Pair trawlers.

TABLE 2.—FOREIGN FISHERY VESSELS OPERATING OFF THE U.S. ATLANTIC COAST DURING APRIL 1973 (EXCLUDING DUPLICATE SIGHTINGS); BY TYPE OF VESSEL AND COUNTRY

Fishing grounds	Stern trawlers [1]	Medium trawlers [2]	Other fishing vessels	Processing and transport vessels	Support vessels [3]	Research vessels [4]	Total
Off New England (ICNAF subarea 5):							
Soviet Union	59	11	[5] 29	9	3	1	112
Poland	9	10		1			20
East Germany	2	5		1			8
Bulgaria							3
Romania	1						1
Cuba							
Federal Republic of Germany							

Fishing grounds	Stern trawlers [1]	Medium trawlers [2]	Other fishing vessels	Processing and transport vessels	Support vessels [3]	Research vessels [4]	Total
Spain	2	1					3
Japan	1						1
France							
Italy	1						1
Mexico	2						2
Greece							
Canada							
Other (Venezuela)			[6] 2				2
Total	80	27	31	11	3	1	153
In the Mid-Atlantic bight (ICNAF 6):							
Soviet Union	30	20		9	1	1	61
Poland	5	7		4			16
East Germany	5	7		1			13
Bulgaria	4			1			5
Romania	5						5
Cuba							
Federal Republic of Germany							
Spain	11	9					20
Japan	6						6
Other	1						1
Total	67	43		15	1	1	127
Off the Southern Atlantic coast (from Cape Hatteras to Florida):							
Soviet Union							
Poland							
East Germany							
Spain							
Japan							
Other							
Total							
Grand total	147	70	31	26	4	2	280

[1] Includes all classes of stern factory and stern freezer trawlers.
[2] Includes all classes of medium side trawlers (nonrefrigerated, refrigerated, and freezer trawlers).
[3] Includes fuel and water carriers, tugs, cargo vessels, etc.
[4] Includes exploratory, research and enforcement (E) vessels.
[5] Rigged as purse seiners.
[6] Pair trawlers.

OFF ALASKA*

A total of 336 individual vessels from Japan (188), the Soviet Union (146), and the Republic of Korea (2) engaged in fisheries off Alaska in April. This was 13 vessels more than in March 1973 and 39 vessels more than in April 1972.

Soviet: The 146 individual Soviet vessels included 79 medium trawlers, 41 stern trawlers, 15 processing and transport vessels, 7 support ships, and 4 research trawlers. The number of Soviet vessels present simultaneously decreased from 130 in early April to 87 at month's end. That was a much sharper decline than in April 1972 when the number of vessels present simultaneously varied from 134 in early April to 114 at the month's end. The larger number of vessels observed in 1972 was due to the greater effort in the herring, flounder and pollock fisheries in the Bering Sea.

The trawl fishery for groundfish along the edge of the Bering Sea Continental Shelf from north of the Fox Islands to northwest of the Pribilof Islands (see fig. 1) increased sharply in early April. The fleet increased from 15 trawlers and 1 refrigerated transport in early April to 47 trawlers and 2 refrigerated transports by mid-month, primarily as a result of shifting of vessels from the central Bering Sea herring fishery. The fleet declined again to 23 trawlers and 2 refrigerated transports in late April when the Soviet vessels began moving southward towards the Pacific Northwest.

The Soviet flounder fishery off Kodiak Island in the Gulf of Alaska declined steadily in April from 32 vessels early in the month to 18 by month's end. The fleet concentrated on the outer grounds of Chiniak Gully in early April and then expanded the fishing area both east and west on outer Albatross Bank as the month progressed (see fig. 1).

The Pacific Ocean perch fishery in the Gulf of Alaska was small. Only 3 to 4 trawlers fished this species in mid-month on the Yakutat grounds in the eastern Gulf.

The herring fleet in the central Bering Sea decreased sharply in early April from 66 to 44 vessels and moved westward to the edge of the Continental Shelf where it also fished for Alaska pollock. By the end of April, the entire fleet was centered along the Continental Shelf edge and pollock was the predominant species sought.

The shrimp fishery east of the Shumagin Islands in the western Gulf of Alaska involved 8 to 10 medium trawlers and 2 support ships during the first three weeks of April and then ended. By comparison, the 1972 Gulf shrimp fishery ended in early April. That expedition, however, involved about twice the number of trawlers and began at least a month earlier than the 1973 fishery.

Japanese: The 188 individual Japanese vessels included 94 medium trawlers, 35 stern trawlers, 32 crab pot vessels, 9 longliners, 17 processing and transport vessels, and 1 support ship. The number of vessels present simultaneously varied between 182 and 188. That was an increase from April 1972 when the number varied between 156 and 162. The larger effort in 1973 was primarily in the Bering Sea pollock fishery.

The ocean perch fleet in the Gulf of Alaska included 12 to 15 stern trawlers and up to 3 support ships. The fishery ranged from southeastern Alaska to the Shumagin Islands, with most effort between Kodiak and the Shumagin Islands (see fig. 1).

Twenty stern trawlers, supported by 2 transport vessels fished for groundfish (Alaska pollock and other species) along the edge of the Continental Shelf in the Bering Sea. The fleet was widespread from the Fox Islands in the eastern Aleutians to northwest of the Pribilof Islands in the Central Bering Sea.

Five factoryship fleets in the Bering Sea continued fishing for Alaska pollock. The fleets were concentrated north of the Unimak Pass in the eastern Bering Sea in early April. Later, they began dispersing and by the end of April were scattered from the Unimak Pass to northwest of the Pribilof Islands in the central Bering Sea. This pattern of fishing was similar to those observed during the past years except that in 1973 the factoryship fleets arrived earlier.

The number of longliners fishing for sablefish in the Gulf of Alaska increased from 7 to 8; they were widespread from the coast of southeastern Alaska to the Shumagin Islands. Another longliner fished for sablefish along the Fox Islands in the eastern Aleutians in mid-April.

The two Japanese crab motherships, supporting 33 catcher vessels, remained centered on the traditional grounds north of Unimak Island in the eastern Bering Sea. Two other vessels, apparently conducting reconnaissance operations, continued fishing off the Pribilof Islands.

Republic of Korea: Two South Korean vessels, a stern trawler and a longliner, engaged in fisheries off Alaska in April. The longliner, which began fishing in late March, continued fishing for sablefish off the coast of southeastern Alaska. The stern trawler arrived in mid-April and fished for ocean perch off the Yakutat grounds in the eastern Gulf.

Meeting with the Soviet Fishing Fleet Commander: After more than a month of arrangements, the National Marine Fisheries Service Regional Director, H. Rietze, headed a team of Government officials and fishermen representatives to a meeting with the Soviet Fleet Commander Genadii Ibragumov. The meeting was held aboard the Coast Guard Cutter *Confidence* in Womens Bay near Kodiak, Alaska on May 1. The Soviets began fishing for flounder and pollock about 40 miles east of Kodiak Island during January. Potential for conflict between fixed U.S. tanner crab gear and mobile Soviet trawls has existed for the past three months. The potential for conflict would have increased drastically with the opening of the halibut season in this area on May 10. The objective of the meeting was to exchange information which might aid in avoiding such conflict. The Fleet Commander indicated that the Soviets had decided to switch the vessels, fishing off Kodiak, to the Bering Sea within the next few days, thus greatly reducing potential for gear conflict. The decision was apparently taken prior to the May 1 meeting. The flounder fleet might return to the Kodiak area next winter depending on Bering Sea ice con-

* Information supplied by the Regional Divisions of Enforcement and Surveillance of the National Marine Fisheries Service (published in the order received).

ditions, according to the Fleet Commander. On another matter, Mr. Ibragumov advised that the Soviets would not be sending a crab fishing fleet to the Bering Sea this year. Although this was expected since the Soviet crab effort usually begins before May, and since no crab vessels were sighted in 1973, it is contrary to statements made by the Soviets at the bilateral negotiations in Moscow during February 1973. The Soviets did indicate then that a crab fishing fleet would be sent to the Bering Sea to fish only with pots in accordance with the current U.S.-U.S.S.R. crab agreement.

Foreign Fishery Patrols: The Alaska Enforcement and Surveillance Division in April conducted 29 foreign fishery patrols in cooperation with the U.S. Coast Guard. No violations of U.S. fishing laws or agreements were observed. A total of 949 foreign vessels was sighted, and a South Korean and 7 Japanese vessels were boarded. Five Japanese vessels entered Alaskan ports for medical assistance, refuge from storms, and shelter from rough seas to transfer supplies.

OFF THE PACIFIC NORTHWEST

Japanese: A single Japanese longliner was sighted off the Washington coast during the first week of April and off the Oregon coast thereafter. This vessel had fish pots aboard. The catch consisted of sablefish, black cod and various flatfish. (By comparison, 1 Japanese longliner was sighted during April 1972).

OFF THE SOUTH ATLANTIC AND GULF OF MEXICO COASTS

Three Cuban vessels were sighted fishing off the southern coast in April (see table 1).

Off Texas: Three Cuban shrimp trawlers (built in Spain) were sighted fishing off Rock Port, Texas, on April 27 by a Coast Guard aircraft (see fig. 3). The vessels had previously been reported by the U.S. Border Patrol. This is the first report of Cuban shrimpers off Texas since September, 1971 when 4 Cuban trawlers were grounded off Aransas Pass during a hurricane.

OFF CALIFORNIA

Soviet: A total of 23 Soviet fishing vessels fished off the coast of California in the last week of April.

One exploratory side trawler was sighted operating 35 nautical miles west of San Francisco in the first week of April, it moved north during the second week to a point 25 nautical miles south of Pt. Arena (see fig. 4). Sixteen Mayakovskiy-class large stern factory trawlers and one Atlantik-class stern freezer trawler joined the exploratory vessel in the third week of April to fish 25–45 miles south of Pt. Arena.

The entire fleet moved southward during the last week of April to heavily fish 30 miles southwest of San Francisco. Five additional side trawlers moved into an area 55 miles northwest of San Francisco during the same week to bring the total number of Soviet fishing vessels off California to 23 at the end of the month. Catches of Pacific hake were sighted during enforcement patrols; one incidental haul of mixed rockfish species was also recorded.

One stern trawler (*Aleksei Makhalin*) requested the U.S. Coast Guard to help in the medical evacuation of a sick fisherwoman, who was admitted to a Public Health Service Hospital on April 23.

The Soviet research trawler *Kamenskoie* returned off the California coast as part of the current US-USSR cooperative fisheries research. The last part of the cruise, an acoustical survey run from Monterey Bay, California to Magdalena Bay, Baja California, Mexico, was concluded on April 24. The *Kamenskoie* returned north and rendezvoused on April 26 with the National Marine Fisheries Service research vessel *David Starr Jordan* off Santa Catalina Island, to remove the U.S. observer and his research gear. The Soviet research vessel then departed northward to continue independent research work.

Japanese: One Japanese longline-gillnet vessel (*Cyosei Maru No. 8*) entered Los Angeles harbor on April 11, 1973 to obtain medical treatment for a sick crewman. The vessel is fishing off Baja California, Mexico for tile fish with anchor gillnets set at depths of 150 meters. It will return to San Pedro, California in May to pick up new gillnets which will be delivered by air freight from Japan.

OFF HAWAII

In April 1973, a total of 58 Japanese fishing vessels called at the Hawaiian ports of Honolulu and Kahului. Information received from the National Marine Fisheries Service regional representative in Hawaii indicates that Japanese fishing activity off the Leeward Islands in 1973 may not reach the level of activity seen in 1972 unless their coastal fishery is once again poor. The Japanese fishing vessels, calling at Hawaiian ports, are stopping primarily for fuel, water and rest and recreation. They have been doing so for some time.

IN THE NORTHWEST ATLANTIC

A total of 280 individual foreign fishing and support vessels from the Soviet Union (173 vessels), Poland (36), East Germany (21), Bulgaria (8), Romania (6), Spain (23), Japan (7), Italy (2), Mexico (2), and Venezuela (2) was sighted off the New England and Middle Atlantic coast during April 1973. The number of vessels was about 9 percent (32 vessels) less than in March 1973 and 15 percent (49 vessels) less than in April 1972. A 26-percent (31 vessels) decrease in the number of Soviet stern trawlers accounted for most of the April decrease. It's believed that many of these trawlers have shifted northward to fishing grounds off Nova Scotia, Newfoundland, and Labrador. Displaying their traditional seasonal withdrawal, the Japanese fleets decreased by 50 percent from 14 vessels to 7. Fishing effort by other countries showed little change compared with the previous month.

The Soviet fleet was the largest foreign fleet with weekly concentrations of 140–150 vessels. Individual vessels sighted totaled 173 (213 in April 1972) and included 89 medium freezer and factory stern trawlers, 60 medium side trawlers (29 of which were rigged as purse seiners), 5 factory base ships, 13 refrigerated fish carriers and supply vessels, 2 fuel and water carriers, 2 tugs, and 2 fisheries enforcement vessels (1 of which has been designated as the ICNAF International Inspection vessel).

OFF SOUTHERN NEW ENGLAND AND ON GEORGES BANK

Soviet: Several fleets, totaling about 120 vessels, were dispersed from south of Block Island, Rhode Island and Nantucket Island onto the eastern and northern slopes of Georges Bank (see fig. 5 and 6).

The largest Soviet fleet (55–60 vessels), including both stern trawlers and side trawlers, was divided into several groups. They were dispersed along the 30 and 50 fathom curves from south of Block Island to south and southeast of Nantucket Island. About 20 of the vessels in this group, fishing the inner shoals southeast of Nantucket Island (30–40 fathoms), were medium side trawlers rigged as purse seiners. Their arrival was about one month earlier than in previous years. Moderate catches of herring and perhaps mackerel were at times seen in the nets and on deck. Factoryships anchored nearby were occasionally seen with large amounts of fish heaped in open deck storage bins.

Vessels engaged in conventional trawl fishing were observed with moderate catches of herring, mackerel, and red hake. Herring and mackerel catches appeared to improve considerably as the month progressed.

A second large group of 34 Soviet vessels (stern trawlers and side trawlers) fished along the southwest part of Georges Bank between Hydrographer and Lydonia Canyons (see fig. 5). Catches were identified as mostly herring, mackerel, and red hake. Included in this group were about 10 medium trawlers rigged as purse seiners. Herring and mackerel were seen occasionally in the nets and on deck. The stern trawlers were taking mostly red hake, and some herring toward month's end.

Early in April, 15–20 Soviet stern trawlers fished briefly in the deep channel separating Georges and Browns Bank about 120–150 miles northeast of Cape Cod (see fig. 5). Limited catches were mostly hakes and argentines.

Polish: A total of 36 individual vessels (14 stern trawlers, 17 large side trawlers, 1 factory base ship, and 4 fish transports) was sighted. This was only slightly less than the 39 vessels sighted in March 1973 but 29 vessels less than in April 1972. During the month, about 15–20 vessels fished along the 40 and 50 fathom curves south of Block and Nantucket Islands. Moderate to heavy catch of herring and mackerel, especially late in the month, were observed.

East German: A total of 21 vessels (7 stern trawlers, 12 side trawlers, and 2 fish transports) was sighted—compared to 19 in March 1973 and 27 in April 1972. The 8 vessels sighted off southern New England fished among the Soviet and Polish fleets south of Block and Nantucket Islands (see fig. 5). Moderate and heavy catches of herring (heaviest late in the month) were observed.

Bulgarian: A total of 8 vessels (7 stern trawlers and 1 fish transport) was sighted—compared to 9 in March 1973 and 7 in April 1972. Three of these vessels shifted in and out of the mid-Atlantic area. Herring and mackerel were observed occasionally.

Romanian: A total of 6 stern trawlers was sighted, one of which fished late in the month among other foreign fleets off southern New England (see fig. 6).

Japanese: A total of 7 stern trawlers was sighted in April (compared to 14 in March 1973 and 6 in April 1972). Only one vessel was sighted fishing among large foreign fleets between Marthas Vineyard and Nantucket Island. No catches were noted.

Spanish: A total of 23 vessels (13 stern trawlers and 10 side trawlers) was sighted compared to 26 in March 1973 and 5 in April 1972. Three of these vessels fished briefly early in the month along the 100 fathom curve between Marthas Vineyard and Nantucket before moving into the Mid-Atlantic Bight. Principal catch is known to be squid.

Italy: Two vessels (1 stern trawler and 1 side trawler) were sighted—compared to 7 in March 1973. One of these vessels fished off southern New England among Spanish and Japanese vessels. Squid is believed to be the principal catch.

Enforcement of ICNAF Closed Areas: On April 9, 1973 during a joint Canadian-U.S. fishery patrol, 2 Mexican and 2 Venezuelan vessels were sighted fishing within closed area B (see fig. 5 for details). Radio communications were established with the Venezuelan pair trawlers *Alitan* and *Denton* and the captains were advised of the ICNAF closed areas. The Venezuelan captains agreed to comply and further agreed to contact the Mexican stern trawlers *Patachin* and *Matlamani* fishing nearby. Chartlets showing closed areas were passed by heavy line to the *Denton*. All four vessels hauled in their gear and cleared the area.

This is the first report that either of these countries has engaged in fishing on Georges Bank. Like the Spaniards, it is believed that the Mexicans and the Venezuelans were seeking mainly large cod.

IN THE MID-ATLANTIC BIGHT

Soviet: Soviet fishing by 61 vessels in the Mid-Atlantic during April 1973 was 43 percent (56 vessels) less than the 107 vessels sighted in March 1973.

The heaviest fishing occurred in the first half of the month when 25–30 vessels (mostly side trawlers and various support vessels) fished briefly near the extreme southern and western boundary of the "no fishing" zone, 65–75 miles off the Virginia coast (see fig. 6). Moderate catches were mostly herring and mackerel. Incidental mixed species appeared to be hakes, scup, sea robins, and a few flounder.

North of this area, 30 Soviet stern trawlers were widely dispersed 20–30 miles between Montauk Point and Moriches Inlet, Long Island. Moderate to light catches were mostly herring and mackerel; some hakes were also taken.

An estimated 8–10 vessels were scattered off New Jersey between Sandy Hook and Atlantic City.

After mid-month, only several Soviet vessels remained in the Mid-Atlantic off Long Island and New Jersey.

Polish: Early in the month 15–20 vessels (mostly side trawlers) fished briefly in a small area off the Virginia coast 15–20 miles east of Wachapreague Inlet. Moderate to light catches were mostly herring and mackerel. Some scup and hakes were also observed among the catch. In the subsequent weeks most of the Polish fleet shifted northward out of the Mid-Atlantic; only a few vessels remained off New York and New Jersey.

East German: Throughout the month, 6–8 vessels fished in numerous areas along the New Jersey to Virginia coast. Considerable fishing time by these vessels was spent in the Mid-Atlantic "no fishing" zone both prior to and after April 15th (see fig. 6). Moderate catches were herring and mackerel. Near month's end, most vessels shifted northward to waters off southern New England.

Bulgarian: Four stern trawlers fished almost the entire month within the confines of the Mid-Atlantic "no fishing" zone. Occasional support vessels were seen off Long Island. Some catches of herring and mackerel were noted.

Romanian: Six Romanian stern trawlers fished the entire month within the "no fishing" zone. Moderate catches were mostly mackerel and some herring.

On April 15, 1973, during a Mid-Atlantic enforcement and surveillance sea patrol of the U.S.C.G.C. *Tamaroa,* radio contact was made with the Romanian stern trawler *Marea Neagra* which was actively fishing in the "no fishing" zone. The Romanians responded in English that they "were permitted" to fish in the zone, but stated that they were aware of U.S. lobster pot areas and avoided them. They reported taking mostly mackerel.

Japanese: A total of 6 stern trawlers fished from south of Long Island (Hudson Canyon) to east and southeast of Cape May, New Jersey (within the "no fishing" zone). No catches were observed.

Spanish: A total of 20 Spanish vessels (11 stern trawlers and 9 side trawlers) were sighted off the Mid-Atlantic within the "no fishing" zone. Their operations extended southward to the Virginia and North Carolina coasts. Light catches of squid and other mixed species were observed occasionally.

Italian: One Italian stern trawler was sighted fishing within the Mid-Atlantic "no fishing" zone from south of Long Island (Hudson Canyon) to east and southeast of Cape May, New Jersey. The Italians are known to be fishing primarily for squid.

U.S./U.S.S.R.-U.S./POLISH MID-ATLANTIC FISHERIES AGREEMENTS

During April 1973, Soviet and Polish vessels were not observed fishing in the "no fishing" zone.

INTERNATIONAL INSPECTION

No foreign vessels were boarded under the ICNAF International Inspection Scheme during April 1973.

ATTEMPTED COURTESY VISITATIONS OF VESSELS OUTSIDE ICNAF CONVENTION AREA

On April 15, 1973, two East German stern trawlers *Erich Weinert* (*ROS–304*) and *Rudolf Leonhard* (*ROS–311*) declined courtesy visits by a United States Coast Guard-National Marine Fisheries Service fishery enforcement team. At the time the request was made, both vessels were located within the Mid-Atlantic "no fishing" zone, 40 miles east of Assateague, Virginia.

VIOLATIONS OF ICNAF REGULATIONS

During the period from March 28 through April 12, a total of 20 Soviet stern factory and freezer trawlers was observed fishing inside the ICNAF closed area B. Fishing inside this closed area is prohibited during March and April to vessels fishing with gear capable of taking demersal species. This regulation was put into effect to protect the remaining haddock stocks which were largely depleted in 1965 and 1966 by Soviet overfishing.

The last Soviet violation was reported on April 12, 1973, when a U.S. enforcement agent spotted 7 Soviet stern trawlers in the closed area B. One of these (*BMRT–ZB–355*) was seen actively fishing with gear capable of taking demersal species in violation of ICNAF regulations. The other 6 were not fishing and had their gear on deck which was clear of fish. One of the non-fishing, steaming trawlers, however, had its fish meal plant working, an indication that fish were taken prior to the observation.

NOTE.—U.S. fishery surveillance patrols, jointly conducted by the National Marine Fisheries Service and the Coast Guard, normally cover the fishing grounds situated on the Continental Shelf of the United States. During these patrols, the total number of foreign fishery vessels is recorded. Each vessel is also identified by its flag, type, and position.

In preparing the monthly summary, each foreign vessel is counted but once, irrespective of how many times it was sighted that month by the surveillance patrols. In other words, duplicate sightings of the same vessel are eliminated in the monthly reports.

During the month, foreign vessels continuously arrive at and depart from the fishing grounds adjacent to the U.S. coast. The total monthly sightings of foreign vessels without duplication will therefore always be larger than the number of foreign vessels sighted during a single fisheries surveillance patrol.

APPENDIX 1

FISHERY ENFORCEMENT AND SURVEILLANCE OFF ALASKA, APRIL 1973

FISHERIES PATROLS

Patrols					Number of sightings		
Type	Number	Hours	Days	Miles	Japanese	Soviet	South Korean
Aerial	25	173		31,036	320	262	10
Surface	4		52	13,000	171	184	2

Note: Boardings of foreign vessels—Japanese, 7; Soviet, 0; South Korean, 1.

ENTRIES OF FOREIGN VESSELS INTO ALASKA WATERS OR PORTS

Nationality	Medical assistance	Refuge	Other	Total
Japanese	2	1	2	5
Soviet				

PATROLS OF DESIGNATED LOADING AREAS IN THE CFZ

Area	Number of patrols	Number of patrols foreign vessels sighted	
		Japanese	Soviet
Forrester Island	11		
Kayak Island	4	2	
Afognak Island	3		
Semidi Islands			
Sanak Island	5		
Unalaska Island	5		
Nunivak Island			
St. Matthew Island			
St. George Island	2		
Total	30	2	

Note: Fishery violations—No fishery violations were detected in April.

Mr. STEVENS. Mr. President, on June 1, 1973 the Senate approved Senate Concurrent Resolution 11, and thereby expressed a policy of support for our Nation's commercial fisheries. Today, I am proud to cosponsor the first major legislative step toward implementation of this policy by law—the Interim Fisheries Zone Extension and Management Act of 1973.

I have stood here with frequency pointing to violations of international fisheries pacts in the North Pacific and Bering Sea. My colleagues from other coastal States have reported similar incidents. We have repeatedly called for strong measures to enforce these agreements. Despite our complaints and urgent requests, the agreements are continually violated and our North American fish continue to be massively harvested by foreign fleets without regard to the need to sustain the fisheries resources. It is the general policy of our Government to postpone action until conclusion of the very difficult and lengthy negotiations of the Law of the Seas Conference. Unfortunately, the foreign governments are not so patient.

In a recent incident in my part of the world, three Japanese fishing vessels were spotted by a Coast Guard aircraft from Kodiak Air Station taking salmon east of the treaty abstention zone. The offenders abandoned their free-floating monofilament gill nets, regardless of the fact that these could remain adrift for years, killing more mammals and fish. Fortunately, in this case, the vessels were apprehended and the nets were retrieved by our own Coast Guardsmen. Experience, however, convinces me that whatever penalty is imposed will not deter continued Japanese operations of this type.

Carrying this one typical example of the foreign fishery problem further, I think the following quotes from the

March issue of the National Fishermen, by the Pacific editor, Richard H. Philips, illustrates the reason I am strongly advocating that part of the Interim Fisheries Zone Extension and Management Act of 1973 which would provide protection for anadromous species, such as salmon, through the full range of their migration. The quoted article deals with one of the most important of Alaskan fish runs. It describes very well how powerless we have been to prevent the destruction of immature salmon on the high seas. The article follows:

The problem was brought about by a lack of knowledge concerning the Bristol Bay salmon runs. In 1953, when the International Convention for the High Seas Fisheries of the North Pacific Ocean was brought into force, the Japanese agreed to abstain from fishing for salmon east of 175 degrees W. Longitude. At the time, scientists from the United States believed that salmon spawned in U. S. waters did not migrate west of the abstention line. Unfortunately, they were wrong, and as the accompanying charts show, Bristol Bay salmon do venture far west of 175 degrees W. longitude.

The Japanese are reluctant to abandon their high-seas mothership fishery in Bristol Bay salmon areas since, in good years the catch of U.S. salmon can amount to almost 7 million fish, as it did in 1965.

On the other hand, the abstention line does protect most other U.S. salmon runs and all Canadian salmon runs, so the North American nations are unwilling to jeopardize that protection by threatening the treaty.

Since 1956, the Japanese high-seas mothership fleet has taken an average of 19.6% of the total Bristol Bay catch, with the percentages ranging from a high of 49.2% in 1957 to a low of 3.9% in 1964. If the immature salmon taken by the Japanese fleet the year before their return to Bristol Bay are added to these figures, it reveals that the high-seas fleets take an average of 22.1% of the Bristol Bay catch. In fact, the Japanese high-seas fleet caught more salmon from the 1957 run than did U.S. fishermen: 7,326,000 compared to 6,660,000. Of the Japanese catch, which amounted to 52.4% of the total 882,000 were caught as immature fish in 1956 before they had an opportunity to reach their full weight and return the maximum amount to the fishermen.

Bristol Bay fishermen sacrifice their fishing time, and hence their catch, to allow enough fish to spawn, and they resent the fact that the Japanese fleets, whom they feel have no claim to the fish, are under no such restrictions.

The U.S. industry also resents what they consider light punishment for those Japanese fishing vessels who violate the abstention line and fish illegally. * * *

At the recent INPFC meeting held in Vancouver, B.C., the Japanese refused to restrict their fishing operations in areas where Bristol Bay fish are vulnerable next year, despite warnings that the 1973 run may be one of the smallest in history, and that the maximum number of fish must be available in the Bay to assure an adequate escapement. Preliminary reports indicate that the Japanese have already taken at least 50,000 fish from that fragile run.

According to reports we have received, the Japanese Government meted out strong penalties to the owners and masters of four Japanese fishing vessels caught fishing last summer near Kodiak Island, Alaska, hundreds of miles east of the abstention line. The vessels were required to remain in port during the time of the court proceedings until the final judgment was delivered. The judgment decreed that the vessels would be required to remain in port for 100 days during the 1973 fishing season—from April 30 to August 7. The owners were fined from $20,000 to $80,000 apiece. The masters were given 1 year each at hard labor. Each vessel was required to forfeit an amount equal to the value of the catch.

This judgment may have been a responsible penalty. If any single nation or group of nations overfishes an area or species or fishes in a manner inconsistent with good conservation practices, all nations presently or potentially fishing for that species or fishing in that area are likely to suffer. Each fish species forms an integral part of a complex food change. The disappearance of one fish may spell the death of others and the elimination of one or more valuable and important fisheries. This in turn is likely to cause severe economical hardship not only to the fishermen and their families, but to all those who depend upon them.

Until the Law of the Seas Conference can meet and formulate a major fishing treaty that is accurately drafted, widely accepted, and rigidly enforced, this Nation must be prepared to take firm steps to protect the natural resources of the oceans upon which so many of our citizens depend. This legislation takes such action.

For these reasons, and because of the urgency of the situation, I endorse this legislation. I urge immediate action on this bill in order to insure that the fisheries of the world may be preserved for future generations of mankind.

By Mr. McGEE (for himself and Mr. FONG):

S. 1989. A bill to amend section 225 of the Federal Salary Act of 1967 with respect to certain executive, legislative, and judicial salaries. Referred to the Committee on Post Office and Civil Service.

Mr. McGEE. Mr. President, I introduce for appropriate reference a bill to amend the Federal Salary Act of 1967 pertaining to executive, legislative, and judicial salaries.

The Federal Salary Act sets forth as public policy the necessity for a regular review every 4 years of the compensation of the top officials of the three branches of Government. It establishes a nine-member, quadrennial Commission on Executive, Legislative, and Judicial Salaries which studies and reviews the compensation of Members of Congress, the judiciary, and the top officials of the executive branch. The Commission, which serves for 1 fiscal year, then makes pay recommendations to the President. Under the act, the Commission reports to the President no later than the January 1 following the close of the fiscal year in which the Commission makes its quadrennial pay review. The President may then include the Commission's pay recommendation—or a modification of it—in his budget message to Congress.

The first Commission, appointed by President Johnson in July 1968, submitted its recommendations to the President in December of that year. These recommendations were included in President Johnson's 1969 budget message and became effective in March 1969. The present Commission, appointed by President Nixon in December 1972, has prepared its report to the President and will, I understand, submit it to him by June 30 of this year. Under existing law, the President may then include the Commission's recommendations, or a modification of them, in his January 1974, budget. His recommendations to the Congress would become effective next year 30 days after Congress receives the message and has been in continuous session, unless Congress enacts a conflicting law or specifically disapproves the President's recommendation.

The bill I introduce today would expedite consideration by the Congress of the pay recommendation which the bill authorizes the President to make this year. The time frame of this measure would require full public hearings this month and the early consideration by Congress of the pay adjustments involved, including the possibility that pay adjustments could become effective on October 1 of this year, along with statutory pay raises for other Federal employees.

I think Congress should look realistically at the question of top Government salaries. No matter how justified an adjustment may be, such action inevitably causes rumbles from those who do not know that more than 4 years have elapsed since this question was last taken up. If Congress approves a Presidential recommendation for increases in an election year, the rumbles become louder and more emotionally charged. This issue then, can be explored by Congress more rationally now than next year.

Specifically, the bill provides as follows: The mechanism for recommending adjustments in executive, legislative, and judicial salaries would operate every other year instead of every 4 years.

After 1973, a new Commission would be appointed every other year, the term of each member to be for 1 fiscal year. Thus, a Commission would be appointed July 1, 1975, and would make its report to the President by June 30, 1976. The same procedure would be followed in successive 2-year periods.

The President would consider the Commission's report and make his pay recommendations to the Congress by August 31.

If the Congress did not disapprove his recommendation, pay adjustments would become effective October 1, the date set by law for general Federal Government pay adjustments based upon Bureau of Labor Statistics comparability figures.

I see no compelling reason why executive, legislative, and judicial salaries should not be adjusted on the same effective date as other general Federal Government pay adjustments. The law provides that the general Government pay adjustments to be effective each October may be changed or postponed by the President if he considers them inappropriate because of a national emergency or economic conditions. In 1972, he availed himself of this statutory right, and the October 1 pay increase did not become effective until January 1973. The President simply postponed the pay adjustments for 3 months for economic reasons.

If this bill is enacted, I believe the same pattern will prevail: the President

will probably make no October 1 pay-adjustment recommendations to Congress because of economic conditions; but I believe it reasonable to assume that executive, legislative, and judicial, as well as general schedule, pay increases will be recommended for a January effective date. By then, the will of Congress with respect to this question will have been expressed this year as Congress considers this bill and whatever recommendations the President submits.

Mr. President, the explanation of current law and the changes proposed here can, in their careful explanation, prove somewhat complicated; but the principle upon which this bill is based is simplicity itself.

First, the question arises whether it is fair, in these days of unchecked inflation, to require Members of Congress, members of the Federal judiciary, and the highest officials of the executive branch—the secretaries of the departments, the under secretaries, the administrators, the members of commissions—to wait 4 years before pay adjustments for them can ever be considered.

And when these pay adjustments are finally approved, the percentage increases, covering as they do a 4-year period, appear to be out of all proportion to what many people, thinking in terms of annual adjustments, have come to expect, in line with general economic conditions and the cost of living.

No study group can fail to note at least a 5-percent annual increase in living costs over the past half decade. Multiply that figure by the 4 years between pay adjustments, run it through the Presidential and congressional mills, and you end up with a headline proclaiming a horrendous—to some people—20-percent pay increase for Washington officialdom. It is then that Members of Congress begin receiving concerned and perplexed letters. Few people stop to consider—or are even aware—that the last pay increase for these officials was more than 4 economically inflated years ago.

If a distinction is to be made between pay adjustments for executive, legislative, and judicial salaries on the one hand and adjustments for Federal General Schedule and Wage Board employees on the other, it seems clear to me that these adjustments should become effective at the same time.

Moreover, in my view, a biennial consideration for Federal executives, judges, and Members of Congress is reasonable. This interval is frequent enough to be equitable, but not so frequent as to authorize yearly pay increases.

Mr. President, the annual salary of a level V executive—the lowest rank in the executive branch hierarchy—is $36,000 a year. This salary was set 4 years ago—at the same time that congressional salaries were established at $42,500. Since then, general schedule employees have received five pay incrases—five increases for all except certain employees in grades GS–16, 17, and 18, whose salaries are limited to a maximum of $36,000; limited to this figure not for reasons of equity, but for the pragmatic reason that it would be inappropriate for these employees to be paid more than their bosses in level V, who are paid at that rate. If the comparability principle—which the Congress declared to be public policy in 1962—were followed, a grade GS–18 employee today would be entitled to $41,734, a figure arbitrarily cut back by the strictures of the 4-year provisions of law that this bill would amend. This is compression; compression between the pay of employees at the top levels of the general schedule and the pay of their superiors, most of whom are appointed by the President; compression created by the current quadrennial provisions of law which frustrate efforts to establish a top-to-bottom salary system that makes sense. The bill that we introduce today will go a long way toward ending that compression and bringing equity to the Federal pay structure.

Mr. President, I mean to speak plainly about the salaries with which this bill is concerned. In my view, we need make no apology for advocating upward adjustments in this compensation. Some Members of Congress, some Federal judges, some officials of the executive branch are wealthy men. Others live on what they earn. I contend that if an objective survey of Bureau of Labor Statistics figures indicates that a grade GS–18 deserves $41,734 in accordance with the comparability principle, then he is entitled to that amount and should receive it. And it follows that if an impartial commission finds that Members of Congress and other top Government officials should be compensated at a rate higher than that of a GS–18, we should not acquiesce in a system providing that the views of that commission should be considered only every 4 years. The amount of money involved, considered in the aggregate and compared to run-of-mill Federal expenditures, is miniscule; but it is an amount representing an equity which I feel is due every official involved.

Mr. President, Senator FONG, who joins me in introducing this bill, concurs with me in a decision to hold early hearings on this measure. We invite all interested Members or other concerned citizens to testify so that this question may have the fullest possible airing.

I ask unanimous consent that two news media articles on this subject be printed in the RECORD. One is a Washington Post article by Mike Causey entitled "High Level Pay Raises Proposed." The other is an editorial from the Foreign Service Journal entitled "In All Fairness."

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

HIGH LEVEL PAY RAISES PROPOSED

(By Mike Causey)

Congressmen, Supreme Court justices and top federal officials would get significant "catch-up" pay raises next year under a proposal that will be delivered to President Nixon by June 30.

The blue ribbon panel of businessmen studying the relationship between salaries of private and government executives has completed most of its staff work. It should have a final report this week. Arch Patton of McKinsey and Co. is chairman of the quadrennial salary review commission. He will return here from his Bermuda home this week to put the final touches in the pay package.

Although the final recommendations are still under wraps, insiders speculate that the proposal for top government executives—at the Grade 18 level—will be between $40,000 and $42,000 a year. Employees at that level now get a flat $36,000. Raises for congressmen who now get $42,500, would be sufficient to maintain their differential with the career government brass.

The pay raises—if cleared by Mr. Nixon and Congress—would be the first executive salary boosts since 1969. Since that time, pay of other federal workers has steadily moved upward. White collar employees got two raises in 1969, of 9.1 and 6 per cent; another 6 per cent in January of 1971; 5.5 per cent in January of 1972 and 5.1 per cent this year.

That upward movement has caused a crunch at the top, because the statutory federal salary for GS 18 cannot exceed that of executive level 5, which is $36,000. The result has been that government employees at Grades 16, 17, 18 are bunched closely together salarywise.

Proposals of the nine-member salary panel (three appointed by Mr. Nixon, two by the House, two by the Senate and two by the Supreme Court) are not binding on the President. He can revise them, either up or down, before sending the package up as part of his budget to Congress next January. Congress then has 30 days to veto the plan (a majority vote of either the Senate or House could kill it) before it becomes law.

The negative veto aspect of the system was designed to lessen the embarrassment of congressmen, so that they wouldn't have to vote themselves a pay raise. But two factors will put the heat on members who are still smarting from the public outcry raised in 1969 when they increased their paychecks 41 per cent.

First, 1974 is an election year. Congress has a tradition of being nervous about voting on pay raise proposals before it has to face the voters.

Secondly, several conservative members are threatening to force a record vote on any such pay raises—so that members would have to commit themselves publicly. This could persuade even the most financially hard-pressed congressman to cast a nay vote.

Mr. Nixon's role also is uncertain. He has delayed or attempted to delay the last two general federal pay raises on grounds that their cost would fuel the fires of inflation, and set a bad example for the nation. If economic conditions remain bad—that is rising prices and pay freezes for the private sector—he could easily scale down the proposals made to him, and be hard to beat on the matter.

According to the government's own statistics, Grade 18 employees who now get $36,000 a year should actually be making $41,734 to put them on a par with their industry counterparts. But the $41,734 figure is misleading, since government "comparability" salaries with industry are based on the fourth step of the pay grade. Although most government employees are in a 10-step system within each grade, the GS 16 and 17 slots have fewer in-grade steps, and Grade 18 has only one step.

Even assuming that Mr. Nixon goes along with the salary panel's recommendations, the final result will depend on efforts in Congress to derail the pay boosts by forcing members to stand up and be counted over a very touchy political issue.

Major Travis of Defense is the new national vice president for the American Federation of Government Employees representing metro Washington area members. Travis was elected over Bea Osbia of Civil Service Commission and Roy Morgan of HEW to serve out the term of Ralph Biser who retired.

Clinical Pathologist: State Department needs one, salary $26,000 to $35,000. Call 557–9120.

IN ALL FAIRNESS

Is there anyone who has not expressed genuine concern for the effects of rampant inflation on both the national economy and

individual pocketbooks? Yet most federal employees have received substantial pay increases during the past few years which have largely offset the effects of rising prices.

However, for those employees whose salaries have been frozen at the salary ceiling of $36,000 imposed by Congress, the years of rapidly rising prices have been an unmitigated and increasing hardship.

For example, Foreign Service officers, Information officers and Reserve officers of Class One have been denied every pay increase since July, 1969. Under the latest pay increase, officers of Class Two, step six and above have hit the ceiling and must therefore acquiesce in an actual *decrease* in pay as both prices and salaries of other wage earners have risen regularly. As of January, FSO–1s are receiving $5,173 per year *less* than what they would have been receiving as their fair compensation, and FSO–2s in steps six and seven find themselves shorted by varying smaller amounts. Since July, 1969, after which those at the ceiling received no further pay increases, the pay of most white collar employees has risen about 30 percent.

Unfortunately, remedies for this obvious injustice are not readily at hand. Under existing law, congressmen, Supreme Court Justices and top political appointees can not get another pay raise until 1974 at the earliest. Until these people get a raise, there can be none for career federal workers who are now held at the same ceiling of $36,000. Recommendations for a pay raise must come from the commission on executive, legislative, and judicial salaries which has been requested to submit a report on the matter to the President by June 30, 1973. Any resultant wage increases can not come until March 1974.

The situation discriminates blatantly against those employees whose ability to reach the top echelons of federal service has been "rewarded" with a substantial reduction in real income.

Legislation to lift the current unfair ceiling of $36,000 is obviously called for. Given the current political situation, however, such legislation is not likely to be enacted in the immediate future. Congress *could* enact legislation authorizing employees in the affected grades to receive retirement benefits based on the pay they should be receiving, rather than the pay they actually receive. Of course, they would also contribute to the retirement fund on the basis of the larger amount. Another remedy is to make cost of living increases available to all employees regardless of income.

AFSA strongly supports the proposals to raise the $36,000 ceiling, to base both retirement fund benefits and contributions on what the affected employee should actually be receiving, and to provide cost of living relief to all employees equally. We will communicate these views to Congress and propose legislative remedies to correct this situation.

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

S. 1990. A bill to establish a Federal Legal Aid Corporation through which the Government of the United States of America may render financial assistance to its respective States for the purpose of encouraging the provision of legal assistance to individual citizens who are in need of professional legal services for prosecution or defense of certain causes in law and equity. Referred to the Committee on the Judiciary.

Mr. BROCK. Mr. President, I am today introducing a bill establishing a Federal Legal Aid Corporation. When enacted, it will encourage the provision of legal assistance to individual citizens who lack adequate financial resources to engage legal assistance for themselves. This legislation enables attorneys to practice according to the highest professional standards while providing safeguards against the recognized abuses present in the current OEO funded legal services program.

The President, in his message to the Congress on human resources, gave his support to the creation of such a program. The administration has submitted legislation to establish such a program. However, the legislation falls short of what is necessary to insure quality representation to the clients it is designed to serve, and is deficient in at least five areas:

First. It would, if enacted, tend to lock in the present monolithic staff-attorney system with all of its abuses and shortcomings

Second. It would not sufficiently curtail the abuses in the present program;

Third. There would be little, if any, public accountability. The taxpayers who foot the bill for the program will have little impact on its activities;

Fourth. It would provide little flexibility in the establishment and operation of the program; and

Fifth. It does not assure adequate local control or supervision of the program.

The viability of the proposal, as it will come to the Senate, has been further eroded with the deletion or emasculation, by the House Judiciary Committee, of many of its key safeguards against program abuse.

In light of this, I came to recognize the need for a constructive alternative to the administration proposal. The bill I am submitting will make legal services a responsible institution in our system of justice.

The primary concept of my proposal is the belief that no single, rigid scheme, imposed out of Washington, is capable of meeting the needs of this Nation. The legal services program that will work best is not one which tries to force all projects into a single restrictive mold. The program that will work best is the one that helps the people in each community meet their own needs in the way they think best.

Under the proposal, I am offering for your consideration today, a Federal Legal Aid Corporation would be chartered by the Congress. Within 90 days of the effective date of this legislation the governments of the various States would be required to enact enabling legislation creating a system for the provision of legal services in the individual State. Their State plan could be any one of these alternatives:

First. Empowering an existing State instrumentality to administer a program for the provision of legal assistance in the State;

Second. Empowering the State bar association to administer the program; and

Third. Establish a method of direct payment or voucher system, to pay attorneys assisting those eligible for legal services in the State.

Safeguards are present in the proposed legislation to insure that each State does have a plan, even in the event a State's legislature is not in session during the period when the system for provision of legal services must be adopted.

Once a State has established a plan, the Federal Legal Aid Corporation then disburses funds to that State, in an amount proportionate to the State's respective share of the total number of those eligible for receipt of legal services in the United States. These funds are then used by the State to energize the legal assistance program adopted in the State.

As you can readily see, this proposal provides flexibility from State to State and allows local control and public accountability of the program through the elected representatives of the people on the State level.

Flexibility of eligibility from State to State is also present in the proposal. A person whose income is such as would qualify him for medicaid benefits in that State is eligible for legal aid. As the criteria for medicaid eligibility in each State will reflect the poverty line in that State, Congress can be assured that the benefits of this legislation will go only to those in need of them.

Finally, my proposal provides strong and adequate safeguards to protect against perpetuation of the abuses present in the current program. The bill prohibits legal services employee involvement in strikes, demonstrations, and protest marches. Additionally, program funds may not be used to support or oppose candidates, legislative proposals, ballot measures or similar enactments or promulgations.

This measure can be summed up in a few words—Freedom of Choice. The spirit of the bill I am proposing is to allow the provision of quality legal services by any attorney to eligible clients. While I believe that I may desire to offer certain amendments during the course of consideration, I am convinced that the enactment of this measure will signal the end of the separate system of access to the courts now imposed upon the poor.

Mr. President, I ask unanimous consent that 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. 1990

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Federal Legal Aid Corporation Act of 1973".

SECTION 1. DECLARATION OF PURPOSE.

Where fundamental rights are to be protected and justice attained, it is essential that the institutions of government be accessible to all. In a nation where justice is dispensed by the courts it is inherent that they be available to all regardless of race, religion, sex, national origin, or personal wealth.

SEC. 2. DEFINITIONS.

a. The word "State" shall include each of the several States of the United States, the Commonwealth of Puerto Rico and the District of Columbia.

b. An "eligible client" shall be an individual in need of professional legal services who meets certain criteria as established in section 4, subsection k(4) of this Act.

c. A "State instrumentality" shall be an agency of a State government established solely to carry out the purposes of this Act, or an existing State agency which shall have assigned to it by the State the responsibility to carry out the purposes of this Act.

SEC. 3. ESTABLISHMENT AND GOVERNANCE.

a. There is authorized to be established in the Federal city a nonmembership nonprofit corporation chartered by the Congress of the United States of America which shall be known as the "Federal Legal Aid Corporation" (hereinafter referred to as the "Corporation").

b. The Corporation shall be brought into being by a board of directors (hereinafter "Board") consisting of seven members who shall be appointed by the President of the United States of America, to take office upon confirmation by the United States Senate.

c. Of the initial members of the Board, one each shall be chosen for fixed terms of seven, six, five, four, three, two, and one year(s), respectively. Succeeding appointments to fill terms which have expired, will be for seven years each. Each person duly appointed by the President and confirmed by the Senate, to fill a vacancy, shall serve for the balance of the term to which he was appointed. No member shall be appointed for more than seven years.

d. No more than four members of the Board shall be members of the same political party. A majority of the members of the Board shall be members of the bar of the highest court of a State and none shall be full-time employees of the United States.

e. No fewer than four members of the Board may be present to conduct the business of the Corporation. Should there, at any time after the Corporation has come into being, be fewer than four members, as a result of the failure of the Senate to confirm nominations submittted by the President of the United States, the President may designate one of the remaining directors or, if none remain, some other citizen of the United States, to supervise the affairs of the Corporation in a manner not inconsistent with policies already established.

f. The terms of the original members of the Board shall be measured from the date on which this Act is enacted into law.

g. The Board of Directors shall have a Chairman, to be appointed by the President of the United States from among the duly appointed members of the Board of Directors for a term of one year, with the term of the first Chairman to be measured from the date on which this Act is enacted into law. If the President shall fail to name a Chairman within thirty days of a vacancy in the chairmanship, the members of the Board shall choose a Chairman from their own membership. No Chairman may immediately succeed himself. A Chairman may be removed at any time by a vote of a majority of the members of the Board.

h. Meetings of the Board shall be held at the call of the Chairman, or by written request of a majority of its members, and shall be required to be held at least once in every four-month period. All meetings shall be held in the Federal City, except by unanimous agreement of the members of the Board.

i. The purpose of the Corporation shall be:

1. To render financial assistance to the States to enable the provision of legal assistance to qualified individual citizens who are indigent and in need of professional legal services (hereinafter "eligible clients");

2. To assist in the provision of legal services to eligible clients by obtaining and making available information of a technical nature to those rendering legal services to eligible clients; and,

3. To, consistent with the provisions of this Act, set forth such procedures and regulations governing the use of Federal funds as may be authorized for expenditure by the Corporation.

j. The Corporation shall maintain a principal office in the Federal city and shall therein designate an authorized agent for service of process.

k. Subject to approval by a majority of the members of the Board, the Chairman shall select an Executive Director of the Corporation who shall serve at the pleasure of the Chairman, and be authorized to secure as many staff members as may be authorized pursuant to law, but in no event shall the Corporation have more than twenty-five employees. Employees of the Corporation shall serve at the pleasure of the Executive Director. No Executive Director may serve more than four years.

1. Compensation of Board members shall be limited to cost of travel plus a per diem rate equal to one two hundred sixtieth the annual pay of the highest Civil Service grade schedule, on days actually employed on Corporation affairs. The Executive Director shall be compensated at the rate of an employee in the highest Civil Service grade.

SEC. 4. CORPORATION POWERS, REQUIREMENTS AND PROHIBITIONS.

a. The Corporation shall assign and disburse all funds appropriated to it to the governments of the several States, as qualify, in amounts proportionate to their respective shares of the total number of eligible clients in the United States (which shall be calculated so as to include eligible clients in the District of Columbia and the Commonwealth of Puerto Rico), as of June 30 of the fiscal year preceding the fiscal year for which an appropriation is made by Congress to further the provisions of this Act: *Only excepting:*

1. Such funds as are necessary for administrative expenses including compensation of the Executive Director and his staff, payment of expenses and per diem of Board members, costs incurred in purchase and rental of space and equipment, and costs necessary to pay for such audits, evaluations and inspections as may be required to assure adherence to the provisions of this Act;

2. Such funds as may be made available by special grant to the various States as incentives to experiment with alternative delivery systems for legal services to eligible clients. Funds available to the Corporation for special grants shall be limited to maximum of five per cent of the Corporation's annual appropriation; and,

3. Such funds as may be expended by the Corporation in entering into any Contract as provided for in subsection b., below. Funds available to the Corporation for such a contract shall be determined by Congress at the time of the Corporation's appropriation.

b. The Corporation shall have the power to contract with a private or public group, association or organization for the purpose of doing research into special legal problems encountered by those who qualify as eligible clients. Such research shall be made available by the corporation to those rendering legal assistance to eligible clients and to all others interested in such research.

c. Funds appropriated to the Corporation, or appropriated by the Corporation to the States, shall only be used to make legal assistance available to individual eligible clients, and to pay necessary expenses as authorized by subsection a., above.

d. No funds shall be disbursed by the Corporation to any State until said State has qualified as set forth in Section 5.

e. Personnel employed by the Corporation and funds appropriated to the Corporation or disbursed by it to a State shall not be used or commingled with other funds being used:

1. To initiate, organize, support, represent, or assist any training program, workshop, seminar, school, publication, newsletter, club, association, group, organization, demonstration, boycott, meeting, rally, march, strike, or any other activity, group, or institution;

2. To support or oppose, directly or indirectly, any candidate for public or party office, or any political party;

3. To represent any person less than eighteen years of age without formal written consent of one of said person's parents or guardian; or,

4. In a manner which tends to discriminate in favor of or against individual attorneys, employees, or clients, on grounds of race, religion, sex, or national origin;

f. The Corporation shall not:

1. Initiate or defend litigation on behalf of clients other than the corporate entity itself;

2. Seek to influence, nor shall any funds appropriated or disbursed by it be used to influence the passage or defeat of any legislation by the Congress or State or local legislative bodies or otherwise support any group or association advocating or opposing any legislative proposals, ballot measures, initiatives, referendums, executive orders or similar enactments or promulgations.

g. The income or assets of the Corporation shall not inure to the benefits of any director, officer or employee thereof, except as salary or reasonable compensation for services.

h. Persons directly or indirectly receiving compensation under this Act, as attorneys, for the provision of legal assistance, shall only receive such compensation subsequent to admission to practice law in the jurisdiction where such assistance is rendered.

i. Persons advocating disregard or violation of federal or State law, during their service, may not receive compensation under this Act.

j. Notwithstanding the provisions of Title I of the United States Code, all persons salaried by the Corporation, or paid from funds disbursed by the Corporation through the States in an amount which is equal to fifty per cent or more of said person's income during any four month period, shall be subject to the provisions of Rule IV of the Civil Service Rules prescribed by the President of the United States pursuant to 5 USC 3301, as amended as of the date of enactment of this Act, as if said employees were employees of the Federal government. Said employees shall not be treated as employees of the Federal government for any purpose not specifically authorized in this Act.

k. Funds made available by the Corporation, pursuant to this Act, may not be used—

1. To provide legal services with respect to any criminal proceeding or, in the case of juveniles, proceedings which would be criminal if involving adults (including any extraordinary writ, such as habeas corpus and coram nobis, designed to challenge a criminal proceeding); or,

2. For any of the political activities described in this section, or to contribute to or in any way assist any group or association participating in such activities;

3. To maintain any action at law until such time as any and all administrative remedies provided for in applicable contracts have been exhausted; or

4. To represent any person who fails to meet eligibility standards established in accordance with this subsection. An individual shall be eligible for legal assistance pursuant to this Act (an "eligible client") if his assets or income would entitle him to receive benefits, in the State in which he is seeking legal assistance, under the program of the State established pursuant to subchapter XIX or chapter 7 of title 42 of the United States Code or, in the event a State has not established a program, an individual shall be eligible for legal assistance pursuant to this Act if his income and assets fall below the official poverty line, as defined by the Office of Management and Budget: *Provided,* That no person shall be eligible for the receipt of legal services provided through this program if his lack of assets or income results from his refusal or unwillingness to seek or accept employment but in no event shall physical or mental incapacity prohibit an individual

from receiving benefits under this Act: *And provided further,* That the States may impose additional eligibility criteria.

l. The Corporation shall evaluate annually the program for provision of legal services to eligible clients being conducted in each State. Should any such evaluation disclose: discrimination on the basis of race, religion, sex, or national origin in the provision of legal services to eligible clients; or violation of the Code of Professional Responsibility for Attorneys, in any State's program, the Corporation may terminate disbursal of funds to that State until it is determined by the Corporation that such discrimination or violation of the Code or Professional Responsibility will no longer occur.

m. Upon request by any Governor, Member of Congress, or authorized officials of executive branch departments and agencies; reports of particular audits, evaluations, and inspections will be made available to the requesting official or to the public. Such inspections, audits, and evaluations shall be initiated in response to the written request of any Governor, Member of Congress, or official of the executive branch whose appointment has been confirmed by the U.S. Senate or the separate request of a member of the Board or Executive Director of the Corporation.

n. Violation of any of the provisions of this section by an individual shall constitute a misdemeanor. The penalties for such shall not exceed six months' imprisonment or a $500 fine or both.

SEC. 5. QUALIFICATION BY STATES.

a. To qualify for assignment of funds from the Corporation, States shall be required to enact enabling legislation setting forth the manner in which grant funds will be used to furnish eligible individuals with legal assistance. Such enabling legislation shall provide for at least one of (but none other than) the following procedures:

1. Empower a State Instrumentality to administer the funds received from the Corporation and disburse such funds to attorneys representing eligible clients as such attorneys provide proof to such State Instrumentality of services actually rendered eligible clients; or,

2. Transmit the funds received from the Corporation to the Bar Association with overall jurisdiction in the State, which Bar Association shall have established a method for disbursal of funds to attorneys representing eligible clients as such attorneys provide proof to the Bar Association of services actually rendered on behalf of eligible clients; or,

3. Establishment of a method of direct payment of funds received from the Corporation to eligible clients or their attorneys based upon a voucher system or other method whereby proof of services actually rendered on behalf of eligible clients is provided to the State.

b. In their enabling legislation, all States shall (1) Permit eligible clients to retain the individual attorney of their choice; (2) Ensure that all attorneys, while engaged in activities funded by Corporation grants:

A. Refrain (i) from political activity, (ii) from any voter registration activity, (iii) from any activity to provide voters with, or prospective voters with, transportation to or from the polls or provide similar assistance in connection with an election and (iv) from any activity organizing individuals or groups or encouraging groups to organize in the community.

B. Shall not at any time identify the Corporation or any program assisted by the Corporation with any partisan or nonpartisan political activity.

C. Maintain the highest quality of service and professional standards in providing legal services to eligible clients.

c. In the event a State does not enact the required enabling legislation within ninety days of the effective date of this Act or the legislature of a State is not sitting when this Act becomes effective and will not be able to enact the required enabling legislation within ninety days of the effective date of this Act, the bar association of the State may submit a plan in the form of a petition, embodying the provisions of subsections a. and b., above, to the court of highest jurisdiction in the State. Said court may adopt such plans and upon such adoption, the State shall be qualified to receive funds pursuant to this Act. Where such a plan is adopted by the court of highest jurisdiction in the State, the plan shall be annually reviewed by said court: *Provided,* That nothing contained herein shall be construed to prevent the State legislature from reviewing, amending or revoking such plan adopted by the court of highest jurisdiction in the State.

d. In the event a State fails to adopt a plan as provided in subsections a, b, and c, within one hundred and twenty days of the effective date of this Act, the Corporation may assign funds for expenditure within said State in a manner to be determined by the Corporation, *Provided, however,* that shall a State determine not to participate in a program of legal assistance to eligible clients, pursuant to this Act, the authority of the Corporation to so assign funds in that State shall be terminated.

SEC. 6. ATTORNEY-CLIENT RELATIONSHIP.

a. As this program is one for the benefit of those individuals financially unable to afford counsel, the Corporation, officers and employees thereof, may not interfere with any attorney in carrying out his professional responsibility to anyone who has become his client, or abrogate the authority of a jurisdiction to enforce adherence by any attorney to applicable standards of professional responsibility.

b. Nothing contained herein shall be construed to limit an attorney, representing an eligible client, from taking any necessary legal action to protect the legal rights of his client.

SEC. 7. REPORTS AND RECORDS.

a. The Corporation shall have authority to require, from the States, such reports as it deems necessary.

b. The Corporation shall have authority to prescribe the keeping of records with respect to funds provided and shall have access to such records at all reasonable times.

c. The Corporation shall publish an annual report by April 15th of each year which shall be filed by the Corporation with the President and with Congress.

SEC. 8. AUDITS.

a. The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent Certified Public Accountants who are certified by a regulatory authority of a State.

b. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such person or persons. The report of the annual audit shall be available for public inspection during business hours at the principal office of the Corporation. The above shall not be construed to limit the authority of the General Accounting Office to conduct such audits of the Corporation as deemed necessary.

c. The Corporation may require from every State, an annual report conducted in accordance with generally accepted accounting standards by independent Certified Public Accountants, who are certified by a regulatory authority of the State, with respect to funds received from the Corporation. The Comptroller General of the United States shall have access to such reports and may, in addition, inspect the books, accounts, records, files and all other papers or property belonging to or in use by the State which relate to the disposition or use of funds received from the Corporation.

SEC. 9. RIGHT TO REPEAL, ALTER, OR AMEND.

a. The right to repeal, alter, or amend this Act at any time is expressly reserved.

SEC. 10. APPLICABILITY OF OTHER PROVISIONS OF LAW.

a. In the absence of specific reference to this Act, the provisions of the Economic Opportunity Act (EOA) of 1964, as amended (and references to the EOA in other statutes) shall not be construed to affect the powers and activities of the Corporation or to have any applicability with respect to programs and activities assisted by Corporation grants.

b. The Economic Opportunity Act of 1964, 78 Stat. 508, is further amended (42 USC 2701, *et seq.*) by striking out Paragraph (3) of Section 222(a) thereof.

SEC. 11. EFFECTIVE DATE.

a. This Act shall take effect on the date of enactment.

b. Section 10(b) of this Act shall take effect on (1) the date of incorporation of the Federal Legal Aid Corporation, or (2) the date on which the first appropriation after incorporation becomes available to the Corporation, whichever is later.

Mr. HELMS. Mr. President, the past history of the legal services program in OEO has been interlaced with political activity, both overt and in the form of litigation in the courts. It is true that OEO records indicate that about 80 percent of the legal services activity has been concerned with personal problems in the social services area—housing, bankruptcy, family relations, and so forth. A smaller number of cases have dealt with what is called, in the jargon of the legal services program, "law reform." It is here where it is deceptive to talk in terms of numbers. Here you have political advocacy in unrestrained form. It may be carried on in the guise of litigation, but the impact is to change laws, and, in effect, to make laws.

The law reform activity of the legal services program, including its backup research centers, amounts to a legislative function. It is making law. It is politics in the highest sense, because we are talking about the distribution of the rewards, privileges, and benefits of society.

It is my view that political activity, even when disguised as litigation in the judicial system, ought to be subject to the traditional checks and balances of the free political system. It is undemocratic to give power to political faction and at the same time insulate the use of this power from the constraints of free government. Moreover, it flies in the face of our constitutional structure.

I am, therefore, pleased to join the junior Senator from Tennessee as a principal sponsor of this bill to create a legal services corporation that would place the planning and execution of the delivery of legal services to the poor in the hands of the States. The appropriate officials in each State are most aware of the local needs. The bar in each State has an intimate knowledge of the problems being brought before the judiciary in each

State. The legislators in each State must answer to their constituencies and have the wisdom to understand the local situation. This is in keeping with the American system.

As the legal services system is presently structured, the program amounts to a single national law firm with 2,200 lawyers, pursuing a national agenda more related to their own needs than to the needs of the clients. The client has no control over his own case, no choice of attorneys, nor even a good chance of getting his case accepted by the program. Worse yet, the system has no accountability to the American people or to their elected representatives.

The most important problem in my view is the stranglehold of the "staff attorney" system on our legal services program. Under the present system and the proposed bill, the bulk of legal services funds go to pay a staff of attorneys employed by the local legal services program under guidelines set by OEO or by the Legal Services Corporation.

These attorneys essentially control the direction and administration of the program. They effectively have the power to decide what clients and what type of cases to take—and even if they do not overtly discriminate between clients, they can decide which cases to put their real effort into and which ones to give only cursory attention.

This is a situation which could be, and is being abused. Even the administration bill, as amended, contains no effective safeguards against such abuse. Indeed, regulation is not the best cure. A change in the system used to give the clients the power of choice between attorneys is a far easier and at the same time far more basic and effective cure; and it is a cure in consonance with the genius of the American system of local government and local "initiative."

Under this bill, the Legal Services Corporation will be the mechanism for giving funds to the States and guaranteeing, with a minimum of meddlesome interference, that the program is effective and free from political interference and political involvement—in short that it really helps the poor, not the staff attorneys, political pressure groups or ideologically motivated social engineers.

The other problem, of course, is that of accountability. I believe in the American form of representative government. It is not perfect, but I know of no other equitable system of resolving conflicting desires and priorities. Our legislative system is responsive to the needs of our people. Its internal checks and balances, in the main, work to keep these conflicting demands satisfied. Everyone knows that the pendulum swings from one side to another, and that at different times in our history, different sectors of society receive a different emphasis in the legislative process. Yet it is our main political forum, and it ought to remain so. We should not thrust the burden of politics upon our courts.

This bill will keep the courts out of politics and politics out of the court. It will provide a decent system of delivery of legal services to the poor. It will keep the delivery system responsive to the American people as a whole. I am proud to join in sponsoring this important piece of legislation.

By Mr. HANSEN (for himself and Mr. McGEE):

S. 1991. A bill to amend section 613 (c) (4) (F) of the Internal Revenue Code. Referred to the Committee on Finance.

Mr. HANSEN. Mr. President, the purpose of the bill I introduce is to continue to allow percentage depletion based upon the value of soda ash extracted from trona. The amendment does not extend the existing cutoff point or increase the amount of percentage depletion miners of trona would be entitled to. Miners of trona have always been allowed depletion based on the value of soda ash extracted from trona. The Treasury Department has specifically allowed this treatment for over 15 years and will allow it through 1970.

This amendment merely codifies and restates the intent of Congress when it added trona to the list of depletable minerals in 1947. This intent was clarified by the Senate Finance Committee in a 1951 committee report and again, this time by the Treasury Department itself, in 1959 when the Congress was then considering enactment of detail depletion rules which became part of the law in 1960 and which is known as the Gore amendment.

This amendment is vital to the health of the trona industry in Wyoming and simply prevents the harmful effects that would occur in that industry, and to all of southwest Wyoming, if the Treasury Department were allowed to follow its announced intent to attempt to administratively change the rules for the future. In short, the State of Wyoming would be adversely affected very severely if this administrative attempt to override the clear intent of Congress, and the basis upon which the industry is based, if the years and years of uncertainty created by the resulting litigation were allowed to occur.

For the benefit of those who may not be familiar with the trona industry in Wyoming, it might be well to briefly recount the history of trona mining in Wyoming. It is a short history and a history of a truly growth industry. The type of industry that should be encouraged, or at the very least one that should not be hamstrung by unfounded change in administrative policy.

In the late 1940's, southwest Wyoming in the area around Rock Springs was dying. It was an area that had grown and prospered as a result of the coal-mining industry but then faced economic disaster as a result of the exhaustion of the mines. Fortunately, about this same time, one company became interested in a report, routinely made to the Department of the Interior by a company prospecting for gas, that showed in a core sample that a strata of trona existed about 1,500 feet underground. One company followed up on this report and shortly thereafter sought to determine if this natural deposit of soda ash could be economically recovered. This first experimental shaft was started in 1947, the same year Congress with a view of encouraging this embryonic industry, added trona to the list of depletable minerals.

There was never any question in anyone's mind that the sole purpose for the investment then being made was to tap this natural resource for its natural soda ash content and, as explained above, Congress in 1951 reaffirmed that this was its intent when it had earlier authorized percentage depletion for trona.

The first plant became operational in 1952. To say that the soda ash industry in southwest Wyoming has been a growth industry is an understatement. From the first investment by one miner in 1952 with a capacity to extract 300,000 tons of soda ash per year, the industry has grown to where it is now comprised of several mining companies with 1972 production estimated to be about 4,250,000 tons per year. That works out to a growth rate of about 1,400 percent over a 20-year period.

Most important, however, the soda ash industry completely reversed the economic fortunes of southwest Wyoming. It has turned an area that faced economic disaster from the death of an old, depleted industry into the biggest job and investment growth area in the State.

From zero jobs about 20 years ago, the Wyoming soda ash industry now conservatively supports about 12,000 people in the immediate area. On top of that, there are now almost 1,000 construction workers in Sweetwater County directly involved in construction of expanded soda ash facilities. When completed, these facilities will in turn result in a substantial increase in jobs. Well over $100 million of investment is involved, with an effect that spreads throughout the country. This is certainly not the type of industry that should be choked by an uncertainty that could be created by extended litigation over the validity of a bureaucratic decision to try to change the rules upon which the industry is based.

In the past, the Wyoming soda ash industry as it grew from nothing to its present status has primarily concentrated on the domestic market. However, as the industry now moves into a more mature stage, it has turned its attention toward ways and means of entering the export market. Since the Wyoming deposit represents the only natural deposit of soda ash known to exist, it is potentially in a unique position to compete in the world markets for soda ash. However, price competition in world markets is extremely competitive and foreign sources of man-made soda ash, although higher in cost, do have the advantage of being closer to the potential foreign customers and the benefit of the resulting freight savings. Nevertheless, Wyoming soda ash producers now believe that their basic cost benefits approximate their transportation liabilities and that they are on the verge of being able to effectively compete in foreign markets. However, this balance is very thin and a change in the depletion rules, or even the threat of such a change, will swing the scale back in favor of foreign producers and rob the United States of a probable new and valuable export to help

solve the adverse balance-of-payments position of this country and create many additional jobs in the trona industry. The offshore market is just now beginning to be tapped by Wyoming soda ash producers and represents a $750 million a year potential, almost 10 times the value of present production.

To summarize, this amendment does not extend or increase the amount of percentage depletion this industry has always received. It simply restates and reaffirms this treatment. It will continue to create jobs in what has been a truly growth industry. It will aid in the fight to correct our balance-of-payments difficulties. And, finally, it will prevent all these benefits from being thwarted by the uncertainty caused by an administrative effort by the Treasury Department to override the intent of Congress and attempt to change the rules for the future.

By Mr. HATHAWAY:

S. 1992. A bill to amend title II of the Legislative Reorganization Act of 1970, to establish a central data bank for Federal fiscal, budgetary, and program-related data, and to improve the ability of all branches of government to specify, obtain and use such information, and for other purposes. Referred to the Committee on Government Operations.

Mr. HATHAWAY. Mr. President, I introduce for appropriate reference a bill to improve and centralize the machinery for handling the fiscal and budgetary business of the Federal Government.

There has been much discussion in recent months of the inadequate budgetary and fiscal machinery of the Congress, and the near impotence of the legislative branch with regard to determining and enforcing national spending priorities.

At the same time there has been an acknowledgement of the near omnipotence of the executive branch in dealing with budgetary matters—an omnipotence largely based on a computer and technical capability to handle Federal fiscal and budgetary data, and an unwillingness to share this data with Congress.

This imbalance between the executive and legislative branches must be corrected, and there are many proposals now under consideration which are designed to do just that. Among them are proposals to enhance the computer capability of Congress vis-a-vis OMB.

While I endorse the concept of an improved computer capability for the legislative branch, I feel it makes more sense—in terms of both dollars, manpower and effort—to establish one central data bank for the storage of budgetary information.

Rather than compete with OMB for hardware and data, there should be one central objective agency, manned with sufficient professional personnel and computer equipment to provide needed fiscal data to all branches of the Government.

The bill I am introducing proposes the establishment of a national center for the selection, storage, retrieval and dissemination of information and data to meet the requirements of all branches of the Federal Government for fiscal, budgetary and program-related data and information. The center will be developed and maintained by the Comptroller General of the United States, and each agency of the Federal Government will be required to furnish the center with data relating to its budget requests, its functions, programs, projects and activities.

The bill calls for the standardization of all Federal fiscal and budgetary information systems, and mandates that information and data in the center be made available to all of the legislative, executive and judicial agencies of the Federal Government on request, and insofar as practicable, to State and local governments also.

My proposal reduces the congressional reliance on the executive branch for fiscal and budgetary information, and puts both branches on a more equal footing. In so doing, it makes our constitutionally-given "power of the purse" mean more than simply allocating the loose change left by OMB.

At the same time, it saves the taxpayers a great deal of money by mandating that we share facilities and professional personnel in meeting our recurring needs for fiscal, budgetary and program-related data and information.

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

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

S. 1992

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Fiscal and Budgetary Information Act of 1973".

SEC. 2. That part of title II of the Legislative Reorganization Act of 1970 which precedes section 201 thereof (84 Stat. 1167; Public Law 91-510; 31 U.S.C. chapter 22) is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART 1—BUDGETARY AND FISCAL INFORMATION AND DATA"

and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY DATA CENTER AND CONTROLS

"PART 1—FISCAL, BUDGETARY AND PROGRAM-RELATED DATA CENTER"

SEC. 3. Part 1 of title II of the Legislative Reorganization Act of 1970 (84 Stat. 1167; Public Law 91-510; 31 U.S.C. 1151 and following) is amended by striking out sections 201, 202 and 203 and inserting in lieu thereof the following:

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA CENTER.

"SEC. 201. (a) The Comptroller General of the United States shall develop, establish and maintain a national co-ordinating facility (hereafter referred to as the "Center") for the selection, storage, retrieval and dissemination of information and data required to carry out the purposes of this title, and to meet, in a coordinated manner, the recurring requirements of all branches of the Federal Government for fiscal, budgetary, and program-related data and information. The Center shall contain, but not be limited to, data and information pertaining to budget requests, congressional authority to obligate and spend, apportionment and reserve actions, and obligations and expenditures.

"(b) Each agency of the Federal Government shall furnish to the Center such information as the Comptroller General considers necessary to carry out the function of the Center, which is to provide in a timely manner and in useable form, data needed to make federal budgetary, fiscal and program decisions.

"(c) The Comptroller General shall establish an initial capability to perform the functions specified in this section by January 1, 1974, and shall report to Congress on implementation of the provisions of this section annually thereafter."

"STANDARDIZATION OF TERMINOLOGY, DEFINITIONS, CLASSIFICATIONS, AND CODES FOR FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 202. (a) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury and the Director of the Office of Management and Budget, shall develop, establish, maintain and publish standard terminology, definitions, classifications, and codes, for Federal fiscal, budgetary, and program related data and information. The authority contained in this part shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects and activities and shall be carried out so as to meet the needs of the various branches of the Federal government and, insofar as practicable, of governments at the state and local level. Such standard terms, definitions, classifications, and codes shall be used by all executive departments and agencies in their fiscal, budgetary, and program-related data and information systems.

"(b) The Comptroller General of the United States shall publish the effective terminology, definitions, classifications, and codes semi-annually on March 1 and September 1.

"AVAILABILITY TO AND USE BY THE VARIOUS BRANCHES OF THE FEDERAL GOVERNMENT, AND OTHERS, OF FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA

"SEC. 203. (a) The Comptroller General shall make available, on request and in useable form, the information and data in the Center to:

"(1) The Congress and all the legislative, executive and judicial agencies of the Federal government; and

"(2) all the states and political supervisions thereof, except that in any case where it is determined that the service requested is substantial, the payments of such fees and charges may be required as may be necessary to recover all, or any part of the cost of providing such retrieval service to State and local governments.

"(b) In all instances the Center shall perform its functions as to protect secret and national security information from unauthorized dissemination and application."

SEC. 4. The table of contents of title II of the Legislative Reorganization Act of 1970 (84 Stat. 1140; Public Law 91-510; 31 U.S.C. chapter 22) is amended by striking out—

"TITLE II—FISCAL CONTROLS

"PART I—BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201. Budgetary and fiscal data processing system.

"Sec. 202. Budget standard classifications.

"Sec. 203. Availability to Congress of budgetary, fiscal and related data."

and inserting in lieu thereof—

"TITLE II—FISCAL AND BUDGETARY DATA CENTER AND CONTROLS

"PART 1—FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA CENTER

"Sec. 201. Federal fiscal, budgetary and program-related data center.

"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary and program related data and information.

"Sec. 203. Availability to and use by the various branches of the Federal Government, and others, of Federal fiscal, budgetary, and program-related data."

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 118

At the request of Mr. INOUYE, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 118, the Child Adoption bill.

S. 821

At the request of Mr. BAYH, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 821, a bill to improve the quality of juvenile justice in the United States and to provide a comprehensive, coordinated approach to the problem of juvenile delinquency, and for other purposes.

S. 1036

At the request of Mr. MUSKIE, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 1036, a bill to amend the Internal Revenue Code of 1954 with respect to legislative activity by certain types of exempt organizations.

S. 1058

At the request of Mr. HARTKE, the Senator from Montana (Mr. MANSFIELD) was added as a cosponsor of S. 1058, to amend title II of the Social Security Act so as to liberalize the additions governing eligibility of blind persons to receive disability insurance benefits thereunder.

S. 1064

At the request of Mr. BURDICK, the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1064, the Judicial Disqualification bill.

S. 1641

At the request of Mr. MCCLELLAN, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of S. 1641, proposing an amendment to the Rules of the House of Representatives and the Senate to improve congressional control over budgetary outlay and receipt totals, to provide for a Legislative Budget Director and Staff.

S. 1769

At the request of Mr. MANSFIELD (for Mr. MAGNUSON) the Senator from Rhode Island (Mr. PASTORE), the Senator from North Dakota (Mr. BURDICK), and the Senator from Utah (Mr. Moss) were added as cosponsors of S. 1769, to establish a U.S. Fire Administration and a National Fire Academy in the Department of Housing and Urban Development; to assist State and local governments in reducing the incidence of death, personal injury, and property damage from fire; to increase the effectiveness and coordination of fire prevention and control agencies at all levels of government; and for other purposes.

S. 1899

At the request of Mr. SCOTT of Virginia, the Senator from Alaska (Mr. GRAVEL), and the Senator from Idaho (Mr. MCCLURE) were added as cosponsors of S. 1899, to transfer the Office of Management and Budget from the Executive Office of the President to the legislative branch of Government, and to establish a Joint Committee on the Budget.

SENATE JOINT RESOLUTION 117

At the request of Mr. INOUYE, the Senator from Nevada (Mr. BIBLE), the Senator from Utah (Mr. BENNETT), the Senator from California (Mr. CRANSTON), the Senator from Arizona (Mr. GOLDWATER), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Oklahoma (Mr. BARTLETT), the Senator from Georgia (Mr. TALMADGE), and the Senator from California (Mr. TUNNEY), 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 RESOLUTION 126—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO JOCILE D. JOHNSON

(Placed on the calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported an original resolution, which reads as follows:

S. RES. 126

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Jocile D. Johnson, stepdaughter of Earl P. Agnor, an employee of the Senate at the time of his death, a sum equal to eight months' compensation at the rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 127—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO JOSEPHINE S. ELLIS

(Placed on the calendar.)

Mr. CANNON, from the Committee on Rules and Administration, reported an original resolution, which reads as follows:

S. RES. 127

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Josephine S. Ellis, mother of Joyce S. Ellis, an employee of the Senate at the time of her death, a sum equal to one year's compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 128—SUBMISSION OF A RESOLUTION RELATING TO THE AGED, BLIND, AND DISABLED

(Referred to the Committee on Finance.)

ELDERLY MUST NOT BE DENIED FOOD STAMP AID

Mr. HUMPHREY. Mr. President, I submit for appropriate reference a resolution calling upon the Department of Health, Education, and Welfare and the several States to take immediate action to prevent about 1.5 million aged, blind, and disabled welfare recipients from losing their eligibility for food stamps, and to protect other thousands of elderly persons against the loss of further benefits and services, when the supplemental security income program, authorized under the Social Security Amendments of 1972—Public Law 92-603—goes into effect on January 1, 1974.

It is unconscionable that American citizens who happen to be poor and dependent should be denied the assistance to which they are entitled simply because of incredible bureaucratic delays—in this instance, the failure of the Department of Health, Education, and Welfare to promulgate regulations on the supplemental security income program until last week—with the result that State legislatures have not enacted such enabling legislation as may be required.

In a previous statement in the Senate, on May 31, I noted the critical importance of maintaining the eligibility for food stamp benefits on behalf of hundreds of thousands of elderly persons who otherwise would be denied daily nutritious meals. There is no excuse for this administration to permit these people to go hungry or to be crippled by the malnutrition that so readily leads to serious illness in old age, simply because this Government cannot complete its paperwork. I am appalled by this apparent bureaucratic insensitivity, whatever the allegations of complicated procedures that are employed as an excuse for a failure to act.

Will the States fully supplement the basic Federal payment, under the supplemental security income program, in order to assure recipients a payment no less than what they are now receiving, or will they seek to reduce welfare costs? I submit, respectfully, that this question is academic at the present time—we simply cannot know until the States have the information that the Federal Government was supposed to provide much earlier. Nor can we permit millions of low-income elderly persons to suffer hunger, the denial of health care, and the termination of other services—that is the central issue.

Mr. President, I ask unanimous consent that the text of my resolution, and an editorial, entitled "Shortchanging the Aged Poor," appearing in the June 8, 1973 issue of the Washington Post, be printed in the RECORD.

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

S. RES. 128

Resolution to expedite the maintenance of benefits for aged, blind, and disabled under the supplemental security income program authorized by the Social Security Amendments of 1972 (PL 92-603)

Whereas many of the several million aged, blind, and disabled eligible for public assistance under the Social Security Act were to have benefitted under the new supplemental security income program authorized by the Social Security Amendments of 1972 (PL 92-603);

Whereas it is estimated that some 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 the supplemental security income program becomes effective on January 1, 1974;

Whereas this loss of benefit eligibility is attributed to extended delays by the Department of Health, Education, and Welfare in promulgating regulations on incentives for State supplementation of the basic Federal payment under the supplemental security income program, and to the corresponding failure of State legislatures to enact enabling legislation;

Whereas the Senate has acted to address this emergency in passing the Agriculture and Consumer Protection Act of 1973, wherein Section 808(b) provides for the restoration of eligibility of recipients of benefits of the supplemental security income program for food stamps;

Whereas rising costs of living further make immediate corrective action by the executive branch and by the States imperative if indigent elderly persons, the blind, and the disabled are not to be denied vitally needed assistance:

Now, therefore, be it

Resolved, that (a) the Department of Health, Education, and Welfare shall forthwith provide full and complete information to State governments on regulations implementing the supplemental security income program, such regulations to carry out the intent of Congress that present and additional persons receiving benefits under adult categories of public assistance programs shall be better enabled to provide for their self-sufficiency and to meet the rising cost of living; and that the Department of Health, Education, and Welfare shall expedite the determination of State supplemental payment levels; and

(b) State legislatures currently in session are urged to enact appropriate enabling legislation, and the Governors of States whose legislatures are not in session are urged to call back the legislatures in special session and/or to take such administrative action as may be feasible under the laws of the respective States, to assure that the intent of Congress with respect to the enactment of the supplemental security income program is carried out by January 1, 1974, when this program becomes effective.

SHORTCHANGING THE AGED POOR

It has long been an article of faith among those who are familiar with welfare politics that the so-called "adult categories"—the aged, blind and disabled—would never be treated with the indifference, hostility or contempt that many legislators reserve for the young and able-bodied welfare poor. In recent times, it has been the latter recipients—typically, the black woman with several small children—who bore the brunt of the animus. Thus, it came as no surprise last year that the Congress, while rejecting President Nixon's Family Assistance Plan (shortly after he had rejected it himself), did enact reforms that were far-reaching for aged, blind and disabled recipients. The new program foresaw almost a doubling of the number of those eligible to receive aid, and it also was estimated that aproximately a third of those already receiving aid would be financially better off under its terms. Now we learn from testimony provided to a Senate committee that many of the aged and handicapped poor who were meant to benefit from the new program stand in danger of losing income instead.

The source of the problem is the fact that the legislation did not require that the states supplement the income of these welfare recipients under the federal program so as to guarantee that they would not be worse off under the new law. Instead, some very complicated provisions were included to encourage and entice the states to do so. However, to date none has—that is, no state has yet taken the necessary legislative actions to supplement the income of these recipients who stand to lose a certain amount of income if they don't act.

To some extent this failure doubtless proceeds from a general anti-welfare feeling that has caught in its net these recipients who are not usually victimized by politicians when the welfare cutback drives are on. But at least as important, and probably much more so, is the fact that the Department of Health, Education and Welfare delayed until the very last minute getting the complicated regulations for supplementation to the states. It has been a case of bureaucratic fumbling and administrative lethargy and the result could easily be considerable hardship and new suffering for these people whom both the Congress and the administration intended to help.

Unless government is content to let these hapless victims of its own incompetence pay the price, some legislative step—probably a delay in the effective date of the new program—will be required. Beyond that, HEW should get down to the serious business (and with the proper sense of urgency) of working out on a state-by-state basis the necessary information on the implications of putting the supplementation provisions into effect. Federal help and leadership are required here. So are energy and action on the part of HEW. And so is good faith. There were many reasons why the larger welfare reform measure was defeated last year. But one was a suspicion held by many of its opponents that the federal bureaucracy was incapable of presiding over such an effort wisely or efficiently. For the immediate sake of those adult welfare recipients who are now in danger and for the sake of the long range prospects of passing a more comprehensive and generous federalized plan, HEW should take care not to prove the critics right.

AUTHORIZATION TO FURNISH DEFENSE ARTICLES AND SERVICES TO FOREIGN COUNTRIES—AMENDMENTS

AMENDMENT NO. 221

(Ordered to be printed, and to lie on the table.)

Mr. NELSON submitted amendments, intended to be proposed by him, to the bill (S. 1443) to authorize the furnishing of defense articles and services to foreign countries and international organizations.

AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF STATE—AMENDMENT

AMENDMENT NO. 222

(Ordered to be printed.)

Mr. GRIFFIN proposed an amendment to the bill (S. 1248) to authorize appropriations for the Department of State, and for other purposes.

AMENDMENT OF SECURITIES EXCHANGE ACT OF 1934—AMENDMENT

AMENDMENT NO. 223

(Ordered to be printed, and to lie on the table.)

Mr. TAFT. Mr. President, today I am introducing an amendment to S. 470, the bill to amend the Securities Exchange Act of 1934 and ask it be printed. This amendment deals separately, straightforwardly, and definitively with the fundamental questions of requirements for membership on stock exchanges and the method for determining commission rates.

Section 2 of S. 470 presently links the two questions by forbidding any SEC-imposed "public business requirement" to limit dealing for one's own account by present or future members of stock exchanges until commission rates on transactions of all sizes are negotiated rather than fixed. No action along the lines of the present Exchange Act rule 196–2 could be taken until that time. Particularly in view of the lack of a definite date for the advent of fully negotiated commission rates, the result of section 2 seems likely to be an increase in self-dealing on exchanges, brought about largely through more institutional membership.

In my judgment, the rationale for section 2 is faulty because it is based upon an artificial linkage of the institutional membership-public business question to the commission rate question. I cannot accept the argument that the primary element in any discussion of institutional membership or a public business requirement is the desirability, or lack thereof, of the present commission rate structure.

The adoption of the approach of section 2, which reopens exchanges to the type of institutional members whose primary mission is trading for the accounts of the institutional parent, will indeed provide undeniable pressure to move toward fully negotiated rates. Most institutions have already stated that lowering the size of a transaction subject to negotiation will in large part assuage their desire to become stock exchange members. However, the consideration of tactics in the battle over commission rate structure is not a sound basis on which to decide whether, and to what extent, dealing by exchange members for their own account should be allowed or encouraged.

I believe that there should be an overriding concern with the character of the business required of every exchange member. The public interest can be served only if the primary function of every exchange member is to serve the public, rather than to do business for itself or its parent owner. If exchange membership does not carry with it the continuing obligation to conduct at least a predominantly public business, there is the strong possibility that the exchange system will move in the direction of a private club where large institutions and other members can gain unfair advantage over the public. The possibility of such unfairness was pointed out by former SEC Chairman Casey, in his testimony before the Securities Subcommittee:

If the gates are thrown open to institutions, this great bulk of (exchange) trading—60 percent of all trading today—could be done not at negotiated rates but at cost, while individual investors and small institutions, unable to justify a seat, would have to pay still higher rates.

Members dealing for their own accounts would have other possible trading advantages besides cost. These include proximity to trading information and greater inducement or ability to engage in short swing speculation, which may cause public orders to be executed at a different price than otherwise. Actions by such members could delay the execution of public orders or even wipe out attractive trading situations before the public can act. Even if the additional regulation of exchange member trading, provided by section 1 of the bill, is reasonably effective, some abuses will occur and it will probably appear to the investing public that private advantage is being encouraged.

Most observers agree that the individual investor is truly an essential element in the market's composition. Continued participation by individual investors is vital to the market's depth and liquidity. Unfortunately, however, the latest NYSE estimate of the total number of individual shareholders shows a decline of 800,000 in the past year, the first such reversal in 20 years of recordkeeping.

The individual investor is leaving largely because he has lost faith and confidence in our securities market. The adoption of this bill, with its suspension of any SEC-imposed public business requirement pending the elimination of fixed commissions, will only erode investor confidence still further. It will reduce the probability of sustained participation in the market by both small brokers and small investors. At this crucial time, the market needs more small brokers and investors rather than fewer. They will not be attracted or even retained at current levels in a market which appears to be becoming more dominated by institutional investors operating through their own outlets. Perhaps the exchanges can control this problem by their own rules, but it would be better to do so through specific statutory or administrative guidelines not related to the negotiated rate issue.

Accordingly, my amendment would require that after a 2-year phase-in period, all stock exchange members do a 100-percent public business rather than effecting any transactions for their own accounts, the accounts of affiliates or institutional accounts which they manage. This is exactly the same "public business" requirement as S. 470 already contains, except that the phase-in period would start upon the date of the bill's enactment rather than upon the date on which no commission rates remain fixed.

Senators WILLIAMS, BROOKE, BENNETT, and TOWER have correctly emphasized, however, that the commission rate question should be dealt with at the same time as the institutional membership-public business question, because of the relationship between uneconomically high fixed commission rates for large transactions and the desire of institutions who effect these transactions to join stock exchanges. My amendment, therefore, would require commission rates on portions of transactions over $100,000 to be on a negotiated basis by April 30, 1974, or by April 30, 1975, if the SEC determines that the public interest calls for a longer time period to reach this goal. The amendment would vest in the SEC, by virtue of its present statutory authority, the discretionary power to permit retention of fixed minimum commission rates for transactions or portions of transactions involving less than $100,000. Of course, the rate, if fixed, would not necessarily be at the present fixed rate level.

A reduction in the cutoff size for fixed commission rates from the present $300,000 level to $100,000 would, to a large extent, eliminate: First, the present advantage held by exchange members over nonmembers with respect to competition for money management business; second, payment by institutions of excessive fixed commission rates; and third, efforts by the institutions to circumvent the effect of these rates through complex and anticompetitive reciprocal practices. At the same time, fixed rates for smaller transactions could be retained, to the extent found by the SEC to be necessary, to protect small broker-dealers against predatory pricing and provide some control over the price of brokerage services offered to unsophisticated small investors with little negotiating power. Fixed rates for these transactions also should tend to reduce the likelihood of public disadvantage from a "rate war," resulting in aggravation of the demise of smaller brokers and small individual investors.

My amendment would provide more rational and specific resolutions of the public business-institutional membership and commission rate questions than S. 470. I urge the Senate to adopt it without delay.

I ask unanimous consent that the amendment be printed in the RECORD at this time.

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

AMENDMENT NO. 223

On page 15, strike lines 4 through 7.

On page 15, line 8, strike out "(B)" and insert in lieu thereof "(A)".

On page 15, line 9, strike out "specified in subparagraph (A)" and insert in lieu thereof "of enactment of this subsection".

On page 15, line 17, strike out "(C)" and insert in lieu thereof "(B)".

On page 15, line 18, strike out "(B)" and insert in lieu thereof "(A)".

At the end of the bill add the following new section:

"SEC. 11. Section 6(c) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 73f(c)), is amended to read as follows:

"'(c) Nothing in this title shall be construed to prevent any exchange from adopting and enforcing any rule not inconsistent with this title and the rules and regulations thereunder and the applicable laws of the State in which it is located, except that, after April 30, 1974, no exchange shall maintain or enforce any rule fixing minimum rates of commissions with respect to that portion of any transaction which exceeds $100,000: *Provided, however,* That the Commission may, by rule, permit an exchange to fix reasonable minimum rates of commission until April 30, 1975, with respect to that portion of any transaction which exceeds $100,000 if the Commission finds that the public interest requires the continuation, establishment, or re-establishment of reasonable fixed minimum rates for such portions of transactions.'"

NOTICE OF HEARING ON NOMINATION OF ARTHUR F. SAMPSON

Mr. ERVIN. Mr. President, I wish to announce that the Committee on Government Operations will hold a hearing on Monday, June 18, 1973, on the nomination of Arthur F. Sampson to be Administrator of the General Services Administration.

The hearing will commence at 10:30 a.m. in room 3302, New Senate Office Building.

All persons wishing to testify should contact Mrs. Gay Holliday, room 3306, New Senate Office Building; telephone 225-7461.

ANNOUNCEMENT OF HEARINGS ON NOMINATIONS TO THE DISTRICT OF COLUMBIA CITY COUNCIL AND TO BOARD OF DIRECTORS OF THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

Mr. EAGLETON. Mr. President, the Committee on the District of Columbia has scheduled a hearing in room 6226, New Senate Office Building, on Tuesday, June 19, 1973, at 9:30 a.m. on the following nominations:

Dr. Henry Robinson, Jr., District of Columbia City Council;

Mrs. Marguerite C. Selden, District of Columbia City Council;

Mrs. W. Antoinette Ford, District of Columbia City Council; and

Mr. Alfred P. Love, Board of Directors, District of Columbia Redevelopment Land Agency.

Persons wishing to present testimony at that time should contact Mr. Andrew Manatos, associate staff director of the District Committee, 6222 New Senate Office Building.

ADDITIONAL STATEMENTS

REPORT ON THE PARIS AIR SHOW

Mr. GOLDWATER. Mr. President, this year as he did 2 years ago, the President invited me to represent him at the Paris Air Show. I did this and have prepared a report which I have submitted to the President. I am sure he would have no objections to my making it available to all Members and, therefore, I ask unanimous consent that it be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., June 6, 1973.

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

DEAR MR. PRESIDENT: Again it has been my honor to have served as your representative at the Thirtieth Paris Air Show which is held every two years. I will preface my report by telling you that it rained nearly all of the time that I was there but in spite of this

the attendance was good and the interest was high. This undoubtedly established a record in participation, and while attendance figures are not available and while they will be affected by bad weather, I am certain it will be the biggest of all recorded. There were over six hundred exhibitors from twenty-one countries compared to five hundred and eighty from sixteen countries in 1971. I would suggest that in the future your representative plan to spend at least one week instead of the five days that I spent at the show.

My general impression on returning from Paris is that the determination on the part of foreign competitors to become more competitive has not abated one bit. Instead, I witnessed a real determination to make even more advancements. I think this attitude was best expressed by Pierre Messmer, the Prime Minister of France, who spoke at a luncheon on the 2nd of June attended by some four thousand people, including representatives from the entire world. I will attach his speech with this report, the most interesting and indicative parts I would like to quote. He said, for example, in speaking of defense: "The first is France's determination to remain the sole master of her defense capability, despite her friendly relations with many of the world's nations, as testified by this great aerospace gathering. One need hardly insist that an air force equipped with modern equipment is indispensable to effective defense. France wants her armed forces to be equipped with the very best defense materiel. This is confirmed by the assembly line products on exhibition here, while the planned projects that you can see, such as the combat aircraft of the future, show that our manufacturers will continue to build planes, helicopters and missiles equal to the very best produced abroad."

Then in getting down to the specifics in aviation industry growth in France he said: "From time to time our exports have given rise to criticism, some on grounds of principles, some of it biased. To the former I declare that the interests of France and of those countries that rely on our industry and our air force must be served. To the latter, I reply that friendship does not preclude commercial competition which is stimulating and therefore useful, as long as it remains within limits that we know not to overstep."

I can find absolutely no quarrel wth that statement. In fact, I believe it to be a statement that could be made by you in the interest of our own aviation industry.

The Prime Minister said later in his speech: "I am convinced that international cooperation is the answer to these problems starting with cooperation on the European level." Without exception, every high ranking official in European aviation that I visited with expressed the same attitude and then expanded it to include the problems now faced with the attitude of the United States; namely, they oppose the taxes that are placed upon the purchase of each foreign aircraft, regardless of its size, and I would seriously suggest that you consider removing this tax. To show you why, we now dominate the world's aviation markets in aircraft of all sizes, and we can well afford to encourage this outside competition; for example, a business or corporate jet made in Europe that would retail for one million dollars in the United States could have an added cost in the neighborhood of fifty thousand dollars which in itself could preclude the purchase of that foreign aircraft even though the customer preferred it.

The Prime Minister went on to say: "The main advantage of aerial transport over other means of passenger transport is, and will remain, speed. Whether we like it or not, the supersonic transport will occupy a significant place in long range transport in the years to come. Just as planes, despite their relative discomfort, have gradually replaced ocean liners in intercontinental travel, supersonic aircraft will, before long, supersede current modes of air transportation."

Mr. President, this statement is as true as true can be, and whether we like it or not, when the first supersonic jet, either French-British or Russian, crosses the Atlantic to the United States, demands for travel in this aircraft will astound and even shock American companies. I am as convinced now as I was two years ago when Congress made, what I felt then and still feel, a monumental and deadly mistake in abandoning the SST, that we are going to buy them or make them and if we buy them we are going to give up a sizeable part of our international aircraft to other countries. Those who scoffed at the railroad replacing the horse; those who scoffed at the automobile replacing the horse; those who said we would never travel at speeds approaching that of sound are still with us and they have placed our country on a downward curve in the aviation industry.

As I reported to you two years ago, foreign competitors are still amazed that the United States would give up its place in the world of technology, avionics and aeronautics, and they are more determined now to take advantage of that shortsightedness than they ever were.

The Prime Minister went on to say at a later point: "The first is financial. Due to its technological advances, the aerospace industry involves large investment capacity, with uncertain, long term returns. The government is therefore obliged to share the financial burden, which is frequently heavy." I believe that the French recognition of this fact is one that we will have to accept, to some extent, in our country and while I recognize that coming from a conservative, this sounds peculiar, nevertheless, we are no longer alone in this world in the airframe, engine and avionics manufacture and we may have to, whether we like it or not, subsidize research and development in many areas of aircraft and components development.

I am very happy to report to you that your determination to approve the General Electric-SNECMA Consortium met with great approval with everyone I visited with at the show subsequent to its announcement.

The day I left Paris there was an announcement made that France's Aerospatiale and the Westland Aircraft Company of Britain had joined hands in a new company called Heli-Europe Industries, Ltd. This is the outcome of six years of cooperation and includes work with and from agreements with Messerschmidt-Bolkow-Blohm of West Germany, August of Italy and Casa of Spain. I mention this to you because it is typical and indicative of the drive of the Europeans to compete in our markets. With the exception of the military helicopter market, they are doing an increasingly good job in the United States.

While at the Air Show I was allowed to fly the A-300 Airbus which I firmly believe will give our industry competition when our airlines are in the market for shorter range, larger capacity aircraft. This is another aircraft developed by a team of French, German and English companies. This aircraft, by the way, uses about five million dollars worth of equipment from the United States, chief of which are the engines and the nacelles. So important has the latter become that the Rohr Company has established a factory in France to construct them.

I was asked to fly the aircraft from the co-pilot's seat beginning at an altitude of approximately 25,000 feet and to take it down to the instrument landing system by radar vectors, which I did, breaking out of the overcast about 500 feet above the ground. The aircraft handles exceedingly well. It is not quite as light on the controls as our larger aircraft, but the controls are positive and the instrumentation is excellent.

On another day I was asked to fly the Mirage 3-B which I did from the back seat and, as I suspected, this is an extremely effective small fighter plane, highly maneuverable, high altitude capabilities which in our case was limited to 50,000 because of the lack of pressure suits. It reached Mach 1.7 and would have gone higher, but the temperature at the altitude we were flying was too warm.

I believe I have discussed with you in the past my belief that the United States cannot continue to consider spending in the neighborhood of fifteen million dollars for a fighter aircraft when small, lighter, equally maneuverable aircraft at greatly lower prices will become available. We are developing these in research and development programs in our country now, but while I know that the Air Force and the Navy will not agree with me, I believe that more and more we have to get back to the basic fundamentals of fighter plane technique and construction so that we can build up the forces that we must build up to be able to protect our interests around the world.

I visited nearly all of the American companies' chalets and had occasion to discuss their attitudes with the leaders of the companies. They have not changed in their opinions expressed two years ago, namely, a disappointment in the lack of a strong United States demonstration at the Show. This feeling I must report is held in general by most American aviation authorities attending the show and is best expressed by an article appearing in the Paris Air Show Daily News of the 31st of May. I report that verbatim here and will comment following it in a general way.

"The relative lack of a strong U.S. presence in the static display area is only one of a number of striking aspects of the 30th Salon. Others are less obvious but have consequences that are far greater, according to long-time observers of the Paris Air Show.

"First, they note the overwhelming display of all types of aviation and aerospace equipment and are impressed by the strong competition that faces the once predominant U.S. industry. 'The day of the technological Marshall Plan is over,' U.S. Air Force Lt. General Otto J. Glasser, chief of USAF research and development told the Daily. 'We must stop being paternalistic and be a real competitor.' Glasser is one of a number of top U.S. officials in Paris for the show.

" 'An example is the Israelis,' he continued. 'Their display area shows some very, very excellent equipment. It's made well and it's cheap.'

"John W. R. Taylor, editor of the authoritative *Jane's All The World's Aircraft* found the equipment display areas much larger than those of previous years. 'It's completely overwhelming,' he said. 'There is immense capability represented there.'

"Other observers are impressed by Russian activity at the Show. They find the Russians more amenable to talk specifics about sales of aircraft and other matters, and note that their attitude may be sparked by two things: the theme of U.S.-Soviet cooperation stressed by the joint Apollo-Soyuz exhibit and the upcoming Moscow conference and display of U.S. air traffic control and other gear. The event, slated for July, is to be the first of its kind, and although much groundwork has already been laid, the atmosphere at Paris is ripe for reaching more solid agreements. Some American electronic companies are taking advantage of having their chalets within easy walking distance of Russian customers,

who may want up to $1 billion worth of U.S. gear over the next ten years.

"And Russians are moving freely among the U.S. chalets. The head of the Soviet TsAGI, roughly the equivalent of NASA, is known to have expressed an interest to one U.S. firm in advanced metallurgical techniques.

"The unique atmosphere has produced some other unique events. One was a birthday party at the Boeing chalet for Soviet cosmonaut Aleksei Leonov. Leonov, who will fly the Soyuz spacecraft in the 1975 joint U.S.-USSR mission, expressed his gratitude by doing a handstand. U.S. astronaut Eugene Cernan held his feet.

"And famed exhibition pilot Bob Hoover has had discussions with the Russians about flying their Yak-40 trijet commuter at the air show. It would be the first time an American has flown a Russian aircraft at a major show."

The comments of retiring Air Force General Otto Glasser, to me, come as close to hitting the nail on the head as any statement I have seen or heard. The truth of the matter is that outside of the C–5A, the Boeing 747, Lockheed 1011, and the Douglas DC–10, the United States has done very little in producing evidence of any continuing interest in technological development on the part of the United States for the last two shows.

For example, I had urged the Air Force to allow the SR–71 to make a record flight from above the Golden Gate to the Paris Air Show, a flight which could have been done in less than three hours and a half and which would have literally "stood the show on its head." Again for at least the second time this effort was denied. I know it would have cost money but the resulting interest and sales possibilities would, in my opinion, more than have paid for it.

The Israeli demonstration was, in my opinion, as typical of the progress being made around this world as any one demonstration I can think of. Here is a small country twenty-five years old which ten years ago had no aircraft industry but which today has developed its own aircraft, its own missile system which, in many respects, I believe to be equal or better than ours, in avionics and again above all, a determination to make its mark in the world.

An interesting meeting I attended was made up of some of the leaders of French aviation and leaders of our own military. A list of these people is attached. Again the consensus at this meeting, including Americans, was that the United States had better prepare itself for world cooperation by tearing down whatever doors we have erected and come to the realization that whether we like it or not, we have, to a great extent, outpriced ourselves in the world markets, and that we no longer dominate the technological, aeronautical or avionics fields.

An interesting meeting with Henri Ziegler who is President of Aerospatiale was a continuance of discussions held two years ago, interesting mainly because this man is one of the most knowledgeable in the field and is very friendly toward American aviation.

Later I visited with Secretary General M. Jacques Maillot who was head of the Air Show. I specifically asked him his opinion of our Transpo '72 and he was extremely high in his praise of it and convinced me he expressed the feelings of all Europeans who attended the show. That show, by the way, is receiving derogatory attention from some of our leading eastern newspapers, and I strongly urge you, sir, to continue this show and plan now to have Transpo '74 so that it will be even better than what he had last year.

It was my pleasure to meet with Transportation Minister Guana and we had a long discussion about the necessity of cooperation between the nations and it was he who brought up the subject of the General Electric-SNECMA combination which caused me to consult immediately with Peter Flanagan in your office, and I am again most happy that you have reached the very proper decision.

Attempts to visit with the Soviet representatives relative to their air traffic control problems came to naught because of the extreme business of their delegation. For your information, however, there is already set up a conference in Moscow later this year on this same subject and American experts from government and industry will attend. Properly conducted and represented, this could bring a very substantial amount of business to our country.

I do not want to finish this report without recognizing some distinct pluses on America's side because we have them

The American Pavillion was the best organized I have ever seen, and I believe I visited almost every exhibit and almost without exception the exhibitors reported great interest and, in most cases, good sales. The exhibits were well planned, well presented, manned by very competent people and I especially commend to you Mr. Richard Cohen who was my escort at the pavillion who did an excellent job.

The most popular exhibit was the Apollo-Soyuz which was literally swamped by people from morning to night. I met there with our own astronauts and with the cosmonauts from Russia who will man the Soyuz. They were extremely open and frank, answering every technical question I cared to ask and once again convinced me that probably the best way to understanding the Soviets is not through the field of politics, but through the fields of science, academies, professionals, etc. This same openness and frankness carried through in my visit to the TU–144 which I had been in before, but which is now what they called their product model, and is a vast improvement over what they had two years ago. It is with great regret that I learned of the crash of the TU–144 and I sincerely hope that this will not retard the Russians in their great efforts in this area. It was a fine aircraft.

Both the Concorde and the TU–144 SST's flew during the show. The Concorde has greatly reduced its noise level where the 144 has not. Their maneuverability at low level and within the confines of the airport were, frankly, amazing.

I must pay special tribute to Mr. Bob Hoover who daily flew the F–5E, probably our best light-weight fighter, and the Shrike Commander on thrilling demonstrations of his skill. He was loudly and enthusiastically greeted. The Blue Angels were at their very best and we were extremely proud of their performance.

The new Grumman F–14 left even the most ardent Mirage and other high performance European aircraft backers amazed at what this aircraft will do. I am attaching the names of the pilots who flew all of these aircraft along with the suggestion that you personally thank them for the contribution they made on behalf of the United States.

My last impression was that just as the Europeans are pushing the sales of their smaller corporate jets in a most successful way in our country, the general European aviation market is growing. Again quoting from the Paris Air Show Daily News is an observation which I think is very solid, interesting and encouraging:

"The Paris Air Show has become known over the years as an international display of commercial air transports and military aircraft. But in this, the 30th Salon, there is enthusiastic participation by general aviation manufacturers and in sheer volume, general aviation displays are outnumbering those of the larger aircraft.

"General aviation manufacturers are also reporting an unusual number of solid sales. Rockwell International's general aviation divisions, for example, announced that they have consummated over $4.75 million in airframe sales in their chalet.

"U.S. general aviation manufacturers now export between 20 to 25 per cent of their total production. Most of those exports go to European countries. And each manufacturer interviewed here yesterday by the Daily has plans to increase its marketing efforts in Europe.

"Rockwell indicates that it is doubling the staff in its Geneva office. Cessna's Citation Division is adding both manpower and resources to its European sales organization. Piper is looking for new ways to manufacture and market U.S. designed products in Europe."

In summation, Mr. President, I think we in America have to wake up to the fact that the Europeans intend, not just to catch up, but to replace us as the world leader in aeronautics and everything associated with the field. Our industry must realize that it no longer dominates as it did before the ridiculous decision to stop the SST. I think we must also realize that growth and advancements in the general fields of aeronautics, particularly in the medium of heavier aircraft will have to be done with an eye on international cooperation and also with the possible, although not needed now, across the board support of the federal government in the encouragement of constantly advancing technology.

I know there will be those who read this report who will say I am placing the emphasis on the wrong priority. Those are people who believe that all of our tax money should go to support people and I can only say to them that that attitude has retarded American business, technology and development and that the only way we can produce jobs for the unemployed of today and tomorrow is to see to it that our endeavors in the highly specialized fields of aeronautics, avionics, electronics, engine technology and technology generally never take a step backward. Space and aeronautics expenditures today are the keys for the jobs of tomorrow and if there is a better priority than the guarantee of our future, I can't conceive what it would be.

I have been honored to have represented you. If you have any questions concerning this report, please don't hesitate to call.

With respect and admiration,

BARRY GOLDWATER.

GENOCIDE CONVENTION: NO THREAT TO AMERICAN MILITARY FORCES

Mr. PROXMIRE. Mr. President, one criticism frequently advanced against the Genocide Convention is that it would threaten our U.S. military forces in time of war. This criticism has arisen from the reference to "time of war" in article I of the Convention which states that—

> The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Thus, some critics of the Convention have believed that such incidents as My Lai would come under the treaty's jurisdiction. This mistaken belief has been encouraged by the loose application of the word "genocide" in popular reference to the My Lai incident. However, the Foreign Relations Committee report on the Genocide Convention clearly demon-

strates that these charges are groundless. The report states that—

Combat actions do not fall within the meaning of the Genocide Convention. They are subject to other international and national laws.

However reprehensible the My Lai incident was, it did not constitute genocide under the terms of the Convention.

Mr. President, this Nation was founded in the belief that men should be free and allowed the right of self-determination. Fundamental to these rights is the right to life itself. The Genocide Convention acknowledges and protects this right for all peoples. The time has come to stop dragging our feet on this matter. We must join the 75 nations who have already ratified the Genocide Convention without further delay. America has always stood for freedom and human rights, and this is no time to turn our back on those beliefs.

I call upon the Senate to ratify the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.

MARYLAND COMMISSION ON MEDICAL DISCIPLINE DOING GOOD JOB IN POLICING THE PROFESSION

Mr. BEALL. Mr. President, as a member of the Health Subcommittee, I naturally am concerned that quality care is delivered to all of our citizens wherever they live and at a price they can afford. While the medical profession is one of the outstanding professions in the country, it like all professions has an occasional "bad apple" that may often present a danger to the public and represents a disservice to the profession.

I have seen cases, even when a local medical society has identified a doctor as being "incompetent," the medical profession or State authorities have been unable to protect the public by ordering the necessary corrective action or by taking the needed appropriate disciplinary steps.

This is an intolerable situation and I am pleased to say that it is not the case in the State of Maryland. Maryland in 1969 established the Commission on Medical Discipline, which is demonstrating that the medical profession can, indeed, police itself and remove the "bad apples."

As John Sargeant, the executive director of the Maryland Medical and Chirurgical Faculty stated—

A medical disciplinary commission that really works is not only protecting the public—it is also upgrading the standards of physicians and improving the quality of care.

I ask unanimous consent that a May article from Medical Economics describing this pioneering Maryland effort, be printed in the RECORD. I certainly want to extend my congratulations to the State of Maryland and the medical profession for its leadership in this important field.

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

THEY'RE GOING AFTER BAD APPLES AS NEVER BEFORE

(By John Carlova)

Doctors in Maryland man a state agency with the power to go after 18 kinds of bad apples and publicize their findings. They're doing just that!

For a G.P., he kept peculiar office hours—8 P.M. to 4 A.M. His patients had odd habits, too; they rolled up to the office by the carload, and some returned two or three times in a night. These strange comings and goings eventually attracted the attention of the police, who suspected that the G.P. was supplying drugs to addicts. But there was no proof.

In nearly all states, this would have meant that the suspected G.P. could have continued practicing his bizzare sort of medicine. In this case, though, the G.P. was a resident of Maryland, which has its own hard-hitting method for dealing with medical bad apples. The police turned what evidence they had over to the Maryland Commission on Medical Discipline, a state agency composed entirely of M.D.s. The commission, in turn, hired a private investigator to obtain additional information about the G.P. Doctors in the community also supplied the commission with relevant material.

Finally, the G.P. was subpoenaed by the commission. After undergoing medical and psychiatric examinations—which showed physical and mental deterioration—he appeared for a formal hearing. Under questioning, he admitted he was a drug addict. It was also obvious that he was professionally incompetent; for some illnesses, he recommended medication dosages that would have harmed or killed patients. His license to practice was promptly revoked.

Consider this swift and effective action in the light of what happens in most other states, where the disciplining of doctors is left to the Board of Medical Examiners. One state board hasn't revoked an M.D.'s license to practice in 20 years. In a recent, typical year, no licenses were revoked in 30 of the 50 states, and 13 states recorded no disciplinary actions at all.

"The appalling fact is that only 15 licensure statutes enumerate professional incompetence as a cause for disciplinary action," points out Robert C. Derbyshire, a Santa Fe surgeon who's secretary-treasurer of the New Mexico Board of Medical Examiners and a past president of the Federation of State Medical Boards of the United States. "An additional eight laws mention malpractice, generally referring to 'gross malpractice' or 'repeated malpractice,' so that one would infer that disciplinary action can be taken only after the act and not when a man's incompetence is such that he seems in danger of committing malpractice."

In Maryland, up until 1969, medical discipline for serious offenses was handled by the Board of Medical Examiners. So-called lesser offenders went before disciplinary bodies of the state or county medical societies. John M. Dennis, a Baltimore radiologist who was on the state society's Mediation Committee at that time, recalls:

"The committee felt powerless and frustrated."

CHARGE: ADDICTION TO NARCOTICS

Finding: The respondent admits he was addicted, but has broken the habit and is now under the supervision of probation officer. Commission orders that doctor's license to practice medicine be revoked. However, this order is stayed on condition that doctor surrenders narcotics permit and participates in therapy program.

We had doctors coming before us who obviously shouldn't have been allowed to practice medicine. However, since they were doing things that were unethical but not illegal, we couldn't take any really effective action against them. Oh, we could scold them or kick them out of the medical society, but that didn't stop them from practicing medicine—nor, in many cases, did they even change their ways. Something definitely had to be done."

CHARGE: UNPROFESSIONAL CONDUCT

Finding: Accused suggested birth-control pills to regulate patient's periods. In examination that followed, the respondent caressed and kissed the patient's breasts. It is therefore ordered that accused be placed on probation for the practice of medicine for two years, and that he report to the commission every three months.

John Sargeant, executive director of the state society (formally known as the Medical and Chirurgical Faculty of the State of Maryland), felt the same way. For a year and a half, he and Dr. Dennis worked on a plan to set up a medical disciplinary body that would (1) have the power of a state agency, (2) be run by M.D.s, and (3) have jurisdiction over all doctors in the state, not just members of the medical society. The plan appealed to the State Legislature, and the Commission on Medical Discipline—with Dr. Dennis as chairman—was established by law on July 1, 1969. The law is remarkably comprehensive, and it gives the commission extraordinary powers. Some main points:

There are 18 reasons for disciplinary action. Among them: gross overcharging; fee-splitting: professional or mental incompetence; practicing medicine with an unlicensed physician; solicitation of patients; abandonment of a patient; immoral conduct; filing false reports; addiction to drugs or alcohol; failure to furnish details of a patient's medical record to succeeding physicians or a hospital on request, and conviction of a crime involving moral turpitude.

The commission, receiving legal counsel from the State Attorney General's office, can issue subpoenas and administer oaths. The chairman in effect acts as judge during a hearing, and a stenographer is present. It's much the same as a court hearing.

The state provides a small budget for the commission. This covers the expenses of an office and part-time secretary, as well as a court stenographer and private investigator whenever they're needed. Members of the commission, however, receive no pay, only reimbursement for expenses incurred.

There are nine members. They include the president of the state medical society, the chairman of its council, three members of the Board of Medical Examiners, two practicing physicians appointed by the State Secretary of Health and Mental Hygiene from a list submitted by the faculty, and two practicing physicians selected by the Secretary himself. Seven of the nine members of the commission must be present before business can be transacted.

Hearings are held about half a dozen times each year, ensuring a reasonably quick disposal of most of the cases.

The commission can revoke or suspend a license, reprimand a doctor, or place him on probation. A majority of the members must agree before a defendant can be found guilty.

A doctor appearing before the commission has a right to counsel. If he is found guilty, he can appeal to the Baltimore City Court or to the circuit court of the county where he practices. Members of the commission have no immunity against possible legal counteraction by a defendant.

After the commission was set up, the big question was: Would the doctors on this panel use their extraordinary powers against other doctors? The answer to date is definitely Yes. In the three years prior to the estab-

lishment of the commission three licenses were revoked by the State Board of Medical Examiners. The commission, in its first three years of existence, revoked four licenses. This, however, is only part of the picture; in those same three years, six doctors voluntarily gave up their licenses rather than go through a hearing before the commission. Therefore, since one of the main purposes of the commission is to remove substandard doctors from practice, its real score of success adds up to an impressive 10.

Only one other state, Washington, has a medical-disciplinary arm with anywhere near the clout of the Maryland commission.* In some respects, however, the Maryland agency has gone beyond the pioneering efforts of the Washington disciplinary board, which was established in 1955. For example, if a doctor is found guilty by the commission, a report of the case is published in the Maryland State Medical Journal. The doctor is named, and no punches are pulled. Here's a sample:

Charge: Making false reports, misrepresentation in treatments, overcharging for services.

Finding: Doctor charged patients for some X-rays that were blank. Diagnostic work was inadequate. Prescription drugs that were contraindicated or irrelevant. Patients were also treated for conditions that were not verified. License to practice is revoked.

A recent report in the journal detailed how a physician had caressed and kissed a woman patient's breasts while ostensibly giving her a physical examination. The doctor was found guilty of immoral conduct; he was placed on probation for two years, on condition that he report to the commission at three-month intervals.

Publication of such cases has raised eyebrows and stirred up some grumbling among doctors in Maryland, but no attempt has been made to stop it. The fact is, when a doctor is found guilty by the commission, the hearing becomes a public record and is therefore publishable. There is no doubt about the effectiveness of such publication. As one Baltimore surgeon puts it: "I wouldn't want to get my name in there."

Maryland doctors in general seem to support the actions of the commission. Material help has come from more than a few physicians who have instigated cases against colleagues or have voluntarily testified at hearings.

One doctor who cooperated with the commission says: "I don't feel like a squealer. When I became aware that a doctor in our community was senile, I felt it my duty to have him checked out by his peers. He wasn't really practicing medicine—he was just prescribing painkillers for almost everything. Before he could be brought formally before the commission, he gave up his license and left practice. If allowed to go on as he was, he'd surely have killed one or more patients. Then I'd have felt like an accessory to murder."

Organized medicine in Maryland also cooperates fully with the commission. Disciplinary cases that can't be handled effectively at the county society level, or by the state society's Mediation Committee or Peer Review Committee, are passed on to the commission with complete reports and recommendations. Commission members, however, are not obliged to follow those recommendations. Further investigations are sometimes carried out.

*See "Found: a Potent Way to Deal With Bad Apples," MEDICAL ECONOMICS, July 6, 1970. Another state, Florida, has a "sick-doctor statute," designed to protect the public from physicians who are mentally ill, senile, or addicted.

State and local police have been especially helpful in commission investigations. In one case, when a doctor was suspected of selling prescriptions to drug addicts, the police collected incriminating evidence from scores of pharmacies in the area and turned it over to the commission. The doctor's license to practice was revoked.

Sometimes a patient will come directly to the well-publicized commission with a complaint against a doctor. Whether the complaint is minor or serious, the commission refers it immediately to the appropriate county medical society or committee of the state society. Often the complaint will turn out to be a misunderstanding that can readily be corrected without the commission's high-powered machinery. If a charge is valid and serious, however, the commission usually insists on a report from the county society or state committee within 90 days. All the reports and investigations are considered confidential until final action is taken by the commission.

Third-party insurance carriers also work closely with the commission. On one occasion, when Blue Cross and Blue Shield complained that a doctor was grossly overcharging patients, the probings of the commission turned up much more than greed. Evidence showed that the doctor's diagnostic work-ups were inadequate; that he treated patients for nonexistent ailments; that he prescribed drugs deemed to be contraindicated or irrelevant; that most of his X-rays viewed by the commission were of such poor quality they had little or no medical value; and that he had charged or attempted to charge one or more patients for X-rays that were actually blank. On top of all that, he had consistently charged $50 or more for an office visit. The doctor's license was revoked for filing false reports, gross and continued overcharging, and professional incompetence.

The commission isn't always that tough. One doctor who came before the disciplinary group admitted he had given prescriptions for narcotics to addicts. This idealistic young physician had once taken part in a church-sponsored program to rehabilitate drug addicts. Several of the addicts later came to his office seeking prescriptions for narcotics. If they didn't get the prescriptions, they warned, they were desperate enough to commit crimes to buy high-priced street drugs. The doctor handed over the prescriptions.

Investigation disclosed that the doctor himself was not an addict. He was a married man with four children, and leaders of his community testified that he was respected and needed. The commission decided that although he had done wrong, he hadn't done enough wrong to pay for it for the rest of his professional life. Instead of revoking his license, the commission suspended it for six months.

In another case, a physician was charged with filing false reports, misrepresentation in treatments, and professional incompetence. A number of doctors and patients appeared on the accused doctor's behalf, and many letters from other patients were offered in evidence. The physician, when testifying, answered medical questions fully and accurately. His records, however, were a mess—and might well have been the reason for misunderstandings about his treatments.

The commission therefore dismissed all counts against the doctor except the one of professional incompetence. On this, he was found guilty because of his careless record-keeping. Upon his agreement to upgrade his records and open them to periodic inspection by a member of the commission, he was let off with a reprimand.

Sometimes when a physician appears before the commission, it turns out that he's committed an offense in ignorance rather than with willful intent. One young doctor, for instance, put an ad in a local newspaper when he was going on a vacation; it informed the general public how long he'd be gone and directed patients to his covering M.D.

The local medical community considered this undue solicitation of patients, and the case eventually went to the Commission on Medical Discipline. After talking to the accused doctor, however, the members of the commission were convinced he hadn't deliberately done anything wrong; he just didn't know that the paid newspaper announcement could be construed as advertising. He agreed to bone up on medical ethics and was let off with a reprimand.

Whenever possible, the commission tries to salvage doctors who are drug addicts or alcoholics. At least three addicts have been returned to practice because they agreed to give up their Federal narcotics permits and follow a strict program of rehabilitation laid down by the commission.

The commission isn't always a winner, though. One doctor who was reprimanded on a charge of solicitation appealed to the courts. A pathologist, he had sent a form letter to doctors, detailing his services and fees. The judge ruled that the charge against the doctor hadn't been proved, mainly because the commission itself had set no real definition of solicitation.

Another doctor, who had his license revoked on a variety of charges, also appealed to the courts. This automatically stayed the revocation, and the doctor has continued to practice for more than a year while his appeal is pending. Meanwhile, other complaints have been made against him, but the commission is unable to act on them until the appeal is heard.

"This is a weak spot in the law under which the commission was established," admits John Sargeant, executive director of the Medical and Chirurgical Faculty. "Nevertheless, even with the law as it is, we feel the Commission on Medical Discipline has taken a big step forward. It's caught up with medical offenders who might otherwise have gone unapprehended and it's deterred more than a few doctors from going wrong. That's important in these days when the health-care system is being closely scrutinized. Critics in Maryland just can't say that little or nothing is being done by the medical profession to police itself."

Can medical societies in other states get the Maryland type of authority?

"They can if they ask their legislatures for it," Sargeant declares, "and they certainly should ask. Mind you, there's a lot of work involved—a plan has to be prepared and presented—but it's well worth it. A medical disciplinary commission that really works is not only protecting the public—it is also upgrading the standards of physicians and improving the quality of care."

ADDRESS BY AMBASSADOR SCALI—SANCTIONS AGAINST RHODESIA

Mr. McGEE. Mr. President, last Thursday, June 7, Ambassador John Scali, U.S. Representative to the United Nations, delivered a statesman-like address to a UNA-USA dinner in New York.

As a Senate delegate to the 27th General Assembly of the United Nations last fall, I was particularly appreciative of the Ambassador's strong and courageous statement in support of the United Nations and the need to strengthen U.S. participation in that institution.

I was particularly gratified to note that, in his speech, the Ambassador invited the Congress to reconsider its ac-

tion of 2 years ago which placed the United States in open violation of international law. Mr. Scali was referring to congressional passage of legislation which allowed us to violate UN sanctions against Rhodesia—sanctions we had vigorously sought and supported.

Ambassador Scali pointed out that:

The evidence is mounting that this amendment not only damages America's image and reputation as a law-abiding nation, but it also has net economic disadvantages as well.

As my fellow colleagues are well aware, 25 of us in this body have introduced legislation which would return us to compliance with our international obligations under provisions of the United Nations Participation Act of 1945.

In light of Ambassador Scali's positive and vigorous approach to the question of UN sanctions against Rhodesia, I was, therefore, very concerned that some Members of this body have seen fit to criticize the Ambassador's remarks.

It is even more disconcerting to note the justification for this criticism—that the Congress of the United States should have little, if any, regard for our international obligations. If one just examines this line of thinking very closely, it becomes apparent that a perpetuation of such an attitude could throw the international community into complete chaos.

Take, for example, such international agreements as the General Agreement on Tariffs and Trade, the Organization for Economic Cooperation and Development, the World Bank, the International Monetary Fund, the enactment of legislation which led to the Kennedy round of drastic tariff reductions, NATO and our other mutual defense treaties, the SALT agreements. One could go on and on. What if we would begin passing legislation putting the United States in violation of these agreements? We would have a credibility problem of such magnitude that other nations just would not deal with us because we could not be trusted to live up to agreements that we have supposedly entered into in good faith.

I would hope that Congress recognizes the need for international cooperation and involvement. The United States just cannot isolate itself from the rest of the world and survive economically. We do not live in a vacuum. Thus, this attitude, if one would carry it to its logical conclusion, would certainly spell the complete demise of this Nation.

I also believe there is an apparent misunderstanding of how this Nation came to comply with UN sanctions against Rhodesia. It was not a unilateral action by President Lyndon Johnson in 1967, without consultation of the Congress. It was Congress who ratified the United Nations Participation Act of 1945, not the President.

I, for one, believe very strongly that when a nation enters into an agreement with another nation or group of nations, we have an obligation to live up to that agreement. I believe in the integrity of this Nation. If we cannot live up to our international obligations and responsibilities, then it is our integrity which is tarnished. As the saying goes: "A man is only as good as his word." This is equally applicable to relations with other nations. We, as a nation, are only as good as our word.

Thus, as I mentioned earlier in my statement, it was very disconcerting to see this line of reasoning surface in this body. It would be my hope that Congress can regain its sense of integrity and once again act in a responsible manner. A positive step in this direction is to support Ambassador Scali's call for a return to our adherence to international law and our international obligations.

I ask unanimous consent that Ambassador Scali's address be printed in the RECORD.

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

ADDRESS BY AMBASSADOR JOHN SCALI

It is a very special satisfaction for me to address so large an audience of distinguished representatives of American business and labor. You are men and women whose concrete achievements in the real world of the American economy have helped make it the most productive economy on earth. In a real sense, you are people whose achievements move America.

At the same time I am aware that your being here tonight demonstrates that you are also profoundly attached to ideals—to those cherished fundamental American goals and dreams enshrined in our own Constitution, which, in turn, have helped inspire the Charter of the United Nations.

It is this blend of realism and idealism that makes us proud of our national heritage as we approach our 200th birthday. President Nixon, in naming me United States Permanent Representative to the United Nations, has charged me with the responsibility of promoting concrete results within the family of the United Nations—132 Member countries, each proud of its identity, its cultural background and its right to share the riches, both spiritual and material, of our planet.

Those of us who were young when the United Nations was born, back in 1945, in the aftermath of a terrible war, hoped that man would be wise, creative and inspired enough to create a magnificent structure of international peace. We dreamed of one that would guard the safety of all nations large and small, and create a new world order. The lofty goal was proudly proclaimed in the Charter in these words:

"To practice tolerance and live together in peace with one another as good neighbors and to unite our strengths to maintain international peace and security."

This was and is a noble goal.

But, as we look back now, 28 years later, we recognize that perhaps our dream of a universal justice exceeded the strength of the structure we created to fulfill our yearnings. We can see now clearly that we did not create an instant world government. Instead, what we put in place was an international forum where the separate, often conflicting foreign policies of Member Governments collided, at a time when the tidal wave of nationalism became a dominant force in relations between governments. And collide they did, with resulting arguments, tension, and deadlock—but occasional visible agreement and progress. In other words, the United Nations has turned out to be a mirror of the real world.

As a newsman back in 1945, I watched as the United Nations structure was put together word by word. But perhaps I and others failed at that time to recognize that the final structure laboriously pieced together after millions of words of discussion and debate and reconciling of diverging views was a compromise, albeit the best a war-weary mankind could devise at that time.

In those days, as a newly returned, young war correspondent, I firmly believed in the need for a United Nations. Almost 28 turbulent years later as a man who prides himself in being a pragmatist, one who seeks to specialize in what works, I can still tell you I believe profoundly in the United Nations. I am honored that our President has offered me the opportunity to support his effort to make faith in the United Nations. I am honored that our President has offered me the opportunity to support his effort to make faith in the United Nations a realistic faith.

I am committed, and I can assure you the President is committed, to bringing this about. In his most recent Report to the Congress, President Nixon puts it like this:

"Unable to retreat into isolation in a world made small by technology and shared aspirations, man has no choice but to reach out to his fellowman. Together we must build a world order in which we can work together to resolve our common problems."

I have observed before that this is what the United Nations is all about. It is a truism to say that the world community, and particularly the American people have been disappointed in the achievements of the United Nations thus far. If at times we appear to be criticizing rather than praising the UN, it is because we need it and because we want to make it a more dynamic instrument for promoting a lasting peace in a world where nuclear weapons can incinerate a hemisphere. Yes, nearly 28 years have gone by. But 28 years, ladies and gentlemen, represent a speck in the march of civilization.

At the very moment that you have convened in New York, the Security Council of the United Nations is once again grappling with an issue that has resisted ultimate solution for 25 years—the Middle East question. In the days ahead we will be solemnly reviewing the agonizing history of this conflict and searching for a solution that has defied the wisdom and the best efforts of many distinguished statesmen.

Critics can rightfully claim that during this quarter of a century the United Nations has achieved only limited success in moderating the fear and suffering of the people of the Middle East. Yet, even as we sit around the United Nations Conference Table and examine this problem anew, we do so with the assurance that the guns are silent while the statesmen talk of a new beginning. A cease-fire, promoted by the Government of the United States, has stopped most of the killing for 33 months and eased the grave danger that this conflict can engulf other nations in a larger and bloodier war.

The fact that eight foreign ministers have come to New York to join the members of the Security Council in this new search for peace within the Security Council Chamber is testimony to mankind's continuing hope that this great international organization can move toward its most important goal as the guarantor of peace. I cannot predict for you tonight that this newest review of the melancholy history of this war will succeed. But I can assure you that I and the members of my delegation and, I am sure, others of goodwill will do their best to bring about the kind of negotiations between the parties that one day will bring real peace to this region which has known more than its share of sorrow.

I mentioned earlier that an American initiative in the United Nations framework, a cease-fire proposed and accepted by all parties, has at least provided an atmosphere where statesmen can seek to convert this fragile cease-fire into a permanent peace.

So I reject the judgment that the Middle East represents a record of United Nations failure and futility. The present Security Council review is moving ahead under the leadership of Ambassador Yakov Malik of the Soviet Union, whose turn it is to preside as President over this 15-nation organ of the United Nations.

To many of us who are only too familiar with the harsh, often ugly vituperation of the cold war, it was a source of deep satisfaction to hear Ambassador Malik open the debate yesterday morning with words which are new evidence of the winds of peace that are stirring around the world. Ambassador Malik said:

"The necessity for the establishment of a just and lasting peace in the Middle East without delay is particularly obvious to all in the conditions of the auspicious changes which have been achieved in the international situation, the perceptible improvement in the political climate on our planet and the continuing further easing of international tension. The world is going through an important turnabout in international relations, a turning away from the dangerous tension of the cold war towards *detente* and peace."

I welcome these words by Ambassador Malik. If there is to be a lasting peace in the Middle East, it will be partly because of cooperation between the United States and the Soviet Government in encouraging both sides to negotiate their differences before it becomes an explosive threat to international peace and security.

The words of Ambassador Malik are a reflection of the search for a step-by-step improvement in Soviet-American cooperation for peace, to which President Nixon and General Secretary Brezhnev are now committed.

As one who has stood at the President's side for the past several years, as he launched and followed through with his historic initiatives to open the door to China and to Moscow while he ended American involvement in an agonizing war in Southeast Asia, I perhaps can be forgiven if I give full credit to our President for the initiatives that have led to the improving international climates. Within a few weeks, General Secretary Brezhnev will be meeting face-to-face with the President in talks that will, I am confident, move us further on the road toward a better understanding with the Soviet Government. This newest move, as you are aware, comes only a few weeks after the United States and the People's Republic of China after years of isolation from one another have set in motion a series of important moves to normalize relations, the newest of which is the establishment of diplomatic liaison offices in each other's capitals.

I mention these bilateral achievements because it is inevitable that these daring, imaginative initiatives by our President inevitable will be reflected some day in greater cooperation among the major powers within the framework of the United Nations. I am not naive enough to believe that some reasonable, encouraging words by Ambasador Malik in themselves guarantee a new spirit of cooperation in achieving a settlement of the Middle East crisis. But, it at least is an augury of hope for those who believe that the success of the United Nations depends on less rivalry and more working together by larger nations to help the smaller ones whose security sometimes depends on membership in the United Nations and the conscience of mankind.

It is my belief, as a man who it is sometimes difficult to persuade, that we could be on the threshold of the generation of peace to which the President has dedicated most of his life and leadership.

I am conscious, as you are, that I am speaking in the presence of the distinguished Secretary-General of the United Nations, Dr. Kurt Waldheim. He knows that I hold him and his statesmanship in great respect. I hope he will forgive me if I turn for a moment to matters that are of special concern to you and to me as Americans.

At a time when everyone is preoccupied with the question of morality in public affairs, let us examine briefly the role of morality, the role of principle in American foreign policy. I submit that when historians look back on these troubled years, they will discover a record of which Americans can be proud.

As President Nixon moves with careful planning from one foreign policy initiative to another, to the applause of Democrats and Republicans alike, I submit it is because this policy is firmly grounded in morality—in the search for an enduring peace.

In the words of the Charter of the United Nations, the President's policy "seeks to reaffirm the faith in the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women and of nations, large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained . . . This is a search for a way to live with one another as good neighbors.

I mention this before a gathering of those who believe in the United Nations because the waves emanating from the success of the President's individual initiatives will one day make this United Nations house a stronger, more enduring structure.

It is on this foundation of principle that I hope to shape our conduct in the United Nations. Our goal will not be a selfish short-term one which relies on superior economic-military might or geographic position. At the United Nations we will seek to build on principle because our tradition and our heritage demand it and mankind expects it.

This same concern for principle has motivated our conduct in the UN. We are prepared to forego short-run advantages to do the momentarily unpopular thing, if, in so doing, we can contribute in the longer run to a world at peace if we can make of the UN a more realistic and effective instrument of peace.

As an example of this approach, I would cite my recent veto of a resolution calling for an extension of economic sanctions, now in force against trade with Rhodesia, to cover South Africa and Portuguese territories. I vetoed because we were convinced the proposed new sanctions would be ignored by many countries, large and small, inevitably weakening the credibility of the United Nations.

There were those in the UN who disagreed with us. I am morally certain that time will demonstrate that our vote was a constructive step toward liberty and justice in a troubled part of the world.

In this connection, I have respectfully invited the Congress of the United States to reconsider the amendment to the Defense Appropriation Act which two years ago placed the United States in open violation of international law. At that time the Congress voted legislation making it impossible for the Executive Branch to prevent imports of chrome and other strategic commodities from Rhodesia as required by the Security Council, a decision which the United States voted and which is legally binding on the United States.

The evidence is mounting that this amendment not only damages America's image and reputation as a law-abiding nation, but that it has net economic disadvantages as well. The United Nations Association has itself made public studies suggesting that the amendment's repeal would be advantageous from the point of view of our economic health, of increasing employment, and of the national security. I would urge you, leaders in American business and labor, to acquaint yourselves with this issue and to address it.

This is only one modest issue. It is only one example of the kind of concern for our position in the international community to which I would bespeak your attention. It is the nature of the American political system that the effectiveness of your representatives depends ultimately on the wisdom and energy of the public and its leaders. I urge you most earnestly to bring that wisdom and energy to bear on the issues before us. There is no magic in the United Nations, but working together we can make it increasingly effective as an instrument of peace and well-being, and, pray God, worthy of our noblest dreams.

THE PUBLIC SERVICE PROGRAMS OF AMERICAN MULTINATIONAL CORPORATIONS

Mr. JAVITS. Mr. President, at a time when the American multinational corporation is coming under increased scrutiny in the Congress and increased criticism at home and abroad, the highly positive contributions that such corporations make to our economy and the international economy are often overlooked.

The prestigious Conference Board has now issued a report outlining the broad range of public service programs that the American multinational corporations undertake in the nations in which they operate.

I ask unanimous consent that the press release of the Conference Board which was issued on May 21 be printed in the RECORD.

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

RELEASED BY THE CONFERENCE BOARD

NEW YORK, May 21.—American multinational companies are contributing money, gifts and time in widely varying amounts to a broad range of public service programs in the nations in which they operate, The Conference Board reports today in releasing the initial half of a two-part study.

The Board's report is the first comprehensive body of information ever compiled on the international contributions of U.S. multinationals. It was developed with financial assistance from ten American corporations and the Bureau of Educational and Cultural Affairs of the U.S. State Department.

In commenting on this work, John Richardson, Jr., Assistant Secretary of State for Educational and Cultural Affairs, stated: "It is increasingly clear that the basic patterns and climate of our relations with other countries are shaped and influenced as much or more by private motivations, private interests and private actions, as they are by government. I am confident that in the years ahead corporate public service activities such as those described in The Conference Board report will help improve the climate not only for doing business internationally but for other forms of international cooperation as well. The rapid expansion of world business and the evolving social and economic interdependence of nations are developments of great promise for the future of our international relations."

Part I of the Board's report, released today, deals with international public service activities carried on from the U.S. corporate headquarters. These consist primarily of contributions of money and time to international service organizations based in the

United States, and of policy and administrative guidance on the public service activities which their corporate subsidiaries are engaged in abroad.

When completed, the second part of the Board's study will describe the public service activities of the subsidiaries themselves, and provide an assessment of them by recipient institutions and thought leaders in selected countries.

EDUCATION, RESEARCH HEAD THE LIST

Among the 218 U.S. companies with foreign operations which cooperated in the Board's study, programs in education and research abroad are the types most frequently assisted from the U.S. headquarters, followed by health and welfare projects. Assistance takes varied forms, such as financial grants to institutions of higher education; part-time or vacation employment for students; exchange programs for travel, study or work abroad; emergency relief programs; and financial grants to hospitals or clinics.

Many American companies support international programs through gifts-in-kind or the services of executives and other employees. For example, pharmaceutical companies support medical conferences and distribute free medicines in times of natural disasters; food products firms give assistance to improve diets in poor countries and sponsor nutrition conferences; and an insurance company has endowed a chair in a foreign university for the teaching of principles of insurance.

WIDE DOLLAR SPREAD

Ninety-six of the 218 companies studied reported a dollar figure for contributions from their U.S. headquarters during their last fiscal year. These ranged from a low of $200 to a high of $2 million. The total for the 96 firms came to $7,642,053, and the median contribution was $15,000.

These sums were contributed almost entirely to American-based international service organizations for use in their programs overseas. The total does not include the contributions made by foreign subsidiaries. Preliminary data from the second part of the Board's study suggest that contributions by U.S. subsidiaries for foreign public service programs come to a considerably higher total.

A number of companies reported that their support for international public service activities had been reduced in recent years due to adverse business conditions.

WHY MAKE CONTRIBUTIONS?

The companies studied by The Conference Board apparently contribute to foreign public service programs for the same reasons that they contribute to domestic programs. The objectives most frequently cited are: to demonstrate social responsibility as a good corporate citizen, to improve the company's image in general and to create a favorable climate for doing business.

A number of companies believe they should design their foreign public service programs so that specific business benefits accrue to the company as well as to the community. A manufacturing company, for example, supports programs in education "to promote an adequate source of qualified manpower."

Two companies—both banks—specifically stated that an objective of their contributions program was to improve the image of the United States abroad.

RELIGION AND POLITICS

Religion and politics are the only activities commonly denied support among the companies studied by The Conference Board.

In the case of political activity, constraint usually reflects a rigorous policy based upon legal prohibitions against such support in the United States, although a few companies specified "leftist organizations," "subversive organizations" and "extremists of the left or right" as groups they are careful not to assist.

The view on support of religious activity held by a large number of companies is summed up by one respondent who said that his firm does not make grants to sectarian or religious organizations "operated primarily for the benefit of their own members." There are exceptions, however, and U.S. business support for religious organizations is more common abroad than in the United States.

Source: U.S. Business Support for International Public Service Activities. Part I: Support from U.S. Headquarters. The Conference Board.

Author: James R. Basche, Jr., Senior Specialist, International Management Research.

GREECE, NATO, AND U.S. POLICY

Mr. JACKSON. Mr. President, the NATO Council of Ministers will be convening in Copenhagen on June 14. It is fair to say that the Ministers will be confronted by questions of exceptional difficulty. The alliance, so successful in the past, now operates in an atmosphere of uncertainty—over America's future role, over the Soviet Union's future intentions, over Europe's commitment to its own defense, over the strategic and political implications of recent changes in the global military equation.

The meeting in Copenhagen thus promises to be a trying one. Given the range of problems explicit and implicit—more than sufficient to occupy the 2-day conference—I hope I will be forgiven for urging an additional timely matter for the Ministers' consideration. I refer to political conditions in Greece and their implications for the future effectiveness of the alliance.

Strategically speaking, Greece plays an important role in the overall defense of the West. It helps guard the "soft underbelly" of Europe, and is well situated for the protection of Western interests in the Mediterranean and the Middle East. This perception of the relationship between the Mediterranean area and the "Atlantic world" is what contributed to Greece's inclusion in NATO in the first place.

Yet NATO is far more than an ad hoc arrangement for military collaboration. The North Atlantic Treaty makes it explicit that the signatories are committed not only to the defense of each other's territory but to "the principles of democracy, individual liberty and the rule of law" and to "strengthening their free institutions." And it is these basic values of the alliance—the links which bind it together—that are called into question by the military dictatorship in Greece.

I regard the subversion of the democratic order in Greece as a serious matter, and an appropriate concern for alliance partners committed to the defense of free peoples. In Greece today, legitimate political activity has been suppressed, and free expression in the cultural sphere abolished. And while participation in NATO is an undertaking of the Greek Government, it is increasingly clear that the unrepresentative character of that Government makes the commitment of the Greek people less than certain.

Given these circumstances, the "business-as-usual" approach of the U.S. Government strikes me as fundamentally unwise. In particular, if the justification for the present policy rests on the premise that Greek forces are vital to the common defense effort, that justification has about evaporated.

It is now undeniable that the Greek regime has met with considerable resistance within the military itself, as recent events in the Greek Navy clearly show. How, then, is the security of the eastern Mediterranean enhanced by Greek Armed Forces when key elements of those forces are demoralized or are not on station because they cannot, in good conscience, support a government which has abrogated the liberties of their fellow citizens? How will a regime, so lacking in support that it must resort to brutality in enforcing its writ, command the loyalty of its people at a time of crisis?

Thus, the suppression of individual liberty, the lack of a genuine popular base for the regime, and the fissures between the Government and the military all make Greece a serious problem for the alliance. In particular, thoughtful statesmen—in Europe and North America—know the difficulty of generating support among their own constituents for a policy which seems to acquiesce in the fait accompli of the present Greek authorities. Indeed, such a policy will ultimately be self-defeating, and it is now time to realize that.

Mr. President, I recognize that a certain portion of what is happening in Greece represents the result of deep divisions in Greek society. The history which led to the rise of the colonels cannot be repealed, and outsiders simply cannot restructure Greek politics in accordance with their own ideas.

But there are certain positive steps that can be taken. I would hope, for example, that the American Government would abandon the wholly fictitious notion that "progress toward constitutional government" exists in Greece, and that it set aside this fiction as the official rationale for our military aid. Instead, I would prefer a policy which conditions such aid on real progress toward free institutions. A genuinely open and unrigged popular referendum on the recent decree abolishing the monarchy must be insisted upon as a minimum demonstration of such progress.

Second, I understand that the NATO foreign ministers may be asked to express themselves on the importance of political liberalization in Greece. I hope the United States will adopt an affirmative attitude toward such a move, and not seek either to evade the issue or water down explicit language on the subject.

Obviously, Mr. President, such actions on our part will not lead to the immediate restoration of individual liberty and democratic procedures in Greece. But they are a good way to begin implementing a forward-looking and productive policy, consistent with both our NATO treaty commitments and our own political traditions.

CONTROL OF THE NATIONAL PURSE

Mr. McCLURE. Mr. President, the Senator from Virginia (Mr. SCOTT) has received nationwide attention for his interesting proposal that Congress assume control of the Office of Management and Budget.

If there is one thing we have come to expect from the Senator, it is the unexpected. Senator SCOTT is just old-fashioned enough to believe that the adage, "Congress controls the purse strings," is true. Or, at least, it ought to be true.

Whether or not one agrees with this approach to the problem, I think it shows the kind of imaginative thinking which characterizes the younger Members of this body. Senator SCOTT is to be commended, and I ask unanimous consent at this point to include an article on his bill, as written by columnist Holmes Alexander, in the RECORD.

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

THE HEAVY BURDEN OF THE FEDERAL PURSE

(By Holmes Alexander)

WASHINGTON.—As the latest of several moves by the rambunctious 93rd Congress to regain control of the national purse, there is this one by Sen. William Scott, R-Va., which would move the Office of Management and Budget (OMB) lock, stock and barrel to Capitol Hill.

As an endeavor in governmental engineering, the Scott bill is of impressive magnitude, indicative of the senator's well-earned reputation of an economizer while serving three terms in the House of Representatives, and of his down-with-deficits pledges in his 1972 campaign. Since there are a half-dozen similar measures, by Democrat and Republican alike, floating around the Hill, Scott's move shows that he is not a lone crusader, as would have been the case a few years ago. I know that he has been at work in the drafting of his bill for several months, so that the timing of its appearance could not have been a gimmick.

Nonetheless, the timing has almost a playwright's touch of the dramatic, even though it was accidental. There couldn't have been a time in this session when more legislators were talking, and more information was at large about the OMB, than when he sprang his notion. On the day I was handed a draft of his OMB bill, the OMB itself was the subject of a debate in the House, and had been the subject of a Senate debate on the previous day.

The House, it will be recalled, voted to sustain (236 to 178) the President's veto of a previous measure that would have required Senate confirmation of the OMB director and deputy director. The Senate, after its debate, had voted the other way (62 to 22). Thus although Mr. Nixon's veto was not overturned, each chamber voted in favor of having the two officers of OMB be subject to confirmation. Scott's bill would provide the 93rd Congress with the means of getting its way on a subject where feelings run high.

If his engineering project of relocating this huge agency (which administers 60 statutes and employs 700 persons) were to succeed, the President would still appoint its director and deputy director, but "by and with the advice and consent of the Senate." This is what the veto-contest was all about. To pass Scott's bill requires only a simple majority of both houses, and this is seemingly in the bag.

We are talking here about a massive transfer of power from the executive to the legislative branch. For Congress to become owner and operator of the Office of Management and Budget would be, without exaggeration, a major legislative event. It would mean a return of what amounts to the swag of a Great Governmental Robbery, one committed by slow stealth over a half-century.

In 1921 the Bureau of the Budget was created, with little notice, as a function of the executive. In 1939 it was attached to the Treasury Dept. Its director fell within the definition of an "inferior" official, not required by the Constitution to be confirmed. In 1970, with Congress meekly concurring, OMB's name and nature were changed, so that its director and deputy director vaulted in importance to super-Cabinet rank.

Were it not for this year's commotion over the impounding of funds and other exercises of presidential power, few congressional members and fewer citizens would know that OMB holds unprecedented control over the resources of the federal government. As Senate Majority Leader Mansfield puts it, "the OMB director sits today without peer as policymaker and policy implementer whose jurisdiction is limited only by the bounds of total American government involvement."

Of course, this concentration of authority in a presidential assistant is a great convenience to a President who seeks to be a strong executive. Up till lately, the arrangement has also been a convenience to a Congress whose members would rather not pore over thousands of budgetary items.

The amount of work which the Scott bill will require of committee members is staggering and downright mind-boggling.

But if the legislative branch wants to recover its megabillion-dollar purse, this is how to do it.

SNOW ISLAND IN FLORENCE COUNTY, S.C.—A HISTORIC LANDMARK

Mr. HOLLINGS. Mr. President, on behalf of Senator THURMOND and myself, I would like to bring to the attention of my colleagues a resolution passed by the South Carolina House of Representatives memorializing Congress to enact legislation to make Snow Island in Florence County a national park.

I ask unanimous consent that this resolution be printed in the RECORD.

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

A CONCURRENT RESOLUTION

Memorializing Congress to enact such legislation as will make Snow Island in Florence County a National Park.

Whereas, Snow Island in Florence County is one of the most historic landmarks in the United States; and

Whereas, Francis Marion, the great "Swamp Fox" of the Revolutionary War, used Snow Island as his base for military operations against the British; and

Whereas, the beauty and tranquility of Snow Island have remained unchanged and undamaged since the days of the "Swamp Fox"; and

Whereas, the beauty and tranquilty of land be preserved for the use and enjoyment of future generations. Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring;

That the Congress of the United States be memorialized to enact such legislation as will make Snow Island in Florence County a National Park.

Be it further resolved that copies of this resolution be forwarded to the President of the United States, to each United States Senator from South Carolina and to each member of the House of Representatives of Congress from South Carolina.

THE 33D ANNIVERSARY OF SOVIET AGGRESSION AGAINST LITHUANIA

Mr. CURTIS. Mr. President, Friday marks the 33d anniversary of Soviet aggression against Lithuania. On June 15, 1940, the Soviets occupied this proud country and demanded immediate formation of a "friendly" government. A month later rigged elections produced a Congress which requested the incorporation of Lithuania into the Soviet Union. On August 3, 1940, at this "request", Lithuania was declared a Constituent Republic of the U.S.S.R. by the Supreme Soviet in Moscow.

In less than 2 short months the Lithuanian people were sealed off from the free world.

Deportation soon began and reached its height on the night of June 12–13, 1941, when more than 30,000 Lithuanian citizens were loaded in cattle cars and shipped to the Siberian tundras and Asiatic deserts.

Thus began another sad chapter in the long history of this nation's struggle for freedom.

Lithuania has been known to history since 1009, when it was a nation divided into many principalities. Mindaugus the Great unified these principalities into one kingdom in 1251.

By the 14th century the boundaries of Lithuania extended into what is now the Byelorussian S.S.R. and the Russian S.S.R.

In 1387 Lithuania was officially proclaimed a Christian state. During the following two centuries one of the most outstanding rulers of the Middle Ages was Vytautas the Great who extended Christianity and strengthened Lithuania's ties with western Europe.

Of Lithuania's role in the Middle Ages, historian Clarence Manning has written the following:

> The Lithuanians had established a powerful and independent state in Europe during the Middle Ages. They were able to check the German drive to the east for centuries. They protected Europe against the Mongols and the Tartars. They furnished a power and a government behind which the Eastern Slavs could live in peace and safety with a freedom that was unknown in Moscovite Russia. They blessed their subjects with more human freedoms than in the neighboring countries. They encouraged education and toleration, and they played their part in the general development of European civilization.

In 1795 during the third partition of Poland, Lithuania was annexed by Russia. During the next 120 years Lithuania was under Russian domination. In 1831 the tsarist government began a policy of attempting to replace Lithuanian language and culture with Russian. The Lithuanian people resisted and remained faithful to their religion, language, and traditions. The policy of russification was abandoned in 1905.

Russian domination came to an end in 1915 when Lithuania was overrun by German armies. German defeat, coupled with the revolution in Russia, made conditions favorable for Lithuanian independence. In 1917, in response to Lithuanian pressure, the German Government authorized the gathering of a congress of 200 Lithuanian delegates. The

congress proposed an independent Lithuania based on ethnographical frontiers, with its capital to be at Vilnius, and elected a 20-member council. On February 16, 1918, the council proclaimed an independent Lithuanian state based on democratic principles.

But, independence was not yet a reality. As soon as German troops evacuated Vilnius on January 15, 1919, the Red Army entered the city and installed a Communist government. The next year Soviet troops were driven out by the Polish army led by Marshal Joseph Pilsudski and Lithuanian fighting units. On July 17, 1920, Russia signed a peace treaty with Lithuania.

Thereafter, this proud country had freedom for a little more than two decades before it once again—in 1940—became a pawn in European conflict.

Lithuanians have not taken the present occupation quietly. Between 1940 and 1952 over 30,000 Lithuanian partisans lost their lives fighting the present Soviet tyranny.

Since June of 1940 the three Baltic Countries—Latvia, Estonia, and Lithuania—have lost more than one-fourth of their entire population through the various genocidal operations of the Soviets.

The Lithuanian people have never accepted captive status. They have clung tenaciously to their national identity and culture. It is this spirit that has earned for the Lithuanian people the abiding respect and admiration of the free world.

Today provides us with the opportunity to reaffirm to the people of Lithuania that we in the United States have not forgotten them or the justice of their cause.

Today I voice my earnest support for the just efforts of Lithuanians everywhere to reestablish their country as an independent state to free their homeland from Soviet control.

WATERGATE

Mr. CRANSTON. Mr. President, Los Angeles' able and intelligent police chief, Edward M. Davis, recently delivered a speech before the Los Angeles County Peace Officers Association which has some food for thought for all American citizens who are trying to understand the meaning to our society of the events surrounding the Watergate scandal.

Chief Davis discusses the Watergate with relationship to law enforcement but his remarks and advice are worth considering by all citizens.

Says Chief Davis—

The sacred thing that we have to remember, is reverence for the law and how it should be the political religion of the land.

Mr. President, Chief Davis has some very sound advice for all of us. I request unanimous consent for the publication of his remarks in the RECORD as recorded by the Los Angeles Times of June 6, 1973.

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

CHIEF DAVIS ON WATERGATE: FIVE LESSONS FOR POLICE

(By Edward M. Davis)

There are some aspects of Watergate that apply as an administrative lesson to those of us in law enforcement.

First of all, Watergate would never have happened if President Nixon had chosen as his chief of staff someone like the venerable Roger Murdock. I didn't choose Roger as my chief of staff because he was a friend or because he was necessarily loyal to Ed Davis. I would be suspicious of anyone who is loyal only to Ed Davis. So, I think one of the first lessons of Watergate is to be wary of excessive personal loyalty.

In this police department, there has to be something bigger than me for someone to be loyal to. That something that is bigger than me includes the City Council as a group and the people of this city, all 3 million of them. And it is the law—above all, it is the law.

If I hire someone to be loyal only to Ed Davis, I must be seeking a very shallow sort of loyalty; that's true for any man. The real power in our form of government comes from the people, and that is where the loyalty has to be.

Another problem that Watergate reveals, it seems to me, is the propensity of many governmental leaders to surround themselves with youth.

Now there is nothing wrong with youth; most of us were youthful at some point. But we made some beautiful mistakes, and to surround ourselves with young men to create the illusion of youth in ourselves or so that we can dominate others is just bad business.

Gray hair in itself has no intrinsic value, but what it represents, in terms of past mistakes in the learning experience, has great value. Throwing away the value of people who have been tempered in the fires of experience to those who have yet to receive that kind of heat treatment is shortsighted expediency.

A third lesson of Watergate, I think, is that you cannot play down professional experience. I don't care whether it's being a "wire man" or whether it's being a police administrator to head the FBI, or whether it's being a prosecutor to head the prosecutorial forces of the United States. Tried and tested, professional experience is absolutely invaluable.

Poor Pat Gray. Had he once been chief of police of a small city, he would have learned about some of these things in dealing with the elected officials of Washington, D.C.

A fourth and most important lesson, particularly for policemen, is the realization that the catching of a felon never justifies the catcher becoming a felon himself—the end does not justify the means when we are talking about the law. I hope that no American police executive is ever caught committing a felony to catch a felon.

We were lectured about this, weren't we? In *People v. Cahan* and *Mapp v. Ohio* and case after case—it's an ancient lesson. The sacred thing that we have to remember is reverence for the law and how it should be the political religion of the land.

Really, I think perhaps we ought to change the oath we take. We take an oath to uphold the Constitution. I think we ought to add to that oath something about reverence for the law, not just upholding and enforcing the law.

The last lesson I want to discuss from Watergate is the great value of openness as opposed to covertness in the day-to-day operation of any organization. The openness automatically keeps you honest.

In the LAPD, we have had an extremely open press policy. Members of the press can go to any member of my department and ask him a question about any subject—and they do it. This is an insurance policy against our getting off the track.

I think that the police, who used to be a very insular group, have become much more open in the last 10 years. The fact that we have opened up police work to public scrutiny is one of the things that have made police work much better.

Perhaps Watergate has other lessons, personal ones for each of us. These are a few of them that have come to my mind as Los Angeles chief of police. If we all learn lessons from Watergate, then as a nation, we can emerge the better from it.

VFW POST 7315, HAVELOCK, N.C., GETS NATIONAL GOLD MEDAL FOR COMMUNITY SERVICE

Mr. JAVITS. Mr. President, over the past weekend, an event took place in Durham, N.C., which did not get the national attention I feel it deserves. The VFW Post 7315 of Havelock, N.C., was presented with the VFW's Community Activities Gold Award of Honor's. The genesis of that award is an interesting and inspiring tale. In June of last year, Mr. Arthur H. Winds of Buffalo, N.Y., then a member of the U.S. Marine Corps was assigned to the Cherry Point Marine Air Base near Havelock after a tour of duty in Southeast Asia.

In the course of his stay at Cherry Point, Mr. Winds saw television reports on the disastrous effects of Hurricane Agnes and was moved to organize disaster relief efforts on behalf of the victims of that catastrophe. As chairman of a committee to raise funds and supplies, Winds expanded his work from the Marine Air Base to other parts of North Carolina and neighboring States. He was then a member of the VFW post in Havelock, N.C., and when the supplies began to stream in the ladies auxiliary of the post pitched in to help package the supplies. Mr. Winds gives the auxiliary credit for doing some 90 percent of the work which resulted in 15 tons of supplies being flown to Wilkes Barre, Pa., in two planes.

It is in recognition of that noble effort by one group of people to help another in its hours of need that the Havelock Post of the VFW was honored at the North Carolina VFW convention this past weekend. I feel this story is a shining example of the nobility of the human spirit, and I congratulate Mr. Winds, VFW Post 7315, and its Ladies Auxiliary.

Mr. President, I ask unanimous consent that an article entitled "Buffalo Man Paves the Way To Honor for N.C. VFW Post," published in the Buffalo Courier Express on June 4, 1973, be printed in the RECORD.

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

BUFFALO MAN PAVES THE WAY TO HONOR FOR NORTH CAROLINA VFW POST

(By Albert L. Hershey)

Thanks to a former Marine from Buffalo, a tiny Veterans of Foreign Wars (VFW) post in Havelock, N.C., has won a national award.

The award, the National Gold Medal for Community Service, will be presented to the post at the North Carolina VFW convention on Saturday in Durham, N.C.

Arthur H. Wind, 35, the former Marine who helped make it all possible, plans to be in Durham when the award is presented to the Havelock Post, No. 7315.

Wind, of 669 Northumberland Ave., organized and spearheaded a drive to bring relief supplies to Wilkes-Barre, Pa., following Hurricane Agnes last June.

Wind said the drive, begun when he was stationed at Cherry Point Marine Air Base

near Havelock, ultimately raised 15 tons of supplies which were flown to Wilkes-Barre.

"Last June I had just returned from Southeast Asia when I saw reports of Hurricane Agnes on television," Wind said, "and I had just joined the VFW post in Havelock." He said that at the time, only about eight members attended the meetings.

Wind said he got involved with disaster relief for Hurricane Agnes by initiating a drive at the Cherry Point base, then expanded his efforts elsewhere as chairman of the committee to raise funds and supplies. The effort spread throughout North Carolina and adjoining states.

"When the supplies started coming in, the Havelock post's Ladies Auxiliary did about 90 per cent of the work in packaging them," Wind said. There were two separate flights in Wilkes-Barre with supplies, he said, on different dates about a month apart.

"Basically we took cleaning supplies and clothing," Wind said.

A few weeks ago when Wind was at home at 669 Northumberland with his parents, Mr. and Mrs. Herbert H. Wind, he received a letter from the Havelock post, informing him he had been chosen for the award and inviting him to be an honored guest at the VFW convention.

"I certainly expect to be there. I wouldn't pass it up for anything in the world," Wind said. He said he had been informed that this was the first time that a VFW post in North Carolina won the award.

Wind, a graduate of Kensington High School in 1965, spent 16 years as an enlisted man in the Marine Corps. He received his discharge last October.

PRIVATE PENSION REFORM

Mr. RIBICOFF. Mr. President, the Pension Subcommittee of the Senate Finance Committee has been holding hearings on issues related to proposed pension reform legislation. Various witnesses have testified before the subcommittee, pointing out the various deficiencies and inequities existing in our private pension system and the need to institute congressional reform. The solution to the problems of private pensions must be directed to assuring that pension benefits which are committed or promised to workers must be fulfilled when promised and due.

Yesterday, Chairman HARRISON WILLIAMS and ranking minority member Senator JACOB JAVITS testified before the Pension Subcommittee. They are the cosponsors of the Williams-Javits Retirement Income Security for Employees Act of 1973, S. 4, which is now pending on the Senate Calendar. This legislation provides for a comprehensive and meaningful reform of our private pension system and would assist in the fulfillment of the pension promise to the American workers. I ask unanimous consent to place in the RECORD the statement and its attached appendix of Chairman WILLIAMS, submitted in his testimony before the subcommittee on June 12.

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

TESTIMONY OF SENATOR HARRISON A. WILLIAMS, JR. BEFORE THE SUBCOMMITTEE ON PENSIONS OF THE SENATE FINANCE COMMITTEE, JUNE 12, 1973

Mr. Chairman, I appreciate this opportunity to appear before your subcommittee.

As you know, the subject you are discussing—reform of our nation's private pension system—is one to which I've devoted a great deal of effort in the last three years.

Today, I would like to outline what our Labor Subcommittee has done, the conclusions we drew, and the reforms we have recommended.

I know you have a heavy schedule, so I will keep my remarks brief.

However, I do have a more lengthy, written statement, and I would ask that it, together with an attached Appendix, be made part of your record.

Mr. Chairman, this Appendix contains an analysis of Federal regulation of private pension plans, and its development.

I hope the Subcommittee will find this background information useful during your deliberations.

This discussion of Federal controls is also specifically responsive to your statement of May 1st, inviting views on which government agency is best suited to administering such regulations.

As you know, Mr. Chairman, the Senate Subcommittee on Labor recently completed a detailed study of the private pension system in our country.

As chairman of the Subcommittee, as well as of the full Committee on Labor and Public Welfare, I directed that study from its inception, three years ago.

Our study was the most recent—and I believe most comprehensive—in a series of inquiries into private pension plans by both the House and the Senate Labor Committees.

These Labor Committee studies, which go back at least to the 83rd Congress, have provided a history of our private pension system, and of Federal legislation affecting it.

And the conclusion which one must draw from an examination of all this accumulated evidence, is that pension legislation enacted thus far has been totally inadequate to the needs of workers.

These statutes were aimed in the right direction.

But, they have failed to assure American workers that their pension benefits are secure, and will be available when promised and due.

The inadequacy of existing law, and the obvious need for pension reform, has been recognized by the Senate during the last three sessions of Congress.

In 1970, 1971, and 1972, the Senate adopted resolutions mandating the Subcommittee on Labor to conduct a general study of pension and welfare funds in the United States.

Furthermore, on each of those occasions the Senate directed our Subcommittee to place special emphasis on the need for protection of the 35 million workers covered by private pensions.

That study has been completed.

The methods of inquiry employed by the Labor Subcommittee, and the evidence we gathered, are matters of record.

Our findings have been published in considerable detail in a series of reports during the past three years.

And the record we assembled presents, in my judgment, an indelible picture of serious and widespread shortcomings in private pension plans.

In our study, the Labor Subcommittee first addressed itself to how widespread the denial of pension benefits really is.

Having established that this problem exists to a shocking degree, we examined the reasons for denial, and the effects it produces.

We held hearings here in Washington, and in Newark, Philadelphia, St. Louis, Minneapolis, and Cleveland.

And throughout our study, we heard from all sides of the issue.

We listened carefully to both employees and employers, and to both proponents and opponents of pension reform legislation.

Mr. Chairman, I will say that from a personal point of view, these hearings were often most disturbing.

It was most painful to come face to face with the tragic, true stories of men and women denied the retirement security they had been relying on.

Time and again, we heard from workers who had given a lifetime of loyal service to their employers, counting on the promise of future pension benefits.

But in case after case, the promises proved empty, and the dreams of economic security in retirement simply evaporated.

While the causes of these broken promises varied, the results were personal economic catastrophes.

We found that generally the causes fell into one or more areas, all of which were closely examined by our Subcommittee.

These areas are vesting, funding, portability, insurance, and fiduciary conduct.

And we also found that most of these tragedies could have been prevented.

They could have been prevented by adoption of comprehensive, nationwide, and vigorously-administered guidelines for private pension systems.

Accordingly, the Subcommittee on Labor recommended, in February, 1972, six major reforms:

1. A federal law establishing minimum standards of vesting.

2. A federal law establishing funding requirements, accompanied by a program of plan termination insurance.

3. Uniform, federal standards of fiduciary responsibility.

4. Improved requirements for disclosure, and communication of plan provisions to participants.

5. A program to develop portability and reciprocity among private pension plans.

6. Centralization in one Federal agency of pension plan regulation.

These recommendations for reform were embodied in the Retirement Income Security for Employees Act—S. 3598—which Senator Javits and I introduced just over a year ago.

That bill was carefully considered by the Subcommittee on Labor, and the full Labor and Public Welfare Committee.

We reviewed the findings of our study, and heard a great deal of testimony both pro and con on specific features of the legislation.

Let me say at this point that we gave specific consideration to the question of which Federal agency ought to be charged with implementing these reforms.

Our conclusion was that it must be an agency which workers will look to with confidence for help. It must be an agency which will restore their faith in the private pension system.

Only in this way can their faith in the reliability of private pensions be restored.

Accordingly, the Committee's judgment was that administration of pension plan regulation ought to rest with the agency which has as its primary mission, safeguarding the rights of working people—the Department of Labor.

As you know, Mr. Chairman, S. 3598 was reported to the Senate, with a favorable recommendation, by unanimous vote of the Labor and Public Welfare Committee.

In the current Congressional session, Senator Javits and I re-introduced this legislation as S. 4.

This bill was again carefully considered by both the Labor Subcommittee, and the full Committee, and additional hearings were held.

As a result of our additional consideration, some modifications were made.

And on March 29th, the Committee on Labor and Public Welfare once again unanimously endorsed this legislation, and sent it to the Senate with a recommendation for passage.

S. 4 is now awaiting a vote by the full Senate.

I would point out, Mr. Chairman, that a total of 53 Senators have joined as co-sponsors of this measure.

Mr. Chairman, I know you agree with me when I say that there can be no doubt of the urgent need for comprehensive, pension reform.

The painstaking study by the Subcommittee on Labor provides a compelling case for such legislation.

Furthermore, it has shown us how the rights of workers can be effectively protected, while our system of private pensions is strengthened.

The bill our Subcommittee developed—S. 4—is based on that study and tempered by two sets of additional hearings.

It has now been offered to the Senate as a realistic, workable, and effective means of reforming private pensions.

There can be no justification for further delay in enacting pension reform.

Congress has already delayed too long, and American workers have suffered as a result.

To let them suffer longer would be unconscionable.

Thank you.

MEMORIAL SUBMITTED BY CHAIRMAN HARRISON A. WILLIAMS, JR. AND JACOB K. JAVITS, RANKING MINORITY MEMBER U.S. SENATE LABOR AND PUBLIC WELFARE COMMITTEE TO SUBCOMMITTEE ON PENSIONS—U.S. SENATE FINANCE COMMITTEE, JUNE 12, 1973—ANALYSIS OF WHICH FEDERAL ENFORCEMENT AGENCY SHOULD ADMINISTER PRIVATE PENSION PLAN REFORM

THE CASE FOR PRIVATE PENSION REFORM AS A LABOR LAW

(In the consideration of pension reform legislation now pending before the United States Senate, a diversity of views exists on the issue of which federal agency shall be given responsibility for the administration and enforcement of pension reform enactments. This memorandum is an analysis of those arguments which support the designation of the Department of Labor as the appropriate agency.)

I. DEVELOPMENT OF PRIVATE PENSION PLANS

Although private pension plans were introduced in the United States before the turn of the century, their growth in coverage and assets has been most substantial during the last two decades.[1] This rapid development was due to several formative influences:

Tax inducements: Tax incentives were granted to employers in the deductions provided for employer contributions to private plans;

Wage stabilization programs: Wage freezes in World War II and the Korean Conflict encouraged the granting of fringe and retirement benefits in lieu of higher wages;

Collective bargaining: Recognition of the pension benefit as a mandatory subject of collective bargaining under the National Labor Relations Act stimulated bargaining for private pension benefits;

Business necessity: employers hiring in a free competitive economy offer the pension benefit to meet the demands of the labor market.

While no single influence is responsible for the phenomenal growth of the private pension system, the major reason is that private pensions offer substantial advantages to both employer and employee.

Today, more than 35 million workers are looking toward a private pension plan as a major source of economic security for old age. Pension funds control assets in excess of $160 billion and this figure is increasing by more than $10 billion each year. Estimates indicate that by 1980, private plans will control $280 billion in assets and cover over 42 million workers.

Failure to realize expectations created by the pension promise have generated public concern for the adequacy and effectiveness of regulatory control exercised over pension funds. The need for governmental supervision over the private pension system has become a matter of increased debate and is now a crucial issue before Congress. The debate has ranged from the extremes of absolute control to minimal regulation.

The public interest in private plans, as identified in the reports of 1972 and 1973 by the Senate Committee on Labor and Public Welfare, is rooted in its effect on the incentives, the mobility and the employment prospects of the labor force. Work performed in reliance on the pension promise can be rendered but once in a lifetime. Once regarded as a gratuitous reward for long and faithful service, the pension benefit has now evolved into an important element of wages in the form of deferred compensation.

Congress has from time to time expressed concern for the operation of the private pension institution. Yet, legislative progress for reform has been slow and of questionable effectiveness in resolving the real issues within the system. Lack of protective legislation at the federal level has prompted individual states to attempt to fill the regulatory vacuum. An institution of this magnitude, therefore, demands effective federal legislation for establishment of minimum national standards which will protect the reasonable expectations of its millions of participants.

II. EXISTING FEDERAL LAWS GOVERNING PRIVATE PENSION PLANS

A. Background of labor law regulations governing private pensions

Within the last 25 years, Congressional concern for some measure of protection for workers' private pensions has been expressed by enactment of labor law measures. A survey of existing federal jurisdiction over pensions was conducted by the General Accounting Office for the Senate Labor Subcommittee, as a part of the Subcommittee study, and concluded that:

"Among the various agencies exercising legal authority and responsibility over private pension plans, *the Department of Labor has the most significant role.* Under the authority of seven different laws, Labor's responsibilities in the private pension area range from requiring disclosure of pertinent information on plans to preventing discrimination against various classes of workers."[2]

The National Labor Relations Act, as amended, (29 USC 141 et seq.) and the Welfare and Pension Plans Disclosure Act (29 USC sec. 301 et seq.) are the principal labor statutes exercising regulatory control over private plans.

The National Labor Relations Act, as amended, provided the impetus for the phenomenal growth of the private system in the last two decades, when the federal courts in the Inland Steel decision of 1948[3] recognized the pension benefit as within the purview of the "wages or other conditions of employment" as defined in the NLRA, thus making pensions a mandatory subject of bargaining.

In addition, the Taft-Hartley Amendments of 1947 to the NLRA set forth the conditions of administration for the jointly administered union-management pension funds. Subject to certain conditions, this Act allowed employers to contribute to welfare and pension plans administered by boards of trustees with equal representation of labor and management. The essential conditions required the pension agreement to be in writing, the funds to be used for the exclusive benefit of the employees, and an annual audit to be conducted.

Extensive investigations into the management of specific pension funds by the Senate Labor Committees in the 1950's led to the enactment of the Welfare and Pension Plans Disclosure Act of 1958. This Act required registration, reporting and disclosure of private pension fund transactions to the Secretary of Labor. It was amended in 1962 to make theft, embezzlement, kick-backs and bribery a federal crime if such activity occurred in connection with a pension or welfare plan.

At least seven other federal labor statutes also affect the operations of private plans (See Appendix). For example, the Fair Labor Standards Act regulates employer contributions to private plans in determining employee rates of pay and the Age Discrimination Act of 1967 provides that pension contributions cannot be used to discriminate against older workers.

It should be noted that none of the foregoing labor legislation affected the Internal Revenue Code directly or otherwise, nor required amendment to the tax laws. Since they consist of affirmative mandates directed to protecting the interests of workers in private pensions, Congress did not believe that these measures were either appropriate or necessary for incorporation into tax qualification statutes. Even though these laws have not achieved the degree of protection necessary to provide adequate safeguards for employee interests in private pensions, their very existence demonstrates a long-established and accepted pattern of Congressional determination to secure the public interest in private pension plans beyond the limited requirements attending tax benefits and considerations.

B. Background of tax law regulation of private pension plans

Under Section 401 of the Internal Revenue Code of 1954, tax exempt status is conferred on all pension funds which "qualify" for such benefits. The grant of "qualified" status results in tax advantages in that: (1) employer contributions into a pension fund are deductible as they are made, (2) profits made by fund investments are free from tax, and (3) employee tax liability on pension benefits is deferred until such time as the benefits are received by eligible participants.

To "qualify" for favorable tax treatment, a plan must be written, permanent and in existence during the year in which exemption is claimed. In addition, the plan must be "for the exclusive benefit of covered employees" and their beneficiaries and must provide benefits in a way which *does not discriminate* in favor of stockholders, officers, supervisors or highly paid employees.

The early history of tax exemptions for private pensions goes back to the Revenue Act of 1926. Prior to the adoption of this statutory authority for tax exemption, the income of employee trusts was taxable either to the employer, employee, or to the trust itself, depending on the terms of the trust instrument. Amounts contributed by employers to such trust funds were generally taxable income to the employee at the time paid unless his rights under the plan were so contingent on future events that it would be unreasonable to impose a tax on the basis of currently realized income.

The tax exemption legislation of 1926 imposed no limitations on employer deductions and no special rules relating to coverage. Most of the restrictions currently existing in tax legislation were adopted in a series of tax bills between 1928 and 1942. Those of major importance include:

1928—provisions were added to tax laws which restricted employees contributions to a pension plan over a ten-year period. One of the main purposes of this provision was to prevent employers from concentrating pension deductions in years most advantageous from an income tax standpoint.

Footnotes at end of article.

1938—provisions were added requiring that employer contributions be irrevocable with no use of funds permitted for purposes other than the exclusive benefit of employees. The purpose of this legislation was to prevent the possibility of pensions becoming a tax avoidance device whereby employers could set up funds in good years and later recapture them in years of financial distress.

1942—provisions were added establishing minimum coverage requirements; prohibition of discrimination in contributions or benefits in favor of higher-paid employees; deductions for employer contributions to fund past services extended to 10% of past service liability or an amount when combined with current service contribution would not exceed 5% of covered employee compensation; and capital gains tax treatment extended to lump sum payments to employees at termination of service.

1954—entire Revenue Code revised. It generally continued and strengthened the tax advantages existing previously. However, two major additions were made: qualified trusts were made subject to tax on "unrelated business income" and faced loss of exempt status if they engaged in certain "prohibited transactions". Again, the basic purpose was to prevent the trust from becoming an instrument for tax avoidance by subverting its objectives.

The changes made by the 1942 Revenue Act included restrictions and liberalizations of earlier tax provisions. The restrictions imposed (coverage and nondiscrimination requirements) were largely corrections of omissions in the original tax exemption law which had become obvious during years of experience with such legislation, and which had been accentuated by changing economic conditions. The absence of such requirements had led to the creation of some plans for the benefit of a few key individuals within companies which, in operation, were merely tax avoidance devices rather than bona fide retirement plans.

As early as 1973 the President informed Congress that attempts to encourage employee retirement plans through special tax treatment had resulted in tax avoidance and he requested remedial legislation. When Congress failed to enact coverage and nondiscrimination requirements in 1938, the Treasury Department attempted by regulation to institute standards of this nature to prevent tax abuses. In 1940, the Treasury Department was forced to rescind its regulatory authority in this regard because of lack of statutory authority and adverse decisions by the Board of Taxation.

Those who have advocated the use of Internal Revenue Laws to protect employee benefits have argued that the IRC was intended to provide adequate security to employee interests as a condition of obtaining tax benefits. However, after exhaustive analysis of this issue, Cardoza Professor Emeritus of Jurisprudence at Columbia University, Edwin W. Patterson (who was a Deputy Superintendent of Insurance in New York) in his book, *Legal Protection of Private Pension Expectations,* concluded that:

"On the whole, the Internal Revenue Code of 1954 provides only limited safeguards of the security of anticipated benefit rights under private pension plans. It is primarily a law designed to produce revenue and to prevent evasions of tax obligations under the guise of recognized exceptions."

"The inquisitional powers conferred on the service by the Code . . . and the keeping of records and the making of statements under oath when called for are limited to the objectives of the Internal Revenue Code, namely, to prevent tax evasion and discrimination."[4]

Footnotes at end of article.

III. PROPOSED LABOR LEGISLATION FOR PRIVATE PLAN DEFECTS

A. Study of private pensions by the Senate Labor Subcommittee

Viewed from historical perspective, the recent Senate pension study has served as a successor to the investigations of the Senate Labor Committees, dating back to the 83rd Congress in 1954. Those investigations surfaced shocking abuses of internal administration and misuse of fund assets in a number of private pensions. Enactment of the Welfare and Pension Plans Disclosure Act of 1958 as well as the Landrum-Griffin Act of 1959, were direct result of these and related Senate investigations.

The latest Senate study of the private pension system was directed by three successive Senate Resolutions dating back to March 12, 1970.[5] Congressional concern was generated by the complaints and allegations that thousands of workers entitled to receive earned pension benefits were being denied their pensions. It is significant that each resolution contained a specific mandate to the Senate Labor Committees to conduct the study with *"special emphasis on the need for protection of employees covered."*

These three charters manifest the continuing recognition by the Senate that the Labor Subcommittee was and is the appropriate Committee to define the pension problems of workers and to propose the legislative solutions which would adequately protect the pensions of workers covered. In pursuit of this objective, the Senate appropriated approximately $1 million in funds.

After three years of methodical and analytical study, the "Retirement Income Security for Employees Act of 1972" was introduced as S. 3598 in the 92nd Congress. This bill, with unanimous approval by both the Subcommittee and full Committee on Labor and Public Welfare, was not acted upon due to other priority legislation pending before the early Senate adjournment for national elections in 1972. However, the Senate leadership announced prompt consideration of this legislation if brought to the Senate Floor in the 93rd Congress. The RISE Act was reintroduced as S. 4 in the 93rd Congress, with the co-sponsorship of 53 Senators. S. 4 was approved unanimously by both the Senate Labor Subcommittee and Labor and Public Welfare Committee and has been pending on the Senate Calendar since April 18, 1973.

B. Senate findings as the basis for S. 4

To define existing problems, the Senate Pension Study undertook a meticulous investigation of the workings of the private pension system. Among the various studies, one utilized the Senate computer for the first time in preparing a statistical analysis of the provisions of 1493 private plans selected as a representative cross-section of plans and participants. Findings of this study were published in Senate Report 92–634 on February 22, 1972 and subsequent publications.[6]

Detailed analysis of many plan provisions produced disturbing results. While many plans were found to be administered and operated in a safe and equitable manner, substantial defects and inequities were discovered which evidenced sufficient proof that a number of workers were losing or being denied pension benefits. Testimony of workers in several major public hearings before the Senate Labor Committee confirmed the existence of serious shortcomings in the administration and operation of the system.[7] Since private pension benefits are governed exclusively by the rights and obligations specified in the pension contract, it was apparent that all defects were traceable either to the terms or non-existent provisions in the contract. The denial or loss of pension benefits to workers were principally attributable to:

The lack of effective centralized federal regulatory control over the scope of operation and administration of the private pension plan;

Inadequate or nonexistent vesting provisions which result in the denial of retirement benefits despite long years of employment;

Inadequate accumulation of assets in funds to meet obligations to workers entitled to benefits;

The lack of transfer mechanisms to allow workers to transfer earned pension credits from one plan to another;

Premature termination of pension plans with inadequate resources for payment of benefits due;

Lack of uniform rules of conduct for fiduciaries who administer the investment of pension funds;

Lack of adequate and comprehensive communication to plan participants of their rights and obligations under the contract.

C. Legislative remedies proposed by S. 4

The proposed remedies of S. 4 are directed to the specific documented findings of the three year Senate Study. They respond to the major defects identified which require reform if workers are to be protected.

S. 4 is intended to restore the credibility and faith of American working men and women in their pension plans. Simply stated, a pension plan is either a promise which an employer expects to fulfill and which his employees expect to be fulfilled, or a warranted expectation by them that they will receive pensions.

Any failure by the employer to carry out his part of the agreement, or any lack of faith by his employees in the willingness of the employer to pay in full their earned and reasonably expected pension benefit serves to defeat the combined labor, management and social objectives which the pension plan was established to serve. The failure of the pension promise produces irreparable injury to the interdependent relationship which must exist between employee and employer. Thus a major work incentive which is indispensable to the productivity of a sound economy is undermined.

The basic reforms approved in S. 4 by the Senate Committee on Labor and Public Welfare are as follows:

1. Prescribes minimum vesting standards whereby employees, after 8 years of service would be entitled to a vested non-forfeitable right to 30% of his earned pension credits accumulating an additional 10% each year thereafter until 100% vested at 15th year of employment.

2. Establishes minimum funding requirement for funding of all pension liabilities over a 30 year period.

3. Establishes a voluntary program for portability of pension credits through a central fund, whereby employees of participating employers may transfer vested credits from one employer to another upon change of employment.

4. Establishes plan termination insurance program to guarantee that vested pension credits of employees will be paid upon premature termination of a plan when there are not sufficient assets to pay workers' vested benefits.

5. Establishes minimum rules of conduct for trustees and other fiduciaries in the administration and investment of pension fund assets.

6. Requires comprehensive disclosure of vital financial data in reports to be filed with the Federal Government, and understandable explanations to workers of their rights and obligations under their pension plans.

7. Makes it unlawful for any person to discharge, suspend, expel, fine, discipline or discriminate against participants in order to interfere with their rights under the plan

or the Act, or for the purpose of preventing the attainment of their rights under the plan or the Act. It is made a criminal offense to use fraud, force or violence, or threats thereof, in this connection.

8. Provides adequate remedies to both the Government and individual worker for judicial and administrative enforcement of the bill's provisions, including recovery of pension benefits due.

The underlying thrust of S. 4 is to protect workers' rights in and expectations in private pension benefits. It accomplishes this objective by establishing minimum safeguards which all plans must contain, independent of their taxable status at any particular point in time. This legislation is a minimum standard labor law based upon the constitutional authority to regulate interstate commerce, and industries and activities affecting such commerce.

The minimum proscriptions required by S. 4 are based upon the recognition that lack of adequate protection for workers' pension benefits results not from abuse or misuse of the tax advantages afforded to private pension plans, but from the inadequate provisions of the pension contract in the absence of mandatory provisions which would guarantee minimum protections.

Further, S. 4 acknowledges that the development of private pension plans involved considerations transcending tax incentives. Among the considerations are those relating to the conditions of employment, labor-management relations, worker productivity, management efficiency, and the social need for a pension plan as an integral element of retirement planning, with obvious concern for adequate economic security in retirement.

D. Analogy of S. 4 to other laws

Labor laws for the protection of workers have generally followed the industrial development of the nation—and to meet their needs, public conscience at times demands governmental action where the private sector is unable to or is unwilling to meet such needs.

The first important labor law took the form of child labor legislation to protect the exploitation of children. Close behind came laws to protect women against excessive hours of work and further safeguards against hazardous working conditions.

Subsequent federal legislation later recognized labor's right to promote its own welfare through mutual association. It guaranteed labor's right to organize, to strike, and to bargain collectively, and extended the help of government in promoting industrial peace and fair treatment through mediation and conciliation. More recent measures also included insurance against occupational accidents and disease, unemployment, or sickness, minimum wages, and prohibition of discrimination in employment because of race, creed, color, sex, or age.

Modern labor laws, while providing for corrective and protective measures, also assure certain basic rights of labor, and obligations of society as a whole to all workers.

Experience has shown that laws to protect workers are not self-executed. They are meaningless unless their provisions can be translated into actual benefits for workers through competent and adequately financed administration, by penalties for violation, and adequate remedies in the judicial process.

Labor laws are interrelated, both in purpose and effect on the worker and our nation's economic and social structure. This interrelationship, for maximum benefit, requires effective and efficient administration of the governing laws designed by a strong and competent administration of a coordinated agency, such as the Department of Labor, which has encouraged and understood the labor-management relationship.

There are at least seven significant labor laws affecting regulation of private pension plans which are administered by the Department of Labor. Thus, the addition of new regulatory measures protecting the interests of workers in pension plans as recommended by S. 4, can and should be logically and consistently integrated within the framework of other labor standard measures administered and enforced by that Department.

Equally important is the similarity of the approach to administration and enforcement for the reform of private pension plans, and the approach taken under such laws as the Fair Labor Standards Act, Occupational Health and Safety Act and the Age Discrimination in Employment Act.

Underlying the policy of all labor law is the effort to protect workers' interests. As the Senate Labor Subcommittee has demonstrated in its findings, lack of adequate safeguards in private pension plans requires government action to protect workers' benefits. All too frequently, the pension promise is broken, and like sub-standard wages, unsafe working conditions, discriminatory employment and similar practices, it becomes a real and legitimate subject for labor law regulation. The same compelling reasons which require judicial enforcement of other labor standard laws, are equally applicable in the implementation of the minimum standards for private pensions.

It follows that the federal agency historically equipped to administer such protective pension legislation is the Department of Labor. The purpose of the Department as stated in 29 U.S.C. Sec. 551 is to:

"Foster, promote and develop the welfare of the wage earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment".

IV. S. 4 DOES NOT AMEND THE INTERNAL REVENUE CODE OR CREATE DUAL ADMINISTRATION

A. S. 4 Does not amend the Internal Revenue Code

The provisions of S. 4 make no direct or indirect incursion, revision, or amendment of the Internal Revenue Code. The bill does not conflict with any statutory provision which governs grant or denial of tax deductions or privileges. The awareness of tax law aspects affecting private pensions is emphasized by the references to provisions in the IRC in the text of S. 4. The references are deliberate and indispensable for reasonable comprehension of S. 4 and intended to assure compatibility of administration and enforcement with appropriate IRC provisions.

On September 25, 1972, having requested S. 3598 (S. 4's predecessor) from the Senate Calendar for its consideration, the Senate Finance Committee filed a report reflecting its views of the bill. While the report made no attempt to pass judgment on its substantive provisions relating to coverage, vesting, funding, insurance or portability, it did contend that legislation such as proposed by the bill has been handled historically through tax laws and, accordingly, was outside the jurisdiction of the Senate Labor and Public Welfare Committee.

The objections, as reported by the Finance Committee, are essentially that:

(a) Its provisions attempt to revise tax laws without specifically amending them, and such effect would be inevitable because of S. 4's references to specific provisions in the Internal Revenue Code, and,

(b) Administration of its provisions would require enforcement by the Secretary of Labor, and this would result in dual administration and conflict with the Internal Revenue Service, both in regulation and enforcement of affected laws.

To these objections, it is noted that the references to the Internal Revenue Code do not incorporate into S. 4 any of the IRC provisions. They are instead used deliberately to specifically avoid complicated and unnecessary repetition in S. 4 and they serve to signal the limits of jurisdiction established by S. 4. The references further serve to assure compatibility in administration and enforcement of S. 4 provisions, with provisions of the IRC. As to the objections relating to dual administration, these are considered in detail in Sec. B.

B. S. 4 does not create dual administration

It has been contended that the new substantive requirements in S. 4 regarding coverage, vesting, funding, fiduciary standards, would, if administered by the Department of Labor, result in dual administration of certain comparable requirements by the Internal Revenue Service.

Specifically, it is observed that the IRS has imposed vesting and funding requirements to secure protection against discrimination in favor of higher paid employees, and fiduciary standards under the prohibited transactions provisions of the Code in order to prevent pension plans from being converted into tax evasion schemes.

Accordingly, it is argued that enactment of S. 4 as a labor measure would result in problems of (1) dual staffs in two agencies, (2) dual reports, (3) differences in coverage, (4) conflicting requirements, (5) qualifications under one set of requirements and not the other, and (6) changes in enforcement procedures.

Vesting conditions administratively imposed by the IRS are greatly limited in scope and application; otherwise, the problems of non-existent or inadequate vesting provisions exposed by the Senate Labor Subcomittee would not have occurred. In essence, the IRS may refuse to grant or continue tax privileges of a plan if the absence of vesting in such a plan would result in discrimination in favor of higher paid employees. This requirement is not specifically contained in the provisions of Section 401 of the IRC, but is an administrative policy of IRS which results from its construction of the anti-discrimination provisions of Section 401. The reason given for this construction is that in the absence of vesting for all employees in a small plan, only the highly compensated proprietors and managers of the enterprise are likely to have sufficient length of service to qualify for a pension.

Since S. 4 does not assume jurisdiction over small business pension plans, it is doubtful that S. 4 would interfere with, or impede, the administrative practice that IRS has made concerning the anti-discrimination provisions of the Code.

IRS also requires employers to fund certain service liabilities of a plan and the interest on the past service liabilities. It does not require compulsory funding of all accrued past service liabilities. and this is the very core of the funding requirement in S. 4. As noted later, the inability of the IRS to compel employer contributions for sound funding renders the IRS impotent to assure promised retirement security for workers.

In addition, IRS administers a loosely defined and vague set of fiduciary standards through the so-called "prohibited transactions" provisions of the IRC. Essentially, these requirements permit conflict of interest investments and transactions if they are for "adequate consideration." It should be noted, however, that these standards relate only to the issue as to whether tax privileges should be withdrawn and not to fiduciary abuse. It is therefore universally conceded that these standards are totally ineffectual to prevent fiduciary abuse in private pension plans. IRS has testified to this effect before Congressional committees[8] and the Administration itself has endorsed a fiduciary bill (S. 1557) which ties administration and enforcement of fiduciary standards to the Secretary of Labor and court remedies, as in S. 4.

There is no valid reason why the "prohibited transactions" provisions of the In-

Footnotes at end of article.

ternal Revenue Code cannot be augmented by independent legislation, such as was done in the WPPDA Amendments of 1962, when kickbacks, bribery and embezzlement involving private pensions and welfare plans were made federal crimes under Title 18, USC. If the fiduciary provisions recommended by either S. 4 or the Administration's bill (S. 1557) were limited to enforcement under the IRC, the problems of fiduciary abuse would continue unabated since the IRS lacks powers to seek judicial sanctions. In addition, splitting off the fiduciary standards from the disclosure requirements of WPPDA (which is administered by the Labor Department) would seriously hamper effective implementation of fiduciary requirements since the disclosure provisions are designed to provide information that would assist in uncovering and preventing fiduciary abuse. Thus, for example, if reports to the Labor Department disclosed a serious conflict of interest on behalf of a fund administrator under S. 4, the Labor Department could move immediately to the courts to set aside the conflict of interest and require payment to the pension fund of any monies that were diverted by reason of such conflict. The IRS, on the other hand, would be limited to removing the plan's tax qualification or imposing tax penalties (assuming that information of the conflict had come to their attention), but could take no action to set aside the conflict and compel the return of diverted pension assets to the trust fund.

Arguments have been made that enactment of S. 4 would result in:

(1) *Dual staffs*—To some extent, dual staffs now exist and are sanctioned by the Congress since the Department of Labor, as previously noted, is currently responsible for private pension regulation under seven different labor laws, including the WPPDA; and the IRS enforces the tax incentive provisions of the IRC. Since both agencies regulate private pension plans for different statutory purposes, such dual regulations is not anomalous. Such duality of staffing does not involve nor result in *duplication of regulation or function*. Regulation of vesting, funding, fiduciary standards, coverage, etc., is different in nature and purpose under S. 4 from any similar incidents of regulation performed under the IRC. The latter is designed to prevent abuse of tax incentives; the former is designed to safeguard the minimum retirement security interests of workers in private pension plans, *regardless of the plan's* taxable status.

(2) *Dual reports*—It is argued that plan administrators would be required to file two different and separate reports relative to the same general area. *Dual reporting, however, should not be confused with duplicatory reporting.* In fact, dual reporting is now required of pension plans under regulations of the IRS and under the WPPDA. The reports serve different purposes in discharge of statutory responsibilities of two different agencies and to the extent duplication has been found to exist, it has been eliminated by agreement between IRS and the Secretary of Labor. (See Rev. Proc. 66–51 and General Instructions E to IRS Form 2950.)

If the substantive reporting requirements of S. 4 were incorporated into the Internal Revenue Code, they would require additional reporting to the IRS since the data necessary is intrinsic to the implementation of S. 4. The reports provided now to IRS in connection with tax deductions and the tax exempt status of a pension trust are not sufficient for comprehensive oversight of plan administration and operations. They do not, for example, enable IRS to determine the actuarial soundness of the pension plan's funding procedures, a matter vital to effective enforcement of new funding standards required by S. 4. If opposition to S. 4 based on dual reporting has validity, then logic and sound administration would require transfer of the current reporting and disclosure requirements of the WPPDA from the functional jurisdiction of the Labor Department to the IRS.

(3) *Gaps in coverage*—The IRC requires certain qualification standards regardless of the number of employees covered by a plan, where a plan requests qualificaton for favorable tax treatment. On the other hand, S. 4 exempts all plans with less than 26 employees. This size cut-off exemption in S. 4, however, reflects a conscious legislative policy to exempt small plans from the more stringent requirments in order to avoid inhibiting their future development. While the validity of such exemption may be arguable, it would have little relation as to whether private pension reform standards should proceed by way of amendment to the Internal Revenue Code or through enactment of a labor bill, S. 4.

(4) *Conflicting requirements*—It has been asserted that S. 4 would create conflicting requirements because plans seeking tax qualification would have to meet different standards under the IRC than standards required for registration under S. 4. There is no conflict since S. 4 does not infringe upon or impair IRS standards for qualification purposes; IRS standards remain intact for plans seeking to obtain or maintain tax privileges. S. 4 does impose different requirements which are totally unrelated to qualification for tax benefits. The approach of S. 4 is identical to the WPPDA. *The WPPDA which requires all pension plans (with certain exceptions not relevant here) to file plan descriptions and annual financial reports with the Department of Labor, regardless of the plan's compliance with IRS standards for tax qualification.* There is no conflict between the IRC and the WPPDA; the statutes are designed to accomplish different purposes and the IRS and the Secretary of Labor discharge different but mutually compatible statutory responsibilities.

(5) *Dual investigations*—It is argued that S. 4 would subject private pension plans to dual investigations from both the Internal Revenue Service and the Department of Labor, with the implication that such investigations would impose burdens upon the plans. Dual investigations currently are conducted both by IRS and the Labor Department on related subjects of inquiry without resulting duplication. The scope of the investigations though related are conducted pursuant to different statutory objectives. It must be assumed that with passage of S. 4, proper coordination would be required between IRS and the Labor Department in performing audits and investigations of private pensions. This is certain to result in more comprehensive and effective enforcement of each agency's different statutory responsibilities.

It is not uncommon today in the government for agencies with investigative responsibilities, e.g. the F.B.I., Narcotics, Labor, Secret Service, Customs, SEC, Comptroller of Currency, FDIC, etc., to have the same subject of investigation pursuant to each agency's statutory responsibilities. Each agency necessarily limits the scope and nature of its inquiry to its statutory limitations; however, by appropriate coordination, it not only eliminates any functional overlapping, but actually achieves better efficiency and effectiveness. For example, the Labor Department has already entered into enforcement-sharing agreements with the Department of Justice under the WPPDA to coordinate investigations in both reporting violations (Labor Department responsibility) and criminal violations of Title 18, U.S.C. relating to kickbacks, bribery, embezzlement and false statements (Justice Department responsibility).

(6) *Changes in enforcement procedures*—It has been asserted that S. 4 is a departure from the traditional enforcement policy of the IRC which is to remove tax privileges where a pension plan fails to comply with required standards. The weaknesses in relying on a tax penalty approach to enforcing S. 4 standards of vesting, funding, termination insurance, fiduciary provisions, etc., are described fully in Part V, *infra*. It is sufficient to observe that provision for administrative and judicial enforcement is indispensable to the achievement of the objectives of minimum safeguards for employee benefits. Moreover, no provision in S. 4 interferes with existing tax penalties for failure to comply with tax qualification standards. Again, the analogy is to the enforcement procedures of the WPPDA. Failure to comply with the WPPDA does not result in withdrawal of the plan's tax privileges. Instead, the provisions of the WPPDA are enforceable in the courts. With this precedent, it is evident that enforcement procedures governing pension plans have not been confined by the Congress to withdrawal of tax privileges. The same is true concerning enforcement of pension plan regulation under the Labor Management Relations Act, the Fair Labor Standards Act, the Davis-Bacon, the Age Discrimination in Employment Act, and other relevant labor measures administered by the Labor Department.

V. PENSION REFORM LEGISLATION SHOULD BE ADMINISTERED AND ENFORCED BY THE SECRETARY OF LABOR

Under S. 4, the Secretary of Labor is delegated overall authority for the administration and enforcement of the vesting funding, plan termination insurance, portability and fiduciary-disclosure standards. The rationale for this delegation is based on logic and compelling practical considerations.

Logically, private pension benefits are a form of deferred wages for workers, and therefore, employee benefits. Employee benefits, whether derived from pension plans or minimum wage standards, occupational health and safety standards, wage and hours legislation, discrimination in employment laws, etc., have been given historically to the Secretary of Labor to administer. It follows therefore, that new legislative minimum standards to protect workers' pension benefits, should also be administered by the Secretary of Labor.

There are other serious practical considerations which dictate the incorporation of these new reform standards into a labor measure appropriate for administration by the Labor Department. These concern the serious weaknesses and deficiencies in administration and enforcement which would result if the provisions of S. 4 were adopted as amendments to the Internal Revenue Code to be administered within the existing framework of IRS regulatory structure.

The incorporation of private pension plan reform standards into the Internal Revenue Code would frustrate the effectiveness of the legislation and deprive workers of rights and remedies which are vital to their retirement security needs under private pension plans because:

(1) *The Internal Revenue Code does not create any private rights.* Neither the Internal Revenue Service nor participants can enforce their rights to vested benefits under the Internal Revenue Code. The only sanction under the Internal Revenue Code for the failure of a tax qualified pension trust to provide vested benefits in accordance with new federally imposed vesting standards is for the Internal Revenue Service to disqualify the pension plan for tax purposes, and if authorized to do so, impose tax penalties on the employer. The removal of the plan's tax qualified status will not necessarily result in participants securing their vested rights. By way of contrast, under S. 4, either the Secretary of Labor or a plan participant can proceed directly to federal court to enforce statutorily granted vested rights.

(2) *Funding standards cannot be enforced under the Internal Revenue Code.* Under S. 4,

the funding of private pension plans can be compelled by the Secretary of Labor through court action if the employer fails to pay the statutorily required contribution, or otherwise deviates from standards established to assure that the plan is funded on an actuarily sound basis. Because of the integration of S. 4's funding provisions with the federal plan termination insurance program established under the bill, in the event an employer deliberately terminates a private pension plan in order to avoid funding requirements, the employer is liable to reimburse the federal termination insurance program for up to 50% of his net worth for any vested benefit losses paid for by insurance.

None of these safeguards are available under the Internal Revenue Code. A failure to make a required funding contribution under the Internal Revenue Code will only result in loss of the plan's tax qualification, imposition of a tax penalty on the employer, deliberate plan termination by the employer, or possibly all three. The threat by IRS to remove a tax deduction is meaningless where the employer refuses to contribute to the plan and therefore claims no deduction. Loss of the plan's tax qualification for future tax purposes does not compel current funding and would undoubtedly result in plan termination. In the event of plan termination, the Internal Revenue Code would not create a contingent liability with respect to the employer's assets thus leaving no financial guarantee for the workers benefits unless plan termination insurance assumes the loss. Assumption of this loss by the insurance program where the employer has the means to continue funding of the plan is inequitable. If the employer was compelled to pay a tax penalty for refusal to fund the plan, the money would go into the U.S. Treasury, but not into the pension fund where it is needed. Funding standards, like minimum wage standards, can only be enforced affirmatively through the judicial process.

(3) *Administration of plan termination insurance through the Internal Revenue Code is anomalous and ineffective.* Under S. 4 private pension plans are required to obtain and maintain plan termination insurance and to pay appropriate premiums to a federal insurance fund for this protection. It is clear that the establishment of this program to protect workers against loss of vested pension benefits owing to employer bankruptcy, plant closing, merger or a similar event at a time when the plan has not been sufficiently funded, is completely irrelevant to the tax qualification purposes of the Internal Revenue Code. Plan termination insurance is designed to protect workers against loss of vested pension benefits and this program is no more a revenue measure than FDIC coverage for banks, Federal crop insurance for farmers, Federal broker dealer securities insurance, etc. For the same reasons as to why funding standards cannot be effectively administered and enforced through the Internal Revenue Code, a plan termination insurance program is unenforceable through the Internal Revenue Code. Failure to pay required insurance premiums, for example, only results in loss of the plan's tax qualified status under the Internal Revenue Code or the imposition of tax penalties, etc., and these mechanisms do nothing to support adequate insurance protection to workers.

(4) *Fiduciary standards and disclosure for private pension plans are outside the scope of any revenue measure.* From its inaction it is reasonable to infer that Senate Finance Committee recognized the underlying validity of incorporating fiduciary and disclosure standards into a labor bill. Abuses of trust are not curbed by removing a plan's tax exemption. A trustee committing a serious breach of trust cannot be removed or barred from holding a position in the plan simply by removing the plan's tax exemption. The proceeds of a transaction involving a breach of trust cannot be traced and trustees held personally liable for damages by removing a plan's tax exemption. There is a consensus that effective enforcement of the fiduciary and disclosure standards require provisions for independent judicial remedies which are not available or contemplated under IRC.

Moreover, successful supervision of the vesting, funding and plan termination insurance requirements are intimately related to supervision and enforcement of the fiduciary standards. If the assets of a pension trust are mismanaged or wasted due to fiduciary misconduct, it has a critical bearing on the acceptable funding status of the plan as well as an intimate relationship to the degree of risk of exposure to the plan termination insurance program in the event of plan termination. If the investment policy of the pension trust is manipulated contrary to fiduciary requirements in order to minimize the necessity for funding contributions, it has a critical bearing on the effective implementation of the funding standards. Finally, if the procedures for processing and deciding on vested benefit claims are rigged in violation of the fiduciary requirements, it has an important impact on the implementation of the vesting requirements in S. 4.

Thus, the enforcement of the fiduciary and disclosure requirements are intimately related to administration of the vesting, funding and insurance standards. If it is assumed that the appropriate agency to enforce the fiduciary and disclosure standards is the Department of Labor (as is the case under S. 4 and Administration proposal S. 1557) sound legislative judgment would require that effective administration of these integrated standards would be better achieved by giving responsibility to the Secretary of Labor.

(5) *Enactment of S. 4 into the Internal Revenue Code will deprive workers in unfunded plans of vesting, funding and insurance protection.* If the vesting, funding and insurance requirements are placed in the Internal Revenue Code, then plans which are established outside tax qualification procedures of the Code will escape coverage of S. 4 requirements. Primarily these will be plans which are unfunded, i.e. the employer pays pension benefits out of his general assets and thus does not seek a tax deduction for contributions to a qualified pension trust. In short, the treatment of S. 4 as a revenue measure tied to tax qualification procedures under the Internal Revenue Code would create a loop-hole, depriving potentially millions of employees of the vesting, funding and insurance protections of S. 4. S. 4, it should be noted, requires all plans to be funded properly (i.e. no loop-hole for unfunded plans).

(6) *Treating S. 4 as a revenue measure to be administered through the Internal Revenue Code will deprive 35 million American workers of an advocate in the government establishment which they need to protect their rights and interests.* The primary and historic mission of the Treasury Department and the Internal Revenue Service is protection of the revenues and collection of taxes. The tax qualification procedure established for pension trusts under Section 401(a) of the Internal Revenue Code is designed to provide tax incentives to encourage the establishment of private pension plans but subject to certain restrictions designed to protect against abuse of these tax privileges and subsequent loss to the revenues. The principal mechanisms in the Internal Revenue Code to prevent tax abuse in pension funds are the insistence that (a) such plans not discriminate in favor of higher-paid employees because such discrimination would result in a tax loop-hole for the wealthy and (b) examination of the "reasonableness" of the tax deduction claimed for contributions. Virtually all IRS regulations pertaining to tax qualifications of private pension trusts are based upon these concerns.

It is apparent that since the primary mission of the Internal Revenue Service is to protect against tax abuse that agency's statutory obligation for the interests of 35 million American workers—covered by private pension plans—is minimal. The IRS is unsuited from both a theoretical and practical viewpoint for the mission of protecting adequately the interests of American workers. It is not structured to handle complaints of misconduct or abuse, or failure to pay pension obligations owed to workers. It lacks adequate background in the elements of collectively bargained pension plans and the related interests of unions, employers and sometimes the beneficiaries themselves.

For all these reasons, it is doubtful that the IRS can serve as an effective advocate for the rights and interests of 35 million pension beneficiaries as these rights and interests are set forth in S. 4. In recognition of the established need of 35 million American workers to have an effective advocate for protection of their interests, the vesting, funding, insurance, portability, fiduciary and disclosure provisions should be put under the administration and supervision of the Secretary of Labor whose organic mission is defined as advancing and protecting the interests of American workers.

VI. CONCLUSION

The American private pension system is deeply rooted in our economy and intrinsically woven into our social fabric. The relationship of social and economic problems attending old age and the financial security necessary to our citizenry for dignified retirement are inseparable. If inequities and deficiencies exist in the system which produce irreparable harm to our workers, legislative reform cannot be delayed.

The hearings, findings and reports of the Senate Labor Committee sufficiently document the inescapable conclusion that workers are asking for and entitled to real and effective protection for their earned pensions. After long and exhaustive study, it is believed that the most effective and efficient remedy lies in the establishment of minimum standards and requirements, with their enforceability provided for administratively and judicially. These minimum benefits for workers and their protection and enforcement should be treated no differently than other minimum requirements enacted for protection of our workers by the federal government in relation to wages, health and safety, and various other measures intended for their benefit. Pension problems produce social ills and economic insecurity which disrupt the employee-employer relationship. Legislation must be directed to strengthen that relationship. Workers' faith in the private pension system can be restored by social reform, and a law to be enforced by a government agency which historically workers have looked to for protection of their benefits conferred by law and, more importantly, one in which they can place trust.

FOOTNOTES

[1] See Interim Report, Senate Subcommittee on Labor, S. Rep. No. 92-634, 92nd Congress, 2nd Session, 1972.

[2] Interim Report op cit. p. 91.

[3] 170 F.2d 247 (7th Ci. 1948), cert denied, 336 U.S. 960 (1949).

[4] Richard D. Irwin, Inc., Homewood, Ill., 1960, p. 97–99.

[5] S. Res. 360, 91st Cong., 2nd Sess.: S. Res. 35, 92nd Cong., 1st Sess.: S. Res. 235, 92nd Cong., 2nd Sess.

[6] See Preliminary Rep. of the Private Welfare and Pension Plan Study, (1971), 92nd Cong., 1st Sess.: Rep of Hearings on Pension

Plan Terminations, 92nd Cong., 2nd Sess.: Statistical Analysis of Major Characteristics of Private Pension Plans, 92nd Cong., 2nd Sess. (1972).

[7] See Hearings, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, Parts I & II, 92nd Cong., 1st Sess. (1971); also, Hearings, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, Parts I, II, III, 92nd Cong., 2nd Sess. (1972).

[8] See Welfare and Pension Plans Investigation, Final Report, submitted to the Committee on Labor and Public Welfare by Subcommittee on Welfare and Pension Funds, U.S. Senate, 84th Cong., 2nd Sess. at pps. 59-60 (April, 1956).

APPENDIX I

MAJOR CONGRESSIONAL ACTIVITIES AFFECTING PRIVATE PENSION PLANS, 1921-72

(By Peter Henle, senior specialist, labor; Ann Marley, analyst in taxation and fiscal policy; Brian Henning, economic analyst, Economics Division; and Raymond Schmitt, analyst in social legislation, Education and Public Welfare Division, March 27, 1973)

I. MAJOR LEGISLATION AFFECTING PRIVATE PENSION PLANS

Labor legislation

Private pension plans have been an issue in several different types of labor legislation. The basic labor relations legislation (1935) set the foundation for a court ruling that employers were required to bargain with representatives of their employees over terms of a pension plan. Later legislation (1947) set forth conditions under which employers could contribute to joint union-management pension funds.

Investigations into the management of specific pension funds led to legislation in 1958 and 1962 requiring registration, reporting, and disclosure of pension plan information to the Secretary of Labor. More recently, two Acts dealing with equal pay for women (1963) and age discrimination in employment (1967) include provisions specifically directed at clarifying the relation of pension plans to the objectives of the two acts.

I. MAJOR LEGISLATION AFFECTING PRIVATE PENSION PLANS

Title	Committee	Dates of hearings	Effect on private pensions
LABOR LEGISLATION			
National Labor Relations Act (Public No. 198, July 5, 1935).	House Labor (74th Cong., 1st sess., H. Rept. 969). Senate Education and Labor (74th Cong., 1st sess., S. Rept. 573). Conference committee (74th Cong., 1st sess., Conf. Rept. 1371).	Mar. 11 to Apr. 2, 1935. Mar. 13 to Apr. 4, 1935.	Sec. 8(5) sets forth employer's duty to bargain with representatives of employees regarding wages and working conditions. In 1949, this was interpreted by Federal courts to include bargaining over terms of a pension plan (Inland Steel v NLFB, 170 F. 2d 247, cert. denied 336 U.S. 960).
Labor-Management Relations Act (Public Law 101, June 23, 1947).	House Education and Labor (80th Cong., 1st sess., H. Rept. 245). Senate Labor and Public Welfare (80th Cong., 1st sess., S. Rept. 105). Conference committee (80th Cong., 1st sess., Conf. Rept. 510).	Feb. 5 to Mar. 15, 1947. Jan. 23 to Mar. 8, 1947.	Sec. 302 regulates pensions financed by employer contributions to union-management pension plans, requiring that such plans be committed to writing that funds be used only for paying benefits, and that management and union be represented equally in the operation of the fund.
Welfare and Pension Plans Disclosure Act of 1958 (Public Law 85-836, Aug. 28, 1958).	House Education and Labor (85th Cong., 2d sess., H. Rept. 2283). Senate Labor and Public Welfare (85th Cong., 2d sess., S. Rept. 1440). Conference committee (85th Cong., 2d sess., Conf. Rept. 2656).	June 12 to July 25, 1957. May 27 to July 1 ,1957.	Provided for registration, reporting, and disclosure of employee welfare and pension benefit plans.
Welfare and Pension Plans Disclosure Act Amendments of 1962 (Public Law 87-420, Mar. 20, 1962).	House Education and Labor (87th Cong., 1st sess., H. Rept. 998). Senate Labor and Public Welfare (87th Cong., 1st sess., S. Rept. 908). Conference Committee (87th Cong., 2d sess., Conf. Rept. 1417).	May 24 to May 31; June 1 to June 28, 1961. July 31, 1961.	Amended the Welfare and Pension Plans Disclosure Act of 1958. Designated certain acts of conduct as Federal crimes when they occurred in connection with welfare and pension plans. Amendments also conferred investigatory and various regulatory powers upon the Secretary.
Equal Pay Act of 1963 (Public Law 88-38, June 10, 1963).	House Education and Labor (88th Cong., 1st sess., H. Rept. 309). Senate Labor and Public Welfare (88th Cong., 1st sess., S. Rept. 1409).	Mar. 15 to Mar. 27, 1963. Apr. 3 to Apr. 16, 1963.	Amends sec. 6 of the Fair Labor Standards Act. Prohibits discrimination on the basis of sex for any employer who is subject to the minimum wage provision of the law. Employer contributions to employee benefit plans are considered "wages." Differing benefits to men and women are not considered a violation as long as the employer's contributions for men and women are equal. Also, unequal contributions based upon the sex of employees will not be considered a violation of law, as long as the resulting benefits do not differ by sex.
Age Discrimination in Employment Act 1967 (Public Law 90-202, Dec. 15, 1967).	House Education and Labor (90th Cong., 1st sess., H. Rept. 805). Senate Labor and Public Welfare (90th Cong., 1st sess., S. Rept. 723).	Aug. 1 to Aug. 17, 1967. Mar 15 to Mar. 17, 1967.	Act prohibits discrimination in employment on the basis of age. Section 4(f)(2) of the act provides that an employer would not be in violation of the law if he observes the terms of a bona fide employee benefit program, as long as it is not a subterfuge to evade purposes of the act. An employer cannot utilize benefit plans as an excuse for not hiring an applicant.
TAX TREATMENT OF PRIVATE PENSION PLANS			
Revenue Act of 1921 (Public No. 98, Nov. 23, 1921).	House Ways and Means Committee (67th Cong., 1st sess., H. Rept. 350). Senate Finance Committee (67th Cong., 1st sess., S. Rept. 275). Conference Committee (67th Cong., 1st sess., H. Rept. 486).		Provided that income of a trust created by an employer as part of a stock bonus or profit-sharing plan was exempt from income tax until distributed to employees, at which time it was taxable to them to the extent the distribution exceeded the amount paid in by the employee.
Revenue Act of 1926 (Public No. 20, Feb. 26, 1926).	House Ways and Means Committee (69th Cong., 1st sess., H. Rept. 1). Senate Finance Committee (69th Cong., 1st sess., S. Rept. 52). Conference Committee (69th Cong., 1st sess., H. Rept. 356).		Extended the exemption from income tax to pension trusts.
Revenue Act of 1928 (Public No. 562, May 29, 1928).	House Ways and Means Committee (70th Cong., 1st sess., H. Rept. 2). Senate Finance Committee (70th Cong., 1st sess., S. Rept. 960). Conference Committee (70th Cong., 1st sess., H. Rept. 1882).		In the case of trusted pension plans, the employers' deduction for contributions for funding past service liabilities must be apportioned over a period of not less than 10 years. This act also provided that the amount contributed by the employer, plus the earnings of the fund, constituted taxable income to the participating employee for the year in which distributed to him.
Revenue Act of 1932 (Public No. 154, June 6, 1932).	House Ways and Means Committee (72d Cong., 1st sess., H. Rept. 708). Senate Finance Committee (72d Cong., 1st sess., S. Rept. 665). Conference committee (72d Cong., 1st sess., H. Rept. 1492).		Restored tax treatment prior to 1928 act that a distributee under an employees' trust was taxable only in the year amounts were distributed to him to the extent they exceeded amounts paid into the trust by him.
Revenue Act of 1938 (Public No. 554, May 28, 1938).	House Ways and Means Committee (75th Cong., 3d sess., H. Rept. 1860). Senate Finance Committee (75th Cong., 3d sess., S. Rept. 1567). Conference committee (75th Cong., 3d sess., H. Rept. 2330).		Established the nondiversion rule which provided that a pension trust had to be irrevocable and the funds had to be used for the exclusive benefit of employees.

I. MAJOR LEGISLATION AFFECTING PRIVATE PENSION PLANS

Title	Committee	Dates of hearings	Effect on private pensions
TAX TREATMENT OF PRIVATE PENSION PLANS—Continued			
Revenue Act of 1942 (Public Law 753, Oct. 21, 1942)	House Ways and Means Committee (77th Cong., 2d sess., H. Rept. 2333). Senate Finance Committee (77th Cong., 2d sess., S. Rept. 1631). Conference committee (77th Cong., 2d sess., H. Rept. 2586).	Mar. 3 to Apr. 17, 1942. July 23 to Aug. 14, 1942.	Provided broad revision of provisions relating to qualification of a stock bonus, profit sharing or pension plan, deductibility of contributions to the trust and taxability of amounts received by employees under the trust. This act provided that the plan must include coverage and benefits which do not discriminate in favor of highly paid or stockholder employees. It provided that the employers' annual tax deduction for contributions not exceed stated limits. It provided that long term capital gain treatment be made available to lump-sum distributions from an exempt employees' trust paid to an employee in 1 taxable year on account of his separation from the service of his employer. The annuity treatment was applied to other types of distributions. The act also provided that employers' contributions under nonqualified plans were deductible only if the employees' rights were nonforfeitable at the time the contribution was paid. An employee under a nonqualified plan was taxable on employer contributions to the extent he had a nonforfeitable right in the contribution at the time made. If his rights were forfeitable, he was not taxable until he received a distribution or the funds were made available to him.
Revenue Act of 1951 (Public Law 183, Oct. 20, 1951)	Senate Finance Committee (82d Cong., 1st sess. S. Rept. 781) (Supplemental Report—82d Cong., 1st sess., S. Rept. 781). Conference committee (82d Cong., 1st sess., H. Rept. 1179).	June 28 to Aug. 3, 1951. Feb. 5 to Apr. 2, 1951.	Provided change in the treatment of appreciation in securities included in a distribution from an exempt employees' trust. This Act excluded the net unrealized appreciation in securities of the employer corporation, or parent or subsidiary company, purchased with employee and/or employer contributions included in a total distribution from an exempt employees' trust, qualifying for the long-term capital gains treatment.
Public Law 589, July 17, 1952	House Ways and Means Committee (82d Cong., 2d sess., H. Rept. 2181). Senate Finance Committee (82d Cong., 2d sess., S. Rept. 1831).		Extends exclusion of appreciation in determining the distributive value of securities to any distribution of employer securities purchased with employee contributions only.
Internal Revenue Code of 1954 (Public Law 591, Aug. 16, 1954).	House Ways and Means Committee (83d Cong., 2d sess., H. Rept. 1337). Senate Finance Committee (83d Cong., S. Rept. 1622).	June 16 to Aug. 14, 1953. Apr. 7 to Apr. 23, 1954.	Classified exempt pension trusts with general group of exempt organizations. Provided that restrictions relating to prohibited transactions and unrelated income be applicable to pension trusts. Extended capital gains treatment to lump-sum distributions made by qualified insured plans because of separation of service. Also extended capital gains treatment to beneficiaries of employees who die after retirement.
Tax Reform Act of 1969 (Public Law 91-172, Dec. 30, 1969).	House Ways and Means Committee (91st Cong., 1st sess., H. Rept. 91-413). Senate Finance Committee (91st Cong., 1st sess., S. Rept. 91-552). Conference committee (91st Cong., 1st sess., H. Rept. 91-782).	Feb. 18 to Apr. 24, 1969. Sept. 4 to Oct. 22, 1969.	Provided that part of a lump-sum distribution attributable to employer's contribution received from a qualified employees' trust within 1 taxable year on account of separation from service be given ordinary income treatment instead of capital gains treatment. Modified the treatment of nonexempt trusts and nonqualified annuities to conform with the treatment of restricted property.

I. MAJOR LEGISLATION AFFECTING PRIVATE PENSION PLANS

Tax treatment of private pension plans

Prior to the Revenue Act of 1921, there were no specific statutory provisions dealing with the tax treatment of a pension, profit-sharing or stock bonus trust created by an employer for the exclusive benefit of some or all of his employees. Generally, however, early regulations provided that amounts contributed by an employer to a pension fund were deductible as ordinary and necessary business expenses. Employer contributions constituted income to his employees unless the contributions were under a plan where the eventual receipt was too contingent to be income constructively received. Income of a pension or profit-sharing trust was taxable either to the employer, the employees, or the trust itself.

Major provisions of acts affecting the tax treatment of private pension plans for employees are outlined below. Legislation affecting the tax treatment of retirement plans for the self-employed has not been included.

II. CONGRESSIONAL COMMITTEE HEARINGS ON PROPOSED PRIVATE PENSION PLAN LEGISLATION

Committee	Dates of hearings	Report	Substance of report or hearings
House Committee on Education and Labor, General Subcommittee on Labor (89th Cong., 1st sess.).	Aug. 5, 1965	None	Permissible uses of jointly administered union trust funds. Hearing on H.R. 7720 to amend sec. 302(c) of the Labor Management Relations Act to permit the participation of retired employees of certain self-employed persons to participate as beneficiaries of welfare and pension trust funds.
House Committee on Education and Labor, General Subcommittee on Labor (89th Cong., 2d sess.).	Aug. 22, 1966	do	Hearings on H.R. 11778 amending the Welfare and Pension Plans Disclosure Act, to eliminate or modify certain requirements with respect to the making of affidavits and the filing of copies of certain information.
House Committee on Education and Labor (90th Cong., 2d sess.).	Mar. 19-May 8, 1968	H. Rept. 1867, 1968	Report to accompany H.R. 6493—the proposed Welfare and Pension Protection Act of 1968.
House Committee on Education and Labor, General Subcommittee on Labor (91st Cong., 2d sess.).	Dec. 10, 1969 to May 20, 1970	None	Private Welfare and Pension Plan Legislation—Hearings on H.R. 1045, H.R. 1046, and H.R. 16462 to amend the Welfare and Pension Plans Disclosure Act; to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, to provide a system of plan termination insurance, to provide standards of fiduciary conduct and improved disclosure and financial reporting.
House Committee on Education and Labor, General Subcommittee on Labor (92d Cong., 1st and 2d sess.).	April 21-28, 1971	Interim Report, April 1972.	Welfare and Pension Plan Legislation.—Hearings on H.R. 1269 (1) to establish minimum standards of fiduciary conduct for plan trustees and administrators, to provide for enforcement through civil and criminal means, and to require expanded reporting of the details of a plan's administrative and financial affairs; and (2) to improve the equitable character and soundness of private pension plans by requiring them to (a) make irrevocable (or vest) the accrued benefits of employees with significant periods of service with an employer, (b) meet minimum standards of funding, and (c) protect the vested rights of participants against losses due to essentially involuntary plan terminations. Interim report presents statistical data and draws some tentative conclusions about the data presented.
House Committee on Ways and Means (92d Cong., 2d sess.).	May 8-16, 1972	None	Tax proposals affecting private pension plans.—Hearings on the legislative proposal sponsored by the Administration (H.R. 12272) to (1) permit employees who wish to save independently for their retirement or who wish to supplement employer-financed pensions to deduct on their income tax returns amounts set aside for these purposes, (2) give self-employed persons who invest in pension plans for themselves and their employees a more generous tax deduction than they now receive, and (3) establish a minimum standard for the vesting of pensions.

Committee	Dates of hearings	Report	Substance of report or hearings
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (90th Cong., 2d sess.).	July 25, 1968	No report	Hearings of 4 bills including S. 3421 to provide additional protection for the rights of participants in private pension plans, to establish minimum standards for vesting and funding of private pension plans, and to provide an insurance program guaranteeing plan termination protection.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (92d Cong., 1st sess.).	July 27–29 and Oct. 12–13, 1971		Private welfare and pension plan study, 1971—Testimony of employers and employees with respect to various inequities and hardships resulting to plan participants from nonexistent or defective provisions of private pension plans.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (92d Cong., 2d sess.).		S. Rept. 92–634, Feb. 22, 1972.	Interim report recommended (1) minimum standards of vesting, (2) systematic funding of plan liabilities accompanied by a program of plan termination insurance, (3) uniform Federal standard of fiduciary responsibility, (4) improved disclosure and communication of plan provisions to employees, (5) a program to develop portability and reciprocity among plans, and (6) centralization in 1 agency of all existing and prospective regulations.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (92d Cong., 2d sess.).	May 1 to July 17, 1972	Committee print, September 1972.	Private welfare and pension plan study, 1972—Field hearings and report on plan terminations in 5 major cities. Disclosed the adverse effects resulting to participants from inadequate plan funding. Recommended remedial Federal legislation in the areas of funding, reinsurance, disclosure, and fiduciary standards.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (92d Cong., 2d sess.).	June 20 to 29, 1972	Senate Report 92–1150, Sept. 18, 1972.	Legislative hearings on S. 3598; report to accompany S. 3598 which provided (1) minimum vesting requirements, (2) minimum funding levels, (3) a voluntary portability program, (4) a plan termination insurance program, and (5) fiduciary standards and improved disclosure of plan operations.
Senate Committee on Finance (89th Cong., 2d sess.)	Aug. 15, 1966	None	Hearings on S. 1575—a bill to establish a self-supporting Federal reinsurance program to protect employees in the enjoyment of certain rights under private pension plans.
Senate Committee on Finance (92d Cong., 2d sess.)		Senate Report 92–1224, Sept. 25, 1972.	Report deleted all provisions except for the fiduciary and disclosure provisions of S. 3598 which was referred to Finance after being reported out of the Senate Committee on Labor and Public Welfare.

III. CONGRESSIONAL COMMITTEE INVESTIGATIONS OF PRIVATE PENSION PLANS

House Committee on Education and Labor, Special Subcommittee on Investigation of Welfare and Pension Funds (83d Cong., 1st and 2d sess.).	Nov. 23–27, 1953, Sept. 22, Dec. 1, 1954.	Subcommittee report 1st sess.—July 20, 1954; subcommittee report 2d sess.—Dec. 31, 1954; committee print.	Investigation of welfare funds and racketeering—hearings and report pursuant to H. Res. 115 authorizing committee studies and investigations.
Senate Committee on Labor and Public Welfare, Subcommittee on Welfare and Pensing Funds (83d Cong., 2d sess.; 84th Cong., 1st and 2d sess.).	March, April, July, November, and December 1955.	Interim reports, Jan. 10 and July 20, 1955; final report Apr. 16, 1956, S. Rept. 1734.	Hearings and report pursuant to S. Res. 225 (83d Cong.) and S. Res. 40 (84th Cong.) giving the committee authority to investigate employee welfare and pension plans subject to collective bargaining. Disclosed a number of abuses in the administration of health and welfare funds. Found that there was a need for corrective legislation to insure more adequate protection of employee-beneficiary rights and interests; recommended that consideration be given to a Federal Disclosure Act embracing all types of employee benefit plans.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (91st Cong., 2d sess.).	July 29—Aug. 26, 1970	None	Hearings on the United Mine Workers Welfare and Retirement Fund.

IV. CONGRESSIONAL COMMITTEE ECONOMIC STUDIES OF PRIVATE PENSION PLANS

Committee	Dates of hearings	Committee report	Substance of report or hearings
House Committee on Education and Labor (85th Cong., 1st. sess.)		Committee Print, 1957	Background material on the legislative history of the Labor-Management Relations Act, significant legislative proposals, 1948–56, designed to amend existing law or to provide new regulations governing the establishment or administration of employee benefit plans, a digest of testimony and a summary of previous reports and committee recommendations regarding the employment-benefit provisions of the LMRA.
Joint Committee on the Economic Report (82d Cong., 2d sess.)		Joint Committee Print, 1952	Pensions in the United States—a study prepared by the National Planning Association on the effects of public and private pension programs on the national economy as recommended in the final report of the subcommittee on low-income families.
Joint Economic Committee, Subcommittee on Fiscal Policy (89th Cong. 2d sess.)		Joint Committee Print, 1966	Materials prepared for the subcommittee on old age income assurance—an outline of issues and alternatives.
Joint Economic Committee, Subcommittee on Fiscal Policy (89th Cong., 2d sess.)	Apr. 26 to May 2, 1966	None	Hearings on private pension plan operations.
Joint Economic Committee, Subcommittee on Fiscal Policy (90th Cong., 2d sess.)		Joint Committee Print, 1967	Old Age Income Assurance—a compendium of papers on problems and policy issues in the public and private pension system.
Joint Economic Committee, Subcommittee on Fiscal Policy (91st Cong., 2d sess.)	Apr. 27 to Apr. 30, 1970	None	Hearings on the investment policies of pension funds.
Senate Special Committee on Aging, Subcommittee on Employment and Retirement Incomes (89th Cong., 1st sess.).	Mar. 4 to 10, 1965	Committee Report, 1965	Hearings and report on extending private pension coverage.
Senate Special Committee on Aging (91st Cong., 2d sess.)	Feb. 17 to 18, 1970	None	Hearings on the economics of aging—toward a full share in abundance. Parts 10A and 10B—pension aspects.
Senate Special Committee on Aging (92d Cong., 1st sess.)		Committee Print, 1971	Pension aspects of the economics of aging—present and future roles of private pensions.
Senate Committee on Labor and Public Welfare, Subcommittee on Labor (92d Cong., 1st and 2d sess.).		Committee Prints—November 1971 and September 1972.	Study of benefits and forfeitures in private pension plans and statistical analysis of major characteristics of private pension plans.

PRIVATE PENSION REFORM

Mr. JAVITS. Mr. President, yesterday Senator WILLIAMS of New Jersey, chairman of the Committee on Labor and Public Welfare, and I jointly testified before the Senate Finance Committee's Subcommittee on Pensions on private pension and welfare reform legislation—and particularly S. 4, the Williams-Javits pension reform bill—which is cosponsored by 53 Members of the Senate and is pending on the Senate calendar. I also note with appreciation that yesterday, Senator TAFT of Ohio—a staunch supporter of the Williams-Javits bill—made an excellent floor statement on this subject.

In view of the widespread interest and concern over the need to reform comprehensively our Nation's private pension plans—and to do it in this session of Congress, and in view of the great support behind early enactment of the Williams-

Javits bill—I ask unanimous consent that my testimony before the Finance Committee, as well as related articles and editorials, be inserted in the RECORD.

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

TESTIMONY BEFORE THE SUBCOMMITTEE ON PENSIONS OF THE SENATE FINANCE COMMITTEE

REFORMING OF PRIVATE PENSIONS—WHAT IS REALLY NEEDED

In 1963, Studebaker shut down its automobile facilities in South Bend, Indiana and cancelled its pension plan. Approximately 4500 employees lost eighty-five percent of their earned pension benefits. Some of them committed suicide. This economic and social tragedy caused the later Walter Reuther to observe—

"Studebaker made covered wagons. They celebrated their 100th anniversary a few years back, and now they are part of history. But the workers, what happened to the workers?"

Mr. Chairman, for the last 3 years, the Senate Committee on Labor and Public Welfare has made inquiries into what happened to the workers—and not just the workers at Studebaker but thousands of workers in private pension plans all over the country. Personally, my concern over the injustices in private pension plans dates back to 1967, when I introduced the first comprehensive private pension reform bill—the predecessor to S. 4, the current Williams-Javits bill.

What I discovered in 1967, and what the Senate Labor Subcommittee discovered within the last 3 years—after a massive and thorough study—authorized and funded by the Senate—is that the private pension promise all too frequently is a broken promise—leading to economic deprivation and bitter resentment by older workers looking forward to retirement years of dignity and security.

By now the "horror stories" concerning unjustified loss of pension benefits are commonplace. The files of the Senate Labor Subcommittee are bulging with case histories of private pension plan victims and any newspaper reporter with a minimum degree of enterprise can discover similar examples in virtually any community throughout the United States. The Administration has itself estimated that somewhere between one-third and one-half of the 35 million workers covered by private pension plans will never collect a dime from their plan, and studies by the Senate Labor Subcommittee indicate that historically the rate of benefit loss has been much, much greater by about half of that estimate.

Yet the progress toward achieving enactment of meaningful private pension reform —while substantial—has been slow and painful, and there still is no law on the U.S. statute books which safeguards adequately the pension rights of workers. While careful legislative deliberation is always appropriate in consideration of such a complex field as private pensions, we should be aware that while we debate, discuss, differentiate and study, untold numbers of workers are being needlessly and irreparably injured by the lack of sufficient pension protection.

To illustrate this point, I feel compelled to advance yet another recent "horror story" —perhaps one of the most shocking I have encountered.

In August of 1971, Mr. Robert E. Pratt of Hudson, New York was laid off from Gifford-Wood Co. due to poor business conditions. In the meantime, the company was sold to Greer Industries, Wilmington, Massachusetts, in June 1972 by Stowe-Woodward Co., Inc. of Upper Newton Falls, Massachusetts, former owners of Gifford-Wood Co. Gifford-Wood manufactured coal extraction, materials handling and other machinery. It was a very old company that dates back to 1814.

On June 30, 1972, the Gifford-Wood plan was terminated, three months before Mr. Pratt's 65th birthday. Mr. Pratt had worked for Gifford-Wood Co. for 47 years. When he applied for retirement benefits on attaining age 65 he was told he would receive nothing for his 47 years of service since the plan had been terminated on June 30, 1972 and there were funds available to pay retirement benefits only to those who had retired before that date.

A copy of the correspondence between Mr. Pratt and company, insurance, banking and government officials concerning this matter is appended to my testimony. Included is an "unofficial" note from the insurance agent who advised Mr. Pratt to contact me for help since while "the company has no legal obligation to you—there is definitely a question of the morality of choosing June 30, 1972 as the cut-off date or of not offering you something for your 47 years of service".

I doubt there can be any more eloquent testimony than such case histories—and they are legion—as to the imperative need for enactment of the Williams-Javits bill without any further delay.

The bill has been 3 years in the making, it is co-sponsored by 53 Senators, it is on the calendar and ready for consideration by the Senate.

We await now the disposition of concerns expressed by the Finance Committee regarding this legislation, and it is to these concerns that I now turn.

I

The Administration and Enforcement of Private Pension Legislation.

There are three major fallacies that have arisen in connection with the argument that the Williams-Javits bill or its analogues should be handled as part of the tax qualification procedures of the Internal Revenue Code. *The first fallacy is that private pension plans are exclusively a creature of the tax incentives; the second fallacy is that the Internal Revenue Service regulates private pension plan design; and the third fallacy is that the need for supporting IRS jurisdiction over this legislation is that it would result in more effective administration.*

As to the first, there has been expert testimony before numerous Congressional committees that the growth and development of private pension plans has *not* resulted exclusively from the provisions for favorable tax treatment. For example, the Research Manager of Hewitt Associates (a well-known pension-consulting firm), Pearl E. Charlet, testified before the Joint Economic Committee in 1966 that:

"A company does not initiate and maintain a retirement plan because it receives a tax deduction for its contributions, since the same tax deduction would be permitted for the same amount of money paid in wages. *Employer motivation for retirement plans in most cases is for reasons completely apart from tax considerations.* The reasons may include need for an orderly method of removing the too-old workers from the payroll, creation of a sense of employee security and morale, competitive advantage in the labor market, and a form of extra-compensation for long service." (Emphasis added)

While tax incentives, no doubt, help in getting private pension plans established, incentives are an element of facilitation not *the* element of decision. The other factors contributing to pension plan development must be considered for purposes of determining a suitable administration of pension reform legislation. Indeed, the testimony cited above indicates quite clearly the great significance of pension plans in labor relations and their almost universal use as a major work incentive. Moreover, over 50 percent of all private pension plans are collectively-bargained—which means that tax considerations are not the prime conditions for private pension growth.

It has also been acknowledged that IRS regulation of pension plans is only incidental to its basic task of revenue collection.

Mr. Harold Swartz, then the Director of the Tax Rulings Division of the Internal Revenue Service, on July 20, 1955 told the Senate Subcommittee on Welfare and Pension Funds that:

"I would like to emphasize that the principal function of the Internal Revenue Service is the collection of Federal taxes. There are more than 70 different internal revenue taxes so imposed. The collection of these taxes involves the processing of nearly 95 million tax returns. Obviously, we can neither examine nor audit all of these returns. We must channel our limited examining manpower to the items which are believed to be the most productive. Accordingly, only a small portion of our time can be devoted to examining into the annual information returns filed by exempt organizations." [1]

The Douglas Subcommittee in its Final Report referred to Mr. Swartz' testimony in concluding that the I.R.S. does not perform a regulatory function in the pension area:

"A plan may lose its tax-exempt qualifications if it engages in any of a list of prohibited transactions, most of which involve dealings between the trustee and the entity which set up the trust that would benefit the concern to the detriment of the employees. However, as pointed out by Mr. Swartz during his testimony, 'It should be understood that the transactions are not actually forbidden by the revenue laws but are *prohibited* only in the sense of being inconsistent with continued tax privileges.' It is apparent then that 'regulation' by the Internal Revenue Service does not regulate as such, but merely allows certain tax exemptions in return for compliance. Mr. Swartz made this position clear when he told the subcommittee, 'In seeing that the taxes levied by Congress are paid, the Revenue Service does not seek to act as a regulatory agency'." [2]

Many others have reached similar conclusions about the adequacy of tax "regulation" to protect employee benefit plan participants.[3]

Incidentally, the same Mr. Harold Swartz who testified before the Labor Subcommittee in 1955 as to the limitations of the Internal Revenue Service in regulating pension plans, testified before this subcommittee on May 31, 1973, that "it would seem logical and preferable, therefore, that any additional vesting, funding and other similar provisions that may be required of these plans be enforced and administered through the Treasury Department."

I believe it is also incorrect to assume that incorporation of the Williams-Javits pension reform standards into the tax code presents the most effective administrative and enforcement mechanism available. Senator Williams and I have prepared a detailed memorandum on this subject which is being submitted jointly in connection with our testimony today. I will, therefore, sum this up in three points as follows:

First, imposition of tax penalties may be either too drastic or too weak a remedy, depending on the circumstances.

Second, the exclusive use of the tax code mechanism may permit additional state legislation in the field—which could lead to duplicating—or even conflicting—pension regulation at the federal and state levels.

Third, it is not the greater effectiveness of the IRS but rather anxiety over administration by the Labor Department of new pension laws which creates the impetus for putting IRS in charge of pension reform legislation.

Footnotes at end of article.

There are literally hundreds of examples that could be given that would demonstrate the comparative inflexibility of the Internal Revenue Code as an enforcement mechanism but here are two, the first illustrating overkill and the second indicating ineffectiveness.

Example #1 (overkill): An employee participating in a nationwide multiemployer pension plan with more than 1000 contributing employers, complains that the trustees of the plan have improperly applied the vesting-eligibility standards and disqualified him for vested pension rights. IRS investigates the complaint and confirms its validity under law. The trustees of the plan disagree and refuse to qualify the participant for a vested pension. IRS then disqualifies the plan with the following consequences: contributions of over 1000 employers to the pension fund are no longer tax deductible, the income from the trust is no longer tax free, and any employer contributions that are made are taxable to the employees—in short, the operations of a nationwide pension plan are brought to a standstill over a complaint involving a single employee.

Example #2 (ineffectiveness): A company going out of business terminates the pension plan. The participants complain to IRS that the assets of the trust were distributed inequitably and in violation of the prorities established by statute. IRS cannot disqualify a terminated plan nor can it retroactively disallow deductions for prior years of plan qualification since the company is no longer in existence. The beneficiaries may have a cause of action under state law but may also lack the resources to bring such an action. Result—the violation is not remedied.

Both of the deficiencies described above with respect to an IRS approach are more suitably handled under the Williams-Javits bill. In the first example, the tax status of a multiemployer plan would not be adversely affected by the misapplication of law to a single worker. The Secretary of Labor would enforce the participant's rights in court. In the second example, the Secretary could, through court action, compel the plan trustee to redistribute the plan assets in accordance with the governing statutory priorities.

I also have serious doubts as to whether incorporating pension reform standards in the Internal Revenue Code would prevent the States from legislating further in the field through additions to their banking, insurance or securities laws or by some independent enactment. There are bills concerning pension reform standards already pending in several state legislatures, and at least one state—New Jersey—has passed a pension law regulating pension funds of companies that remove themselves from the local jurisdiction.

There ought to be a uniform national set of standards for private pension plans so as to avoid unnecessary regulation at both the Federal and State levels. The Williams-Javits bill, with minor exceptions, preempts the States from regulating the subjects covered by the bill. The question is whether a similar objective can be reached by exclusive reliance on the Internal Revenue Code. My staff is currently engaged in legal research on this subject and I would be pleased to share the results of that research with this Subcommittee.

The IRS has developed substantial expertise concerning pension plans under the tax qualification provisions of the Internal Revenue Code. The Labor Department has developed substantial expertise on pension plans under the reporting and disclosure provisions of the Welfare and Pension Plans Disclosure Act as well as under seven other labor laws it administers which regulate some incidents of pension plans.

I do not profess to know whether the expertise of the IRS outweighs the expertise of the Labor Department. What is more important, in my judgment, is whether a law for safeguarding the interests of workers in private pension plans should be given to an agency whose primary interest is tax collection and whose primary means of enforcement is removal of tax privileges (or, if we were to adopt Senator Bentsen's bill, the imposition of additional tax penalties).

Even if more adequate enforcement powers were given to IRS for purposes of protecting workers' pension rights, there is still a serious question as to whether the primary interest of IRS in tax collection would not displace effective protection for beneficiaries or result in undue disruption of IRS's traditional role. In this regard, a recent editorial in the Journal of Commerce notes:

"Ideally, IRS should be kept strictly to its statutory function of tax-collecting, and in all other respects be allowed to keep as low a political profile as possible. The greater the extent to which it is detoured into other fields of action—such as the enforcement of Phase Two and Phase Three of price controls—the more prominent its profile becomes and the less effective it is likely to become in its own theater.

"After all, when a taxpayer is called in to discuss problems that have come to the attention of IRS, he ought to be confident that the agency he is dealing with is interested solely in his tax liability, not in the manner in which he has (or has not) conformed to price controls or in the viability of his company pension plans, or anything else. This is—or should be—as important as the separation between church and state in the American Constitution."

Indeed, I believe that the professionals in IRS and Treasury also have serious reservations about this matter. I have with me today a copy of the draft bill which a joint Treasury-Labor Department Task Force drafted and which was submitted for clearance to the White House in April. This draft bill would have established mandatory funding and fiduciary standards and a program of Federal reinsurance, and is similar in number of important respects to the approach taken in the Williams-Javits bill.

As we know, the White House did not accept the bill—and certainly that is its right and prerogative. However, what I find particularly interesting about the Task Force bill—and I emphasize this—is that administration and enforcement of the funding and reinsurance provisions were turned over to the Labor Department. Apparently, the experts in both the Treasury and Labor Departments concluded that this approach would be the most effective.

Accordingly, while I have no doubt that many arguments can be advanced for entrusting new pension reform standards to the IRS, the heart of the problem is that there is anxiety that the Labor Department, if entrusted with this responsibility, would not act objectively but would favor the interests of organized labor.

I don't believe this would be the case, and I have seen no serious evidence that supports this proposition. In any event, the argument that the Labor Department is the wrong place does not make the Treasury Department the right place. There are other viable alternatives, such as the independent commission approach, which I originally espoused.

The important thing is that the agency selected be unencumbered with other potentially conflicting missions, and that it be given the tools to do an effective job. If we are to make pension reform legislation work in the interests of 35 million workers, we cannot afford to do less.

II

The substantive standards of effective private pension reform

A Vesting

The Williams-Javits bill provides a vesting formula which gives a worker a 30% vested right after 8 years of service, increasing by 10% each year thereafter, until 100% vesting is reached with the completion of 15 years of service. Further, the Williams-Javits bill gives workers vested benefit credit for all service performed prior to the effective date of the law.

Senator Bentsen's bill (S. 1179) provides a vesting formula which gives a worker a 25% vested right after 5 years of service, increasing by 5% each year thereafter, until 100% vesting is reached with the completion of 20 workers who are 45 years old, vested benefit years of service. Senator Bentsen's bill gives credit for service prior to the law.

Senator Griffin's bill (S. 75) provides vesting of 100% after 10 years of service with credit for service prior to the bill.

Finally, Senator Curtis's bill (S. 1631), the Administration's proposal, provides for 50% vesting when a plan paticipant's age and service add up to 50 and 100% vesting within 5 years thereafter. The so-called "Rule of 50" is prospective only in application; no credit is given for service performed for the employer prior to the law.

Of these four proposals, all but the Administration's incorporates the two principles which I regard as indispensable to an effective and meaningful vesting standard. These two principles are: first, a federal vesting standard should be based on length of service only i.e. the standard should be age-neutral; the second, some form of credit should be given for service rendered prior to the law in order to protect adequately the interests of this generation of older workers.

The Administration's "Rule of 50" is the least acceptable. I believe that it will exacerbate age discrimination in hiring. In a recent speech, former Secretary of Labor James D. Hodgson stated:

"I worry that the Rule of 50 might well cripple job opportunities for some older workers. It could work like this. An employer has two job candidates, one age 35 and one age 45. He knows the latter would vest in only three years while he would have no obligation to the former for eight years. In such circumstances the temptation to hire the former seems considerable to me." [4]

The Rule of 50 also deprives a worker of credit for his early years of hard work, and this also seems inequitable.

In general, I prefer the graded approach to vesting used in the Williams-Javits bill and the Bentsen bill since it tends to avoid the "all or nothing" result for the worker who is severed from employment just prior to the year when vesting is applicable. However, we permit 100% vesting at the end of 10 years under the Williams-Javits bill where it can be shown to be as equitable; while the Bentsen bill does not provide such an alternative.

I am opposed strongly to the idea that has been advanced in these hearings that the law ought to permit employers to choose between the four vesting alternatives that have been advanced. Aside from the fact that many might choose the Rule of 50—which I regard as inadequate—there ought to be as nearly as possible a single basic standard. The law ought to tell the worker what he is going to get, and when he is going to get it, and there should not be any wide variation in achieving vested pension rights if workers are to be convinced that they are being treated fairly.

B. FUNDING

Both the Williams-Javits bill and the Bentsen bill provide for the funding of all unfunded pension liabilities over a thirty year period. By way of contrast the Administration's bill calls for the funding of the unfunded vested liabilities at the rate of 5% of the liabilities existing during the year. Thus, under the Administration's bill, there is no target period during which all unfunded vested liabilities must be fully funded.

Footnotes at end of article.

The major difference between the Williams-Javits bill and the Bentsen bill in connection with funding is a difference in treatment for "experience deficiencies" caused by actuarial error. Under the Williams-Javits bill, experience deficiencies must be funded over a five year period unless the employer is not financially able to make the payment, in which event he may obtain an additional five year period to fund the deficiency. Under the Bentsen bill, on the other hand, experience deficiencies can be funded for the remaining working period of the workers—which could be as long as another thirty years.

The Williams-Javits approach on experience deficiencies is to be preferred because it protects more adequately the federal reinsurance program against the possibility of pension plan liabilities being shifted unnecessarily to the insurance program due to actuarial mistake. Actuarial practice is not an exact science, and it is all too possible that underestimated liabilities would be cranked into the cost of reinsurance despite the fact that the employer has the means to fund these deficiencies more quickly.

The Administration's formula for funding is the least preferable because it has no fixed target date when full funding of vested liabilities must be completed and also because it is unenforceable. It is least preferable because this is the slowest method of funding that has been proposed and is even inconsistent with Accounting Opinion #8, as the American Institute of Certified Public Accountants confirmed in testimony before this Subcommittee on May 22nd.

The Administration's funding standard—weak as it is—is unenforceable because in the event of the failure to make the 5% contribution the only sanction is that all employees would vest in contributions made to the plan up to that point. If no contributions have been made, the employees vest in nothing. Also, the Administration's bill does not resolve the status of the plan if the year after a failure to make the required contribution the employer gets back on the track and begins to fund in compliance with the bill. Do all the employees who previously became vested then become unvested? Do they continue to be vested in the new contributions made by the employer? The bill is quite deficient in these areas.

C. PLAN TERMINATION INSURANCE

There is no more vital need in pension reform than a program of federal plan termination insurance.

When Congress enacts a law which contains requirements for vesting it will generate new expectations and bring into being new rights. It will be the law that fixes the worker's pension rights and not just the pension plan. How are we going to answer those who will continue to lose their pensions as a result of plan termination, after we in the Congress have enacted a law which gave them those rights? Only a program of plan termination insurance, as proposed in the Williams-Javits bill or in the Bentsen bill, will assure that the statutory rights that Congress has enacted will be adequately protected.

I recognize that we are breaking new ground here and that as one witness has put it: "we are changing the rules of the game". So because this is an innovative program, concern is being expressed from a number of quarters as to the feasibility of reinsurance. They are the same kind of concerns that were expressed when the federal insurance for bank deposits was first proposed, and it should be recalled that, originally, that type of insurance was opposed—and opposed vigorously—by the banking community.

These government insurance programs have been highly successful. They restored and promoted confidence in private institutions and contributed greatly to the growth and expansion of these institutions. The same is true of federal pension reinsurance. We should not, and must not wait for another catastrophe—such as the Studebaker closing in 1963—in order to protect pension rights of a generation of beneficiaries.

D. PORTABILITY

The Williams-Javits bill establishes a federal clearinghouse fund in the Department of Labor to promote on a voluntary basis the transfer of vested pension credits from one plan to another as a worker changes jobs. The Bentsen bill would permit the tax-free transfer of vested pension credits from plan to plan without establishing a federal clearinghouse. The Administration also claims that the liberalized tax treatment it proposes for lump-sum distributions from pension plans could also encourage portability.

There is much to be said in favor of either the Williams-Javits approach or the Bentsen approach. Senator Bentsen's bill is based upon the experience in Canada where both tax-free transfers of vested credits were authorized as well as the establishment of a clearinghouse mechanism. Apparently the clearinghouse mechanism has never been utilized in Canada. The advantage to the Williams-Javits proposal is that it would centralize record keeping and relieve employers of these burdens and also would provide a mechanism which could ultimately serve as a type of pension bank for universal portability. There may be merit to trying both the Williams-Javits approach as well as the Bentsen approach since there is no inherent conflict between the two.

E. FIDUCIARY STANDARDS

There is a consensus that additional federal fiduciary standards for pension fund administrators are required. Both the Williams-Javits bill and a separate Administration proposal (S. 1557) would establish protection against fund abuse and conflicts of interest. Both bills amend the Welfare and Pension Plans Disclosure Act and would charge the Secretary of Labor with responsibility for administering and enforcing the fiduciary standards.

S. 1631, however, would also incorporate the new fiduciary standards into the "prohibited transactions" provisions of the Internal Revenue Code and would impose tax penalties for a breach of trust.

The inherent disadvantage of this approach—or any approach that seeks to curb fiduciary abuse by removal of tax privileges or imposition of tax penalties—is that it is the participants who bear the brunt of tax sanctions. If the plan's tax qualification is withdrawn because of some abuse by a trustee, the employer may very well terminate the plan to the detriment of the participants. If tax penalties are imposed for breach of trust there may be less money available to pay pension benefits. Tax sanctions are not effective in this area because they are only imposed after the breach of trust has occurred. Under the Williams-Javits bill, steps can be taken *to prevent* as well as redress breaches of trust.

Although consistency between the "prohibited transactions" provisions of the Internal Revenue Code and the new fiduciary standards bill might seem desirable, this consistency is designed more in the interests of symmetry than practicality. Insofar as the "prohibited transactions" provision of the Internal Revenue Code is duplicatory or inconsistent with the fiduciary standards of the Williams-Javits bill, I recommend that it be repealed.

III

Further tax incentives to encourage the expansion of private pension coverage

In order to encourage the further expansion of private pension coverage, I support, in general, the Administration proposal for permitting individual employees to deduct from taxable income an amount equal to 20 percent of earned income or $1500, whichever is less, for annual contributions to individual retirement funds or company funds. I am in favor of increasing tax deductions for contributions to plans covering the self-employed and their employees also. Although I feel the deduction for the employed and the self-employed should be the same. I believe that Senator Bentsen's proposal for a tax credit in addition to a tax deduction for the employees contribution to an individual retirement plan or a company plan is a good one and should be supported because it would more adequately extend the benefits of the Administration's proposal to lower paid employees.

Nevertheless, it seems to me that the major obstacle to widespread employee utilization of these advantages is the fact that they rely on specific tax deductions and credits. The majority of employees the Administration and Senator Bentsen are attempting to reach with these tax incentive proposals do not itemize tax deductions but rather use the standard deduction. Accordingly, it is unlikely that many employees will take advantage of these proposed benefits unless some method is found to simplify the tax reporting responsibilities to the Internal Revenue Service.

In addition, I believe that special consideration should be given to establishing a tax credit for small businessmen which would encourage them to establish or participate in pooled pension fund plans. The overwhelming majority of employers without private pension plans are in the small business sector.

Finally, should the Finance Committee wish to report separately the tax incentive proposals—which clearly belong in the Internal Revenue Code—from the pension reform proposals of the Williams-Javits bill I could see no objection.

CONCLUSION

I have no doubt that the Congress can develop a fair, feasible and efficient system of private pension plan regulation. And under that kind of regulation, private plans will develop even more rapidly than in the past because we will have assured to the beneficiaries that pension promises are kept and reasonable expectations built upon those promises are not disappointed.

The legislation will be better—fairer, more feasible, more efficient—if we work it out in the bipartisan manner which has characterized its progress to date—and if we keep the interests of 35 million workers uppermost in our minds.

This is historic legislation. It breaks new ground and recognizes that not since the enactment of Social Security has there been such a welling-up of public interest in assuring more adequate retirement security through reform of the private pension plans. In response to inquiries I made in New York just two weeks ago, I have received over 20,000 letters of support for prompt enactment of the Williams-Javits bill—and that is just in a two week period!

The one thing above all else that we must assure is that the legislative remedies we enact are real and not illusory. There has been enough disappointment in this field. Let us put that disappointment and frustration to an end, and let us do it this year.

FOOTNOTES

[1] *Welfare and Pension Plans Investigation,* Hearings before the Subcommittee on Welfare and Pension Funds of the Committee on Labor and Public Welfare, U.S. Senate, Part 3, 84th Congress, 1st Sess., July 20, 1955, p. 847.

[2] *Welfare and Pension Plans Investigation, Final Report,* submitted to the Committee on Labor and Public Welfare by its Subcommittee on Welfare and Pension Funds, U.S. Senate, 84th Cong., 2d Sess. (April 1956).

[3] Isaacson, *Employee Welfare and Pension Plans: Regulation and Protection of Employee*

Rights, 59 Col. Law Rev. 96 (Jan. 1959) at 105. Regulations under the Internal Revenue Code and Taft-Hartley Act have "some impact on the plans, but have failed to be effective sources of regulation, in large part because their concern with the benefit plans has been incidental to other purposes." See also 45 Minn. Law Rev. 575 at 607.

[1] *Private Pensions and Public Policy*, Remarks by James D. Hodgson, First Annual Pension and Profit Sharing Conference, Sutro & Co., Inc., Los Angeles, California, April 18, 1973.

APPENDIX

CORRESPONDENCE INVOLVING LOSS OF PENSION BY ROBERT E. PRATT, HUDSON, N.Y. 12534

JUNE 6, 1969.

SUMMARY OF PERTINENT POINTS OF GIFFORD-WOOD, INC. EMPLOYEE RETIREMENT PLANS

Normal retirement date is after an employee has reached the age of 65.

The current monthly retirement allowance is $1.75 per month per year of Credited Service commencing with the first day of the month following the date of retirement.

Recent changes which clarify and improve the benefits are as follows:

(1) A member shall be retired on a Normal Retirement Allowance upon reaching his Normal Retirement Date, provided that on such date he has ten or more years of Credited Service.

(2) Any Member, upon ceasing to be an Employee for any cause other than death or retirement under the Plan, if he has completed 10 or more years of Credited Service, shall be entitled to a Retirement Allowance commencing at his Normal Retirement Date. The amount of such Retirement Allowance shall be the amount accrued to the Employe's date of termination of employment.

(3) The Normal Retirement Allowance shall be a monthly amount equal to $2.00 multiplied by the number of years of his Credited Service, effective April 15, 1971.

All other terms of the Retirement Plans remain unaltered. Any employee desiring further information regarding the Retirement Plan may obtain it by contacting the Manager of Manufacturing or Supervisor of General Accounting, with whom a copy of the amended retirement plans is on file.

G. W. DIETRICH,
Vice President and General Manager.

GIFFORD-WOOD, INC.,
Hudson, N.Y., October 23, 1970.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR BOB: It is a pleasure for me to congratulate you on your forty-seventh year with Gifford-Wood. This is indeed a fine record, not often attained. May you enjoy many more pleasant years with our firm.

Sincerely,
C. F. STEPHENSON, *President.*

GIFFORD-WOOD,
A COLUMBIA PRECISION CO.,
Wilmington, Mass., October 27, 1972.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR BOB: Received your letter last week, and it was certainly nice to hear from you.

Reaching retirement age is an accomplishment, and I hope you find the opportunity to enjoy your years of retirement. Bob, I am sorry to hear that you are not receiving a pension. The problem is a complicated one and involves the fact that Gifford-Wood is no longer a separate company, but is a predecessor to another corporation. Please be assured, though, that Mr. Loehr is investigating all the facts relative to retirement with our retirement principal. You should hear from him shortly—be patient a little longer.

We enjoyed many good years together at Gifford-Wood, but as is the case so often, we must look ahead not back.

If you are ever over this way, please drop in for a visit.

Very truly yours,
R. E. ADAMS,
Vice President, Research & Development.

GIFFORD-WOOD,
A COLUMBIA PRECISION CO.
Wilmington, Mass., November 29, 1972.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR MR. PRATT: I am sorry to advise you that when the Gifford-Wood Salaried Employee's Retirement Plan terminated on June 30, 1972, the Plans' assets were only sufficient to provide annuities for those employees who then had reached the normal retirement age of sixty-five years. As a result, you will not be able to receive an annuity under the Plan.

Sincerely yours,
HERBERT F. LOEHR,
Vice-president, Finance.

HUDSON, N.Y., *November 28, 1972.*

NATIONAL COMMERCIAL BANK AND TRUST CO.
Albany, N.Y.

Attn: Mr. ALFONSE MECCARIELLO, Assistant Manager, Trust Division.

Re: 40–034134—Gifford-Wood Co. Salaried Employees Retirement Plan.

GENTLEMEN: As your Bank was a former distributor of checks to retired employees of Gifford-Wood Co. under the above plan, may I ask your opinion regarding refusal of Greer Industries who took over Gifford-Wood Co. to put me on the list to receive a pension check, the same as other former retired employees of Gifford-Wood Co.

In August of 1971 I was under lay-off until negotiations were consummated regarding a sizable contract. However, I was never recalled to work in the Engineering Department.

On September 11, 1972, I reached my 65th birthday and, naturally, hoped to receive word of my eligibility for pension, after 48 years of service in the employ of Gifford-Wood Co.

I wrote to Greer Industries about a month ago and my letter was never answered until November 25, when I received notification that my pension check would not be forthcoming, as my name would not be placed on the list with the other employees.

You, of course, are not obligated to reply to this letter as you are no longer identified with the Pension Plan in question. However, I would greatly appreciate your review of the situation regarding the awarding of this pension to me. Or, if there is no redress on my part and I will have to abide by their decision to deny me this compensation in the form of a pension after my long years of service.

Please overlook my audacity in addressing this letter to you, but I was quite shaken up on being advised this income on which I have been planning for living expenses, etc. would be denied to me.

Very truly yours,
ROBERT B. PRATT.

NATIONAL COMMERCIAL BANK
AND TRUST CO.,
Albany, N.Y., December 1, 1972.

Re: 40–034134 Gifford Wood Company Salaried Employees Retirement Plan.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR MR. PRATT: I received your letter of November 28, 1972 which was directed to Mr. Meccariello. As you know, this bank is no longer trustee for the above plan.

We do not feel that we can give an opinion concerning the decision made by Greer Industries. However, we suggest that you contact your attorney, who should deal directly with Greer Industries if you wish to continue to pursue this matter any further.

Very truly yours,
RICHARD E. RIGHTER,
Assistant Trust Officer, Trust Division.

HUDSON, N.Y., *January 11, 1973.*

THE TRAVELERS,
One Tower Square,
Hartford, Conn.

Attention: L. A. & Gr., Claim Department
Group Annuity Unit—3 WS.

GENTLEMEN: As your company (The Travelers) is now Trustee of the Gifford-Wood, Inc. Retirement Plan (salaried employees) and in turn is issuing the monthly pension checks to those retired people from Gifford-Wood who are entitled to the benefits, I wish to submit the following:

I was laid off (retired) from Gifford-Wood in August 1971 due to poor business conditions. In the meantime, the company was sold to Greer Industries in June 1972.

On September 11, 1972 I reached my 65th birthday, but was never notified as to the status of my pension.

I have a record of 47 years of actual service with Gifford-Wood from 1923 to 1971 and Gifford-Wood has all this information. I have written letters to personnel of the company who are in a position to give me some positive information regarding the reason why I am not receiving my benefits under the pension plan.

I am enclosing a copy of a letter dated November 20, 1972, in answer to my letter regarding my pension. This letter was signed by Mr. Herbert F. Loehr, Vice-President, Finance. I know that there must be a lot of information and a more concrete explanation than what is spelled out in this letter to me.

I have been a member of the Gifford-Wood Retirement Plan from its beginning. It seems that I must have accumulated quite a sum from my services and should receive any just benefits. I cannot understand how I can be completely cut off from any annuity under the Plan.

You, of course, are not obligated to reply to this letter. However, I would greatly appreciate your review of the situation regarding the awarding of the pension to me. Or, if I have no redress and will have to abide by Mr. Herbert Loehr's decision to deny me my just and due compensation in the form of a pension for my services.

Please overlook my audacity in addressing this letter to you, but I was quite shaken up being advised this income on which I have been planning for living expenses, etc.

Very truly yours,
ROBERT E. PRATT.

P.S. Enclosed is copy of the original plan in part dated April 15, 1971 indicating a change in the normal retirement allowance which is self-explanatory and may be of some help in solving my dilemma.

THE TRAVELERS INSURANCE CO.,
Hartford, Conn., January 18, 1973.

Re Group Annuity Contract GR–2056.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR MR. PRATT: I have reviewed your letter of January 11, 1973 and attachments. I have also reviewed the Retirement Plan for Salaried Employees of Gifford-Wood. As the Plan stands as a legal document, qualified by the Internal Revenue Service, the discontinuance falls within approved guidelines. Unfortunately you are one of the former employees who is not entitled to a benefit. Had you already attained age 65 on June 30, 1972, you would have been eligible for some annuity.

I think that a clarification of The Travelers involvement is in order. The Travelers is not the Trustee of this Plan as noted in the first line of your letter. We have merely contracted with Gifford-Wood to disburse the monthly annuity payments they advised us to make. We hold the money and guarantee that we will administer the payments.

As an employee of The Travelers I can only advise you that you are not one of the employees who we were contracted to make annuity payments to. Also, I can advise you that from the documents that were sent to

me, the company acted within IRS guidelines in disbursing the funds of the Pension Plan when it discontinued.

I hope that this letter clarifies the involvement of The Travelers in this situation.

Very truly yours,

JOHN J. RZASA,
Underwriter, Group Pension Division.

MR. PRATT: On an unofficial basis I might suggest that you contact your Senator who has been very active in this area recently, Mr. Javits. The company has no legal obligation to you but there is definitely a question of the morality of choosing 6-30-72 as the cutoff date or of not offering you something for your 47 years of service. Hopefully the Senator would contact Gifford-Wood regarding the situation.

J. RZASA.

STATE OF NEW YORK,
DEPARTMENT OF LAW,
February 26, 1973.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR SIR: We are in receipt of your letter of February 23, 1973, dealing with your pension difficulties, and we have noted the correspondence which you have enclosed therewith.

Unfortunately, neither this office nor any State agency has any jurisdiction over unilateral pension plans in effect between employers and employee members thereof. Such plans are considered to be private contracts between the parties, and the rights of the respective beneficiaries depend entirely upon compliance with all of the terms and conditions of the plan.

The only Government agency that may have some information for you in the matter would be the U.S. Department of Labor, through its Welfare and Pension Plan Division, located at 26 Federal Plaza, New York, N.Y. Under Federal law all retirement plans of any nature are required to be filed with this agency, and its has certain limited supervision over such plans.

As a last recommendation, we suggest that you consult a private lawyer concerning your rights in this matter, and it is quite possible that after a review of the pension plan and all of the facts that you furnish him, that he will be able to give you a sound opinion which can guide you in determining your right to retirement benefits at this time.

We are returning the file that you sent us with your communication.

Very truly yours,

Louis J. Lefkowitz,
Attorney General.
By Daniel Polansky,
Assistant Attorney General,
In Charge of Labor Bureau.

U.S. DEPARTMENT OF LABOR WELFARE AND PENSION PLAN DIVISION,
New York, N.Y.

GENTLEMEN: In February, 1973, I wrote to Mr. Daniel Polansky, Assistant Attorney General in regards to the Retirement Pension Plan of Gifford-Wood Co., Hudson, New York, (Columbia County), as it was originally set up and written for all eligible retired employees of the company. Mr. Polansky has referred me to your department, as you will see in the copy of his letter that I have attached hereto.

Enclosed is a copy of the revised "Pension Plan" dated June 6, 1969 and paragraph (3) noting a change in the Normal Retirement Allowance effective April 15, 1971, which plan includes all employees upon reaching the age of 65, and accumulating ten years or more of credited service.

I was laid off (retired) from Gifford-Wood Co. in August, 1971 due to poor business conditions. In the meantime, the company was sold to Greer Industries, Wilmington Massachusetts in June, 1972 by Stowe-Woodward Co. Inc. of Upper Newton Falls, Massachusetts, former owners of Gifford-Wood Co.

I became 65 years of age on September 11, 1972, and according to the Pension Retirement Plan, I should have started receiving pension benefits in October, 1972. As time went on, I anxiously awaited for some word as to the status of my pension.

Rather than go into too many details at this time, I am particularly interested in whether your department handles such cases as this one.

I am enclosing copies of all correspondence that I have had in reference to this matter as well as the responses that I have received.

I would appreciate any help that you might be able to give me in this matter, and I look forward to hearing from you.

Very truly yours,

ROBERT E. PRATT.

DEPARTMENT OF LABOR,
New York, N.Y., March 14, 1973.

Mr. ROBERT E. PRATT,
Hudson, N.Y.

DEAR MR. PRATT: We have received your letter of March 1, 1973 and its attachments concerning your attempts to obtain pension benefits.

Unfortunately, this agency is not in a position to aid you because there is no provision in the law—over which we have jurisdiction—which covers your case, i.e. withdrawal or cessation of a unilateral pension plan by an employer.

This agency's jurisdiction regarding pension plans is cited in "The Welfare and Pension Plan Disclosure Act." A guide booklet which defines and highlights provisions of this Act is enclosed with a copy of the Act.

It is with regret that we must advise you that under the present law, we cannot assist you in your claim.

Very truly yours,

HENRY W. BERRY,
Assistant Area Administrator.

[From the New York Times, June 13, 1973]

FORTY-SEVEN YEARS ON JOB, WORKER LOSES PENSION

(By Fred Ferretti)

HUDSON, N.Y., June 12.—Robert and Grace Pratt don't really expect to get their pension money, but, as Mrs. Pratt said, they hope "that what happened to us will help other people."

"We're not starving," Mr. Pratt said here today in the pine and maple living room of the second-floor apartment where the Pratts have lived for 32 years. "But not having what I think I earned will stop us from doing things we wanted to when I retire. It's just not right. It's not right."

Mr. Pratt, who will be 66 years old this Sept. 11, worked for the same concern—the Gifford-Wood Company, a conveyor-equipment contractor here in this Columbia County city for 47 years. He expected that when he reached the age of 65 he would receive the $94-a-month pension he had been counting on.

FULL OBLIGATION REJECTED

But, as has happened to other people who work for companies that have private pension plans and that are sold to other companies or to conglomerates, Mr. Pratt found out that the company that bought Gifford-Wood said it would honor the pension obligation only to a point. The point did not include Mr. Pratt.

Only those with 10 or more years of service and who became 65 on or before June 30, 1972—the day the company was sold—were covered, he was told. Mr. Pratt was out of luck by less than three months. He became 65 on Sept. 11, 1972.

"But don't 47 years mean anything?" he asked today "What incentive is there to be faithful if things like this happen?"

LONG TRIPS ARE OUT

So the Pratts, unless there is a reversal of the corporate decision to disallow his pension claim, will have to rely on their combined Social Security payments of $359.60 a month here in this city where they have lived all of their 39 years of married life. They will not be able to travel, "as we wanted to and as I think we're entitled to."

They will visit their oldest and youngest daughters, who live in neighboring communities, but "we won't be able to pick ourselves up and drive down to Portsmouth, Va., where our middle daughter lives," Mr. Pratt said, adding: "You just can't do that when you're watching your pennies."

"We were thinking about a trailer, but we can't afford anything like that now," Mrs. Pratt noted.

Mr. Pratt began working for Gifford-Wood as a boy of 16 in 1923. The company originally made ice-making machinery, they went through a coal-handling phase and finally emerged as a builder of conveyor equipment.

When he went to work at the plant, only three blocks from where his apartment now is, Mr. Pratt made $15.85 a week.

In 1965 Gifford-Wood was bought by Stowe-Woodward, of Upper Newton Falls, Mass., and in 1972 it was sold to yet another Massachusetts company, Greer Industries of Wilmington.

LAUDED, THEN LAID OFF

After the first sale, "things stayed the same," Mr. Pratt said. He got a letter in November of 1968 congratulating him on his 45th anniversary with the company; another in October, 1969, for his 46th, and another in October, 1970, noting his 47th anniversary and wishing him "many more years with the firm."

The following August Mr. Pratt was called into a superior's office and told he was being laid off "because business was bad." He was earning $170 a week in a drafting job at that time.

While awaiting the pension he thought he would receive, he went to work for the Hudson Department of Public Works as an inspector and "kept going to the plant, asking about my pension."

"They kept telling me I was on the list," Mr. Pratt recalled.

THE BAD NEWS

Then he was informed by an officer of Gifford-Wood that pension benefits would be terminated as of June 30, 1972. He received a letter that said: "The plan's assets were enough to provide annuities only for those who had reached age 65 when the plan terminated on June 30, 1972."

Mr. Pratt wrote again to the company and received a similar reply. He wrote to the United States Department of Labor, to the Internal Revenue Service and to State Attorney General Louis J. Lafkowitz, among others, and "all of them said they were sorry but there wasn't much they could do."

The Travelers Insurance Company, which paid the pension money, said it too, was sorry. But the underwriter who notified Mr. Pratt officially also wrote him a note by hand. It said:

"On an unofficial basis, I might suggest that you contact your Senator, who has been very active in this area recently, Mr. Javits. The company has no legal obligation to you, but there is definitely a question of the morality of choosing 6-30-72 as the cutoff date or of not offering you something for your 47 years of service. Hopefully the Senator would contact Gifford-Wood regarding the situation."

The note was signed by the underwriter, John J. Rzasa.

SENATOR INFORMED

"It was the kindest thing anyone's done for me: He was a fine man," Mr. Pratt said. And he followed the advice and wrote to Senator Jacob K. Javits.

Mr. Javit's letter took note of Mr. Pratt's plight, mentioned the Williams-Javits pension-and-welfare bill but offered little hope in writing.

"Then last week we got a call from the Senator's office," Mr. Pratt said. "They wanted to know if he could use our name and what had happened to us as an example. We said, 'Yes; we hope it helps'."

So today Mr. Pratt found himself a quasi-celebrity. He was telephoned by out-of-state newspapers, photographed, taken over to his old plant, which has been resold once more and is owned by a manufacturer of dock equipment, now and asked to reminisce.

"It's nice remembering," he said. "But I don't know why I shouldn't get something out of it, being there half a century and all."

SPONSORS CALL FOR ACTION ON PENSION BILL

(By Linda Charlton)

WASHINGTON, June 12.—The two principal sponsors of a bill aimed at reforming the private pension systems on which 35 million workers are dependent told a Senate subcommittee today that speedy action was urgent to end a situation in which "a private pension promise all too frequently is a broken promise."

That phrase was in the testimony of Senator Jacob K. Javits, Republican of New York, who with Senator Harrison A. Williams Jr., Democrat of New Jersey—the other chief sponsor of the bill—appeared today before the Subcommittee on Pensions of the Senate Finance Committee.

Fifty-one other Senators are also sponsoring the bill.

"VESTING" IS DEFINED

The Williams-Javits bill includes a number of provisions designed to correct flaws in many private pension plans uncovered in a three-year study by another Senate subcommittee headed by Senator Williams.

These provisions include a requirement that pension rights be vested after eight years, that a centralized system be set up to allow the transfer of vested pension rights from one employer to another and that a Federal pension-insurance fund be set up.

"Vesting" is the term for the procedure giving an employee an absolute right to all or part of the retirement benefits earned for that worker under a pension plan, whether or not he leaves a company before his retirement date.

Senator Javits, in his testimony, said that "by now, the 'horror stories' concerning unjustified loss of pension benefits are commonplace." But he cited as "perhaps one of the most shocking I have encountered," the story of Robert E. Pratt of Hudson, N.Y., and attached copies of correspondence between Mr. Pratt and others involved.

Mr. Pratt worked for a company whose pension plan was terminated three months before his 65th birthday. As a result, he was told that, despite his more than 47 years' service in the company, he would receive no pension.

"I doubt there can be any more eloquent testimony than such case histories," Mr. Javits said.

Senator Williams, in his testimony, also spoke of the "men and women who gave full and faithful service to their employers" only to find "broken promises which wrecked human lives and produced untold human misery."

JURISDICTION ASSIGNED

The Williams-Javits bill would charge the Department of Labor with the responsibility of implementing its reforms. Senator Williams said that the department had been chosen after "much thought and concern" as "one which workers will look to for help with confidence; it must be the agency that will restore their faith in the private pension system."

He said also that it is this department that "has the primary mission to safeguard the interest of working people."

There has been argument in favor of giving jurisdiction to the Internal Revenue Service, which now regulates private pension plans because of the tax considerations involved.

The Williams-Javits bill, which is considerably broader than Administration pension-reform proposals put forward in April, has been approved by the Senate Labor and Public Welfare Committee. A similar bill was drastically pared by the Finance Committee last year, however. Similar legislation is pending before the House Education and Labor Committee.

[From the New York Daily News, June 13, 1973]

HE WORKS 47 YEARS, SEES PENSION TURN TO DUST

WASHINGTON, June 12.—Robert E. Pratt worked for 47 years for a machinery manufacturing firm, the Gifford-Wood Co., of Hudson, N.Y., then was abruptly laid off in August 1971.

He was 64 and a year from the $94-a-month retirement benefits that those 47 years had earned him.

So he went out looking for a job. Through the federally sponsored Emergency Employment Act he got work as an inspector for the Department of Public Works in his home city of Hudson.

CALLS IT "HORROR STORY"

After turning 65 last September, he applied to Gifford-Wood for his pension only to be told that the pension plan had been terminated three months earlier when the firm was absorbed by Greer Industries of Wilmington, Mass.

Calling the incident a "horror story—perhaps one of the most shocking I have encountered," Sen. Jacob Javits (R–N.Y.) told Pratt's story today to the Senate Finance Committee in pleading for sweeping reform of private pension plans.

"He was told that he would receive nothing since the plan had been terminated on June 30 and there were funds available to pay retirement benefits only to those who had retired before that date," Javits said.

SENATE VOTE BLOCKED

"The private pension promise all too frequently is a broken promise," Javits added, "leading to economic deprivation and bitter resentment by older workers."

Sen. Harrison A. Williams Jr. (D–N.J.), co-author with Javits of a major pension reform bill, charged in testimony before the finance panel: "Congress has already delayed too long, and American workers have suffered as a result. To let them suffer longer would be inconscionable."

The Labor and Welfare Committee unanimously approved the Javits-Williams bill last year and again this year. But the Finance Committee, which demanded an opportunity to consider it, has blocked a Senate vote.

The measure, which has now 53 co-sponsors—more than half the Senate—would guarantee an employe covered by a private pension plan 30% of his earned pension credits after eight years of service with an additional 10% each year thereafter until he has a vested right in his full pension after 15 years with a firm.

Because no such guarantees exist in many private firms, Javits said that based on experience only about 16% of the 35 million Americans covered can expect to receive any benefits.

While the Senate debates, Pratt, whose three daughters are now married, lives with his wife in their Hudson home on his $253.60-a-month social security.

[From the New York Times, June 10, 1973]

THE CASE FOR PENSION REINSURANCE

(By Jacob K. Javits)

The pending pension legislation sponsored by Senator Harrison A. Williams Jr., Democrat of New Jersey, and Senator Jacob K. Javits, Republican of New York, provides, among other items, for a plan of reinsurance.

In an article in the Business and Financial Section last Sunday, William H. Moore, chairman of the Bankers Trust Company, stated that while it was necessary to expand the private pension system, the need for a reinsurance plan "has yet to be sufficiently demonstrated."

I doubt that there is much disagreement anymore over the need both to reform existing private pension plans and to expand their coverage to employes who do not participate presently in a private plan. Congress would like to do both and I am reasonably confident that the legislation it enacts for pension plans will go a long way toward meeting these objectives.

Yet, I think the record should note that it wasn't until private pension reform—and particularly the Williams-Javits bill—started getting up a head of steam that we heard very much about the importance of expanding private plans to the noncovered work force. This minor bit of history demonstrates the primary role of reform legislation in stimulating efforts to improve our nation's whole private pension system.

To encourage the further expansion of private pension coverage, I support, in general, the Administration's proposal for permitting individual employes to deduct from taxable income an amount equal to 20 per cent of earned income or $1,500, whichever is less, for annual contributions to individual retirement funds. I am also in favor of increasing tax deductions for contributions to plans covering the self employed and their employes.

However, I believe that the limits for tax deductions proposed by the Administration are unrealistic and should be raised to at least $2,500, which is the current deductible limit for the self-employed.

Further, to extend adequately the benefits of this proposal to the lower-paid employe, the tax deduction should be coupled with a tax credit and some method should be devised to relieve employes from the necessity of having to itemize deductions. Otherwise, it is unlikely that many will take advantage of these benefits.

Finally, special tax incentives should be provided to encourage small businessmen to establish pooled pension funds with minimal administrative expense.

I find it disturbing that suggestions should be made that certain private pension-reform priorities, such as the Williams-Javits reinsurance proposal, are somehow less vital than expansion of pension coverage among workers. In fact, quite the opposite is the case.

A Federal program of plan-termination insurance is vital not only to protect existing pension benefits against loss due to employer bankruptcy, merger, sale or similar events, but also to promote the confidence in 35 million beneficiaries that is essential to assure the future development and expansion of the private plans.

While it is true that the recent Treasury-Labor Department study of plan terminations showed that for the first seven months of 1972 only one-tenth of 1 per cent of all participants covered lost benefits as a result of plan termination, in absolute numbers 8,400 workers lost approximately $20 million in earned pension benefits.

To each of the 8,400 workers who saw his expectation of retirement security and dig-

nity wiped out it is no consolation to play the "numbers game" and say: "Well, what about the fellow who had no pension plan at all?"

Moreover, if the rate of loss due to plan terminations was projected over a generation of workers (approximately 30 years) it would mean that some quarter of a million workers would lose $600-million in private pension benefits—a staggering sum.

I doubt very much that the successful expansion of private pensions would evolve under these circumstances, especially since it is the small businessman who lacks a private pension plan for his employes. Yet he is the very employer who is most likely to experience economic reversals and terminate his pension plan with inadequate funds to back up the pension promise.

Pension promises made should be pension promises kept. While I fully support the idea of greater tax incentives to encourage small employers and individual workers to set up retirement funds, the greatest obstacle to further development of private pensions is worker uneasiness over the reliability of the private pension promise.

For analogous reasons, Congress has enacted the Federal Deposit Insurance Corporation to insure bank deposits, Federal mortgage insurance and Federal insurance for stock brokerage firms. Similar considerations dictate Federal reinsurance of private pensions plans.

The anxieties that have been expressed over the impact of such a program are out of proportion to the enormous benefits that would flow from its adoption. Indeed, the alleged small percentage of benefit losses only show that Federal reinsurance is viable at a reasonable premium.

The adoption of reasonable funding requirements and mandatory Federal fiduciary standards are an essential part of the Williams-Javits pension reform proposal. However, I disagree with the notion that the enactment of these standards standing by themselves would alleviate problems created by plan terminations.

The fact is that a substantial number, if not the overwhelming majority, of plans that have terminated adhered to acceptable fiduciary standards. Moreover, in a surprising number of cases the employer contributing to the plan was following an acceptable funding procedure.

In the Studebaker case, for example, where some 4,500 workers lost 85 per cent of their vested pension benefits when the company shut down in South Bend, Ind., in 1963, Studebaker was contributing to the plan in accordance with funding procedures equal to or superior to those imposed by the pension-reform legislation currently pending.

The difficulty is that as plans mature their benefits are frequently improved and these improvements add additional liabilities that must be funded. Full funding of pension benefit commitments, however, can only take place over a period of time; it would be quite impossible for most private pension plans to be fully funded at the outset of the plan or when a new benefit improvement is installed.

Experience demonstrates that some employers do terminate their pension plans for economic and other reasons prior to achieving full funding. In the absence of reinsurance there will not be sufficient protection to workers in these situations.

Indeed, it is quite misleading to suggest that funding and fiduciary standards would adequately handle the termination situation because such a proposal if enacted into law would generate expectations that cannot possibly be met.

In terms of vesting requirements, there is a growing consensus that the Administration's "Rule of 50" (50 per cent vesting when age and service add up to 50) is far less desirable than the Williams-Javits bill recommendation that provides 30 per cent vesting after eight years of service, with additional increments of 10 per cent each year thereafter until 100 per cent vesting is achieved with 15 years of completed service.

The important advantage of the Williams-Javits rule is that it is "age-neutral." It provides vesting on the basis of an employe's length of service on the theory that if he has worked long enough for something he deserves to get it irrespective of his age.

On the other hand, the Administration's Rule of 50, by factoring in the workers age irrespective of how long he has worked, is bound to exacerbate age discrimination in hiring, which, while illegal, nevertheless has a regrettable influence on an employer's hiring practices.

Moreover, the Rule of 50 is prospective only in its application. Under the Rule of 50, older workers would have to start earning pension credits anew to qualify for vesting, regardless of how long they worked for the employer prior to enactment of the law.

By way of contrast, the Williams-Javits bill gives credit for service with the employer prior to enactment of the bill. Thus, the Williams-Javits bill does the most good for older workers by adequately recognizing a lifetime of hard work.

As for "portability," the Williams-Javits bill provides for a voluntary arrangement whereby vested pension credits can be transferred by a worker from one job to another, leading to improvement of his pension benefit as he advances in his career.

While it is argued that portability would require formation of a complex new Federal bureaucracy, this objection seems overblown in view of the fact that the portability system is only voluntary on the part of both employers and employes. It represents a start—and only that—on the ideal, which would be a system where workers universally could transfer credits from plan to plan.

The Williams-Javits pension reform proposal is a moderate one. All the evidence to date, including testimony before the Senate subcommittee on Labor and other committees in Congress, indicates that its costs can be well tolerated by the private pension system. In my judgment, its enactment will encourage, rather than discourage, growth in the private pension system because it will renew the confidence of working people in the security and performance of the private pension promise.

Further incentives are fine and they should be stimulated by additional legislation. But we should never lose sight of the necessity of assuring that the programs Government encourages deliver the goods.

The Williams-Javits bill is now on the Senate calendar ready to be considered, after having been approved unanimously by the Senate Committee on Labor and Public Welfare on March 29. The Senate Finance Committee has been holding hearings on the subject and the House is also making progress in moving ahead with similar pension reform proposals.

Thus, there is an excellent chance that legislation improving private pensions will be enacted in this Congress—even this year.

[From the Los Angeles Times, March 20, 1973]

END THE PENSION MIRAGE

More than 30 million Americans, half of all those employed in private industry, are covered by pension plans that supposedly guarantee them a measure of financial security in their retirement years. Unless the laws are changed, a sizable number of those 30 million will never collect a dime.

A pension reform bill introduced by Sens. Jacob K. Javits (R-N.Y.) and Harrison A. Williams, Jr. (D-N.J.) was approved last year by the Senate Labor Committee. But it never came to a vote in the House or the Senate.

It seems, however, that a lot of senators and congressmen are discovering that their constituents have become aware of the potential for pension abuse and are demanding that something be done about it.

The Javits-Williams bill, which has been reintroduced with 50 senators as cosponsors, is expected to emerge soon from the Senate Labor Committee. A companion measure has strong support in the House. There is no reason that pension reform legislation cannot be enacted before the 93rd Congress goes home next year provided that an aroused public keeps up the pressure.

The need for corrective action should not obscure the fact that private pension plans are making a great and growing contribution to the retirement-age security of millions of Americans. About 5.3 million retirees are receiving an aggregate of $8 billion a year, in addition to Social Security benefits, and both figures will rise sharply in the years just ahead.

Senate committee hearings, however, have documented many cases where an employee can work for the same company for 20 or 30 years, then discover that his promised pension benefits are not forthcoming.

One big problem is that many corporate pension plans do not provide for so-called vesting. That is, an employe whose job is terminated before retirement age is not entitled to pension benefits.

The result is that, in today's volatile and highly mobile economy, many workers lose their retirement rights when they change or lose their jobs. Others find their pension rights voided when their company goes bankrupt, is merged into a larger conglomerate—or simply fails to run the pension fund on an honest, actuarially sound basis.

The Javits-Williams bill includes a minimum vesting requirement: An employe who has been covered by a pension plan for eight years could, for example, take 30% of the company's contributions with him if he lost or changed his job. After 15 years, vesting would reach 100%.

The measure also spells out new standards of conduct required of pension fund managers, as well as new rules for public disclosure. It would create a federal insurance program to guarantee workers against the financial collapse of their pension plans. And it would encourage the establishment of truly "portable" pensions that could be transferred from one employer to another.

According to most experts, the pension reform bill would not cost the average employer more than 1½% to 2% in extra payroll costs. That is little enough to pay for assuring millions of Americans that, when retirement day comes, the pensions that they have anticipated will not turn out to be a mirage.

[From the New York Times, April 19]

MINIMAL PENSION REFORM

The need for strengthening the private pension plans on which 30 million workers depend for much of their old-age protection was ably delineated in the message President Nixon sent to Congress the other day. Unfortunately, the reform program he has recommended fails to match his rhetoric.

Particularly disappointing is the President's failure to propose any form of Federal reinsurance to protect workers whose expectation of retirement benefits is wiped out by the closing down of a business or the bankruptcy of a pension fund. In December, 1971, when Mr. Nixon instructed the Treasury and Labor Departments to study this problem, he asserted that "even one worker whose retirement security is destroyed by the termination of a plan is one too many." Now he blandly turns the whole issue back to employers, unions and private insurance companies for solution.

The President's proposals on vesting and funding are essentially repeats of the inadequate recommendations he made originally. The Williams-Javits pension reform plan, which now has the co-sponsorship of a majority of the Senate, represents a much more

solid foundation for changes needed to make workers secure. Even that bill provides less than perfect protection, but its adoption would go much further than the Administration's toward achieving the Nixon goal of making 1973 "a year of historic progress in brightening the retirement picture for America's working men and women."

[From Business Week, April 21, 1973]

GINGERLY PENSION REFORM

Ten years ago, President Nixon's proposals for pension legislation would have been considered a strong, forward-looking proposal. They are good as far as they go, but they do not go far enough to meet all the legitimate demands for reform that have built up in the past decade.

The President proposes, for instance, to start vesting pension rights at the point where a worker's age and years of service add up to 50. This is a sound approach to the problem of confirming a worker's right to his accumulated credits if he leaves his job before retirement. But unlike other proposals before Congress, the President's plan would only vest credit earned after it became law. A full generation would have to pass before the law's promise of pension security would be fulfilled. This is too long. The vesting standard that Congress adopts should provide for at least partial retroactivity.

Similarly, the President is heading in the right direction when he proposes that 5% of a pension plan's unfunded, vested liabilities should be funded each year. But again, this will not eliminate the possibility that individuals will lease their credits when pension plans are discontinued or companies go bankrupt. A better answer would appear to be a nationwide termination-insurance plan, either public or private. This would involve some risk of increasing costs but several studies by government agencies indicate that they would not be great.

The nation's private pension system is far healthier than its critics will admit. It delivers on its promises to millions of retired workers each year. But it does have inequities and weak spots. The goal of reform legislation should be to deal effectively with these weaknesses before they lead to general mistrust in the whole system. This is not a time for half-measures and a gingerly approach. It is a time to fill the holes in a strong but imperfect system.

[From Pension and Welfare News, June 1973]

THE ADMINISTRATION PENSION PROPOSAL

This spring President Nixon submitted his proposals for pension reform to Congress in a message which is likely to increase the pace of a movement which has had the inevitability, and the speed, of a glacier.

Except for a moderate proposal on compulsory funding of vested liabilities, the Administration message requested legislation similar to the President's proposals of December 1971.

CONTENTS OF BILLS

In two bills, the Retirement Benefits Tax Act and the Employee Benefits Act, the Administration-backed legislation would require vesting according to the Rule of 50 (50% vesting when age and years of participation equal 50, with 10% for each year thereafter) and funding of 5% of unfunded vested liabilities each year, allow deduction of employee contributions to $1,500 per year or 20% of earned income, increase allowable HR 10 deductible contributions to $7,500 or 15% of earned income, allow transfer of lump-sum termination benefits tax-free to another qualified plan, and provide for stricter fiduciary and disclosure provisions.

Compulsory vesting is a necessary part of pension reform. The Administration's proposals are, therefore, steps in the right direction. The Rule of 50 does not go far enough, however. Nothing less than the Williams-Javits bill's provisions should be accepted by the legislators in Congress at this time. Williams-Javits calls for vesting 30% at the end of eight years, with 10% annually thereafter. Adoption of Williams-Javits vesting would establish a platform achieved in future sessions of Congress.

EMPLOYEE DEDUCTIONS

The Administration proposals for funding are, again, moves in the right direction. Funding should be required, however, for all pension liabilities over 30 years.

The Administration proposal to give tax-deductibility to employee contributions to $1,500 or 20% of earned salary (whichever is less) deserves strong support. At present, employer contributions to qualified plans enjoy income-tax deduction. The Treasury forgoes large amounts of income, which must be replaced by income tax payments of all taxpayers. Beneficiaries of qualified plans, however, derive a benefit, whereas those persons not covered by such plans do not.

It is difficult to follow the rationale of persons opposed to reasonable deduction of employee contributions. A number of advanced industrial countries allow income-tax deduction for such contributions. This measure would benefit chiefly employees in the lower and middle bands of the middle economic class. It would help employees where an employer cannot or will not set up a plan, bringing into the private pension system people who are now unfairly excluded. It is hard to see how allowing a maximum of $1,500 to be exempt from income tax would unduly benefit the rich; they have minimal need of a pension anyway.

Increasing the HR 10 (Keogh) contribution limits would make retirement plans for the self-employed more nearly approach those available to corporate employees of similar income. This, too seems desirable for purposes of equity.

LUMP SUMS ON TERMINATION

The present tax on lump sums received by employees on termination can be onerous. Where such sums go into another retirement plan it makes sense to defer taxation until retirement. This the Administration legislation would do.

Improved fiduciary and disclosure legislation is recognized by all involved in pensions as essential and needs no further comment.

It is disappointing that the Administration proposals contain no guaranty fund to protect benficiaries of plans which are discontinued. Surely ingenuity of pension technicians is equal to this task. Critics of a guaranty fund say that cases are relatively few where it would apply. The economic blow is nevertheless hard on those on whom it does fall. If the cases are indeed few it should be that much easier to devise a workable insurance plan at reasonable cost.

[From Journal of Commerce, June 13, 1973]

RATHER THAN IRS: LABOR DEPARTMENT CONTROL ON PENSIONS URGED

(By Leah Young)

WASHINGTON, June 12.—Sen. Jacob Javits, R–N.Y., today revealed that preliminary plans by the Treasury and Labor departments for pension legislation would have placed an enforcement of funding and reinsurance proposals in the Labor Department.

Sen. Javits made his revelation as he and Senate Labor Committee Chairman Harrison A. William, Jr., D–N.J., testified before the Senate Finance Committee on pension legislation. The Finance Committee is holding hearings on pension proposals that would place all pension regulation except for fiduciary responsibility rules under the aegis of the Internal Revenue Service.

In today's testimony, the two senators explained to their colleagues on the Finance Committee why they believe Finance has no jurisdiction over pension legislation and why the Labor Department and not the Treasury should supervise pension reform.

CRUX OF THE BATTLE

The issue is not the crux of the pension reform battle. All sides now agree that vesting—assuring a guaranteed interest in one's pension plan—and funding will be regulated by federal law. Further, most observers believe that in the Senate, at least, reinsurance of pension plans to safeguard pensions when plans or firms go under has very good odds on passage.

By and large, however, the business community wants IRS supervision of pension plans while organized labor is fighting for Labor jurisdiction.

By turning the draft Labor-Treasury bill over to the committee, Sen. Javits is nullifying official testimony by Labor and Treasury spokesmen, including Treasury Secretary George P. Shultz, that only IRS is competent to regulate funding and reinsurance provisions.

The Treasury-Labor draft pension legislation was altered by the White House to eliminate any reinsurance program and to lessen the impact of the funding proposal. The White House then placed funding under Treasury's aegis.

"As we know, the White House did not accept the bill—and certainly that is their right and prerogative. However, what I find particularly interesting about the task force bill—and I emphasize this—is that administration and enforcement of the funding and reinsurance provisions were turned over to the Labor Department. Apparently, the experts in both the Treasury and Labor departments concluded that this approach would be the most effective," Sen. Javits told the committee.

Sen. Javits stressed further if there is real fear that the Labor Department will be too partial to the labor viewpoint, then an independent commission should be established to administer the new pension rules.

QUOTES EDITORIAL

The Senator backed up his viewpoint by quoting from an editorial from the June 6 Journal of Commerce in which this newspaper noted that "when a taxpayer is called in to discuss problems that have come to the attention of IRS, he ought to be confident that the agency he is dealing with is interested solely in his tax liability, not in the manner in which he has or has not conformed to price controls or in the viability of his company pension plan, or anything else. This is—or should be—as important as the separation between church and state in the American Constitution."

In their joint brief to the committee, Senators Williams and Javits stressed that the Internal Revenue Service "is not structured to handle complaints of misconduct or abuse, or failure to pay pension obligations owed to workers. It lacks adequate background in the elements of collectively bargained pension plans and the related interests of unions employers, and sometimes the beneficiaries themselves.

In his presentation, Sen. Williams advocated the Labor Department as the proper administrator of pension plan reform on the grounds that "the administration and enforcement of private pension regulations belongs with the federal agency which has the primary mission to safeguard the interests of working people—the Department of Labor, and necessary pension safeguards belong with that mission."

Sen. Javits also raised the spectre of state

pension plan regulation if the IRS approach is upheld in Congress.

"There ought to be a uniform national set of standards for private pension plans so as to avoid unnecessary regulation at both the federal and state levels. The Williams-Javits bill, with minor exceptions, pre-empts the states from regulating the subjects covered by the bill."

The Williams-Javits approach would guarantee 30 per cent vesting after eight years service with 100 per cent reached in stages after 15 years. All unfunded liabilities would have to be funded within 30 years under the bill and a reinsurance fund would be established to guarantee plans. A voluntary portability system would be established to allow workers to deposit pension credits with a new plan if both the worker and the employers agree.

CHRISTOPHER TIBBS, POET

Mr. MATHIAS. Mr. President, to some lucky few, fame comes early. Christopher Tibbs, a fourth grader at Dr. Samuel A. Mudd's Elementary School in Waldorf, Md. is among this select group. As reported in the Charles County Independent Beacon on May 17, 1973, a poem composed by Christopher is to be published in a national magazine, Children's Playmate. It is an excellent and inspiring piece and I commend it to the attention of all my colleagues. I request unanimous consent to have the article from the Independent Beacon printed in the RECORD.

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

BEAUTY IS ABOVE ME . . . AREA BOY'S POEM TO BE PUBLISHED

A 9-year-old pupil at Dr. Samuel A. Mudd Elementary School in Waldorf will become a nationally published poet in the fall because of a school project.

Christopher Tibbs, a fourth grader at Dr. Mudd school, will become a contributor to "Children's Playmate," a national magazine published for elementary age children, in the magazine's August-September issue.

"He got the idea for the poem from some pictures we looked at in class," said Mrs. Robert Engels, one of Chris' teachers. "But he did the writing all on his own. Together we decided to send it to the magazine."

The poem, "Beauty Is Above Me" was recopied and displayed at the school library. "Now we have it home and it's framed," explains Chris' mother, Mrs. William T. Tibbs.

"Chris wrote the poem several months ago, and after we got it home we sort of forgot about it for awhile. Then Chris came home with the letter (from "Children's Playmate") saying they had accepted it. We never really expected to hear from them again," recalled Mrs. Tibbs.

But the children's magazine did respond and promised to publish the poem as follows:

Beauty is above me . . .
Water splashing on the rocks.
Clouds making pictures in the sky.
Cotton falling softly off the plant.
Trees as straight as pins.
Rocks all shapes and sizes.

Chris' reaction to his newfound fame? "At first he had a big head," admitted Mrs. Tibbs. "He made sure all the neighbors had seen it and was very excited. But he's settled down now."

Settled but apparently still inspired. "He has said he wants to continue his creative writing and poetry," said Mrs. Engel. "He wants to sit down and write a letter to the magazine thanking them and letting them know he will continue. So we'll get together and do that."

One would get the impression Chris is a boy scholar, but those who know him well know him better. "He's just a typical fourth grader," Mrs. Engel figures. "He's not very studious," agreed Mrs. Tibbs. "His other interests center around science. He's interested in a lot of the underwater shows on television, and likes to experiment and collect things. He's also very active in Cub Scout Troop 1780 and boating."

Chris is apparently living up to his promise, though, to turn out more creative material. His next project, say Mrs. Engel and Mrs. Tibbs, is a short story, the plot of which is still in doubt.

S. 268—THE LAND USE POLICY ACT

Mr. FANNIN. Mr. President, in the near future the Senate will be debating S. 268, the Land Use Policy Act.

It is my conclusion that this bill, as approved by the Senate Interior Committee, is legislation which would do great harm to the rights of our States and local governments and individual property owners.

I am especially concerned that a bill which could have such fundamental effect on our Nation is being considered at a time when the public attention is diverted to other problems.

I do not believe that our people generally realize that this bill affects the rights of everyone and would be another step toward centralizing Government in Washington.

Mr. President, Industry Week magazine has done an article which summarizes many of the arguments which have been made concerning land use legislation. I ask unanimous consent that this article which was in the June 4, 1973, edition of the magazine be printed in the RECORD to promote a more thorough understanding of the questions involved in this legislation.

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

LAND USE POLICY: A LIMIT TO GROWTH

(By John H. Sheridan)

During most of the nearly two centuries since the American Revolution, land in the U.S. was considered an abundant commodity.

Federal land programs centered on opening up new frontiers. The states, for the most part, sat back and gave local government a free hand in regulating land development. And a property owner's right to make the lights—was largely unchallenged.

Those days belong to history.

Today, a groundswell of concern about the environment, urban sprawl, and diminishing land resources is shaping a new approach to land use. The dividing line between property rights and the public interest is becoming a battleground.

In a number of states, new layers of bureaucracies have been created to guide and restrict land use. Construction of homes, factories, powerplants, and airports, and the extraction of natural resources are certain to collide more frequently with policies that seek to limit growth.

A NEW LAND ETHIC

"The cowboy land use ethic is changing," asserts Daniel W. O'Connell, executive director of the Florida Environmental Land Management Study Committee, a 15-member citizens group working with the state legislature to devise a statewide land use strategy.

"Slowly, but surely, people are beginning to realize that land is a natural resource that we have to think more about. And they're recognizing that overdense land uses are causing many of our problems. In Florida, we've already had a spate of moratoriums on development and even population caps set by local governments."

Pollution control laws at the federal, state, and local levels have already chiseled deepy into the cornerstone of property rights. Legislation now in Congress—to establish a national land use policy—promises to spin an even more extensive web of restrictions.

A sound land management policy can eliminate much of the parochialism and uncertainty which has frustrated development in the past. For that reason, industry has generally supported the concept of "balanced" land use planning which provides for economic needs. But industry shudders at the prospect of a law which would only add another cannon to the arsenal of fanatical environmentalists.

Federal lawmakers generally agree that a better scheme of land management is needed.

Based on current projections, notes Rep. John P. Saylor (R, Pa.), we can expect that "during the next 30 years, the pressures upon our land will cause an additional 18 million acres of undeveloped land to be converted to urban use."

Today, land planning authority is fragmented. There are, Sen. Henry M. Jackson (D, Wash) points out, more than 80,000 units of government—cities, counties, water districts port authorities—which "exercise land use planning and management authority It is no wonder that without a generally agreed upon design for America's future, we have needless conflict, delay, and the dedication of scarce land resources to uses which are not desirable."

For lawmakers at every level, it seems, a major obstacle is deciding how to proceed in devising an "agreed-upon design." The Maryland legislature, for example, couldn't agree on how much authority to delegate to the counties—and its land use proposal was stymied.

In Congress, where six different land use bills have been introduced, debate has focused on a number of issues—including what the federal-state relationship ought to be.

CRACK A BIG WHIP?

Should the federal government have strong sanctions with which to coerce state action? And how far should it go in dictating the terms of state programs?

In sponsoring S. 268—the Land Use Policy & Planning Assistance Act of 1973—Sen. Jackson outlined a limited federal role: planning grants to "encourage" state programs. States would be allowed considerable flexibility in shaping programs to meet their own needs, but—to qualify for the planning grants—would have to follow broadly defined federal guidelines. States choosing to go a different route would forfeit the planning grants only.

Under the Administration's proposal (S. 924), states would be threatened with cutbacks of up to 21% in federal funds for airports, highways, and conservation if they failed to adopt an approved land use planning program. (Sen. Jackson included such sanctions in the bill he sponsored last year, but they were deleted on the Senate floor. He omitted them in drafting his 1973 legislation.)

Sen. Edmund S. Muskie (D, Maine) has urged a different brand of sanctions for recalcitrant states: loss of water treatment grants and no extensions of Clean Air Act deadlines. Further, his proposal—Title VI of the Water Pollution Control Act—would have Congress establish more specific criteria for states to follow. Otherwise, he contends, Congress would be passing the buck "with no instructions on what to do with it."

Hearings on the Jackson Bill and countermeasures have stirred controversy on a number of other questions:

Is the legislation likely to spur states to prohibit or severely restrict development of vast areas of the country—in the name of environmental protection?

What recourse should property owners have if they suffer financial setbacks due to state land control actions?

To what extent should the legislation strike a balance between environmental and economic priorities?

Should states be required to designate areas suited for energy-producing and transmission facilities and for resource development?

"EVERY ACRE OF LAND . . ."

Both the Jackson and the Administration proposals call for state control over "areas of critical environmental concern," developments of regional benefit, and areas likely to be impacted by key facilities—such as airports and energy transmission lines.

An "adequate" state land use program, the Jackson Bill says, "shall include" state authority "to prohibit, under state police powers, the use of land" in designated critical areas.

Testimony on the Jackson Bill suggested some far-reaching consequences:

Howard L. Edwards, vice president-secretary, Anaconda Co., New York, pointed out that the original definition of "areas of critical environmental concern" specified nine different categories of land. "That mandatory list includes nearly every acre of land in the United States and, without question, does include every acre west of the Mississippi River," he told the Senate Committee on Interior and Insular Affairs.

"The bill could be administered so as to designate the entire nation as an 'area of critical environmental concern' . . . [and] each of the defined areas could likely be restricted to a single use."

Gene C. Brewer, vice chairman, Southwest Forest Industries, Inc., Phoenix, testifying on behalf of the National Assn. of Manufacturers (NAM), also expressed concern that there could be "a strong tendency to designate vast areas . . . and to severely limit the land uses which may take place within such areas."

During one phase of the Senate committee's deliberations, the language of the bill was revised—and "areas of critical environmental concern" were defined as areas where "uncontrolled or incompatible development could result in damage to the environment, life or property, or the long-term public interest."

The implication is that "compatible" land use is permissible, but industry observers fear the connotation leans heavily toward a nonuse policy.

A NATIONAL GROWTH POLICY

"What we are talking about," says Daniel B. Denning, staff associate, U.S. Chamber of Commerce, "is what may be the beginning of a national growth policy. It will be more fundamental than a national energy policy. This is the biggest thing since wrapped candy."

The pending legislation, he notes, requires the Council on Environmental Quality to review the "desirability" of national land use policies and, within a year, submit a report containing specific recommendations.

What it amounts to, Mr. Denning believes, is a backward approach. A national land use policy—with provisions for growth—should precede enactment of control measures, he says. "In effect, we're getting on a train without knowing where it's headed."

The chamber and most industry spokesmen have opposed giving the federal government a big whip.

"With sanctions, the bill takes on a whole different tenor and color," says Mr. Denning. "It would mean that the secretary of the interior [as federal administrator] would be making substantive judgments on state programs in deciding whether or not to withhold funds."

Without sanctions, states would not feel unduly pressured to accept federal land use criteria.

"We support a limited amount of federal review," Mr. Denning explains, "to insure that national goals and requirements are met—but other than that, we feel states should be free to draw up their own plans to meet their own needs."

Some federal review is necessary, he adds, to assure that states do not act contrary to the best interests of the nation as a whole. "If only one state had a site adequate for a deepwater port, should that state be allowed to deny the nation that port?"

Further, what consequences might arise if the states in which low-sulfur coal deposits are located chose to designate those regions as "areas of critical environmental concern"—and allow only enough production to meet their own needs?

The U.S. chamber is also concerned about the possibility that landowners may be denied partial or total use of their property without just compensation. In committee testimony, it urged a provision guaranteeing access to the same remedies an owner has in cases in which a state exercises its "eminent domain" powers.

The issue raises some serious constitutional questions.

Half a century ago, Supreme Court Justice Oliver Wendell Holmes said: "A strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change. When this seemingly absolute protection is found to be qualified by the [state's] police power, the natural tendency of human nature is to extend the qualification more and more until—at last—private property disappears."

A provision in the Jackson legislation would prohibit use of federal land-planning funds to purchase real property. This prohibition, coupled with strong sanctions and severe restrictions on the use of land in critical areas, would encourage states to circumvent constitutional safeguards against "taking" of private property without compensation, Mr. Denning warns.

Lacking funds for land acquisition, he adds, states might be forced to expand their noncompensable police powers to actions traditionally considered to constitute "taking."

"That is just what Justice Holmes warned against," Mr. Denning observes.

SOME "PLUS" FACTORS

If drafted and implemented with a proper balance between economic and environmental needs, state land use programs can "reduce the indecision which industry faces . . . and may speed up the land use decision-making process," Mr. Denning points out.

And another potential benefit: "Industry will have a clear idea where it can go and where it cannot . . . and what it can do when it gets there. That's important for industrial planners—especially utilities and large corporations trying to plan 15 or 20 years in advance. They would know which areas are open and what the constraints are. At least, I would hope that's the kind of result which will come from this.

"Today, when industry or a power company wants to go into an area, it has to get dozens of permits from various local and regional decision-making authorities. Hopefully, these [delays] will be consolidated in a rational process—so you have one-stop shopping for permits and land use decisions."

Lance Marston, director, Office of Land Use & Water Planning, U.S. Dept. of Interior, believes large-scale developments will benefit from advance planning by states "working with countries to help identify those areas that would lend themselves to various kinds of development.

"If we continue to go the way we have been . . . then we'll find that everything is going to end up in a stalemate," says Mr. Marston, whose office was instrumental in drafting the Administration's land use bill. "Numerous powerplant siting decisions are being held up because of the inadequacy of the current regulatory system—the exclusionary provisions in much of the local zoning laws."

The Administration's legislation, he says, would force states to look at coastal zones and other areas "and determine where they ought to be thinking about siting powerplants, industrial parks, oil refineries, and other facilities. A state simply can't treat itself as one little island and say, 'Let some other state take care of the refinery problem.' It's going to have to sit down and look at the tradeoffs."

STATES' OPTIONS

Mr. Marston sees the federal role as assisting states in identifying appropriate land use methodologies. "But the ultimate decision of how they develop their programs is going to be left up to the states." One of the state's functions would be to set up an "institutional mechanism" that would permit all parties—including industry—to be heard on long-range planning needs. "As it is, no one is looking at that. Planning and decision-making are fragmented. And, many times, local jurisdictions are making decisions that impact constituencies greater than they represent."

While states will assume a greater degree of responsibility for developments having a major impact, local government units will still be making 90% or more of the land use decisions, the Interior Dept. official believes.

A prospect which worries developers is the likelihood that creating new planning agencies will mean additional delays in obtaining approval for large-scale projects.

"We're concerned that we could, literally, be put out of business with improper land use planning," says E. G. Johnson, executive vice president, National Assn. of Industrial Parks, Washington. "It makes sense to have some kind of land use program—but not if it means you have to go through not only the local, but also the state and federal governments for permits. When a developer is held up for a year or two, it becomes a terribly burdensome and expensive situation.

"Obviously, some guidance is needed. But I'd hate to see things reach the point—as some people advocate—of a quasi-government operation, such as exists in Europe, where [it's] pretty much dictated where you can build a new plant."

The tricky problem, Mr. Johnson believes, is striking the balance between federal guidelines and states' options. Without some federal overview, "some states just aren't going to do anything—and other states are going to be overambitious."

A SQUEEZE ON RESOURCES?

Petroleum and mining companies are understandably worried that land use controls might be used to severely limit the areas which will remain open to exploration and extraction of resources.

"To predetermine the geographic locations of lands suitable for mineral development is an impossible legislative requirement," says Anaconda's Mr. Edwards. "These are lands where God saw fit to deposit the minerals, and He has not yet revealed to man all of His hiding places. . . . The location of lands suitable for mineral development is unknown, and projections would be meaningless.

"As our nation becomes increasingly a mineral-deficient country dependent on foreign sources, the value of land for mineral development will become comparatively higher. Curiously, as our mineral needs accelebrate and the supply dwindles, the plethora of measures that would impair the

development of domestic mineral resources multiply.

"If government policy inhibits or thwarts mineral development, the alternative is to force undue reliance on foreign—and frequently unstable—sources. . . . For example, in the last two years seven domestic zinc plants have been shut down and 40% to 50% of the zinc industry of the United States has been exported to foreign countries [despite the fact that] zinc consumption in the U.S. has reached an all-time high."

Carl E. Bagge, president, National Coal Assn., says a rational land policy "must recognize as a priority land use the necessity to permit the full development of our coal reserves, as well as other nonrenewable natural resources. . . . No land area should be zoned, withdrawn, or otherwise removed from prospecting or exploration unless an exhaustive geological analysis of its mineral potential has been made.

"Land use planning must be geared to resolve the conflicts for land use rather than align state interests against regional and national interests," Mr. Bagge stresses. With an unrealistic approach to land use policy, "the outlook for energy through the latter part of this century could be catastrophic for the nation."

COASTAL BARRIERS

The petroleum industry fears overzealous regulation of coastal areas, which could prevent the construction of ports and refineries needed to handle the expected increase in oil imports.

Maine, one of the first states to seize the land control initiative, enacted its Site Location Act in 1970. "It's common knowledge," a state official admits, "that it was originally an anti-oil law." The measure was watered down, however, before getting final approval from the legislature.

Last November, California voters approved a referendum to create a Coastal Zone Conservation Commission which is charged with controlling development on land within 1,000 yards of the coastline. And Delaware adopted a state law banning new heavy industry along the 100-mile Delaware Bay coastline.

The Delaware action ruled out "at least one potential new oil refinery along the Atlantic Coast," says John L. Loftis, Jr., senior vice president, Exxon Corp.'s Exxon Co. U.S.A. Div., Houston.

Moratoriums—or bans—on coastal development will only intensify the energy crisis, Mr. Loftis told the Senate Interior & Insular Affairs Committee. To handle the volume of oil imports which the U.S. will require by 1985, "at least three deepwater offshore unloading terminals . . . and [new] refining capacity of some 8 million barrels per day" will be needed.

ANALYSIS OF THE NIXON ADMINISTRATION'S RELATIONS WITH THE PRESS

Mr. MUSKIE. Mr. President, the Professional Relations Committee of the National Press Club, in cooperation with the Communications Department at American University, has just completed a most comprehensive analysis of the Nixon administration's relations with the media. I commend it to my colleagues as a significant commentary from a responsible group of journalists with deep concern about free and full access to Government information.

Because this study bears directly on numerous policy issues and legislative matters pending in Congress, including the question of public television financing, the Freedom of Information Act, the White House Telecommunications Policy Office, and the so-called Newsmen's Shield law, I ask unanimous consent to have the bulk of the Press Club report printed in the RECORD.

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

THE PRESS COVERS GOVERNMENT: THE NIXON YEARS FROM 1969 TO WATERGATE

(A Study by the Department of Communication, American University, Washington, D.C., for the National Press Club, with conclusions and recommendations by the Professional Relations Committee of the National Press Club)

PREFACE

The Department of Communication at American University joined in this study with the National Press Club in the hope that it could help people better understand the role of the news media in Washington, and some of the problems involved in reporting on the federal government.

The Press Club's Professional Relations Committee asked the department to examine press-official relations during the first Nixon Administration. The committee had been charged by the club's board of governors in June, 1972, with carrying out and publishing such a study. It subsequently was decided not to begin work until after the 1972 elections to remove any suggestion of partisanship.

The study director was asked in October to put together a team of volunteers, and to complete the report by January, 1973. The time later was extended to secure all the interviews, and to include developments in the early months of the second Nixon term.

The study team was made up of 20 Press Club members, American University graduate journalism students and recent graduates. Each volunteered time out of a busy schedule with the only recompense being his or her feeling that the end product would be useful to many people. The team did not pretend to be antiseptically "objective" in its outlook. But every effort was made to retain a fair and independent view of the process. For the interviews, for example, we asked the same general questions of both officials and correspondents. The idea was to try to induce them to talk freely about their work and their views.

Thus, it was disappointing that only three out of the 15 White House officials we approached would join in the spirit of the study.

Innumerable efforts were made to discuss the interviews and the aims of the study with White House press secretary Ronald Ziegler. Ziegler pledged repeatedly that he was interested, and would meet with us. He did not, however, and waited nearly four months before he finally told committee chairman James McCartney on March 1, 1973, that he had ruled out all White House participation. A promised letter of explanation was never received.

It is not felt that the White House refusal measurably affected the validity of the study's conclusions. Three officials did talk to us extensively, and we included their observations, though Ziegler insisted that they were not speaking officially. In addition, much of what the other officials who were approached think about the press is a matter of public record.

The overall findings are outlined in the first chapter of the report. The final chapter sets forth the conclusions and recommendations drawn up by the Press Club's Professional Relations Committee after its members had reviewed the study.

The deeper our examination of the issues, the more it became apparent that a fuller, ongoing review of this process is urgently needed. It is hoped that this report will be seen as the first step in a periodic appraisal of press-government relations in succeeding administrations that would be welcomed by the press corps, and by politicians of both parties.

I am grateful to the many people in Washington and outside who offered us encouragement throughout the study. Special thanks are owed to Donald Larrabee, president of the National Press Club for 1973, and his predecessor, Warren Rogers; to James McCartney, Grant Dillman, Samuel J. Archibald and the other members of the Professional Relations Committee; and to Jack Germond, who served as liaison for the Press Club board.

Above all, this study could not have been pursued as it was without the support and unflagging faith invested in our efforts by Dr. Robert O. Blanchard, chairman of the Department of Communication.

LEWIS W. WOLFSON.

CHAPTER 1

THE TRUTH ABOUT GOVERNMENT: THE NIXON ADMINISTRATION VERSUS THE WASHINGTON PRESS CORPS

(By The Professional Relations Committee, the National Press Club, and Prof. Lewis W. Wolfson)

We knew when we undertook this study that while both officials and journalists pledge to inform the public fully, they hardly see eye to eye on what is full information about government, even in the best of times.

Politicians want news people to be "constructive" on behalf of their programs and their view of the national interest, as former White House press secretary George Reedy has pointed out. And, though the President and other officials are given an expansive, uncontradicted forum for their pronouncements in much of America's news media every day, they still will not readily accept the fact that for news people that is not enough. No journalist can remain true to his trade if he simply reports what officials think is "constructive" news about government.

This debate over defining what should be reported became news itself in the last two presidential administrations, starting with the Johnson Administration's crisis of credibility, and continuing with Nixon officials efforts to discount much of the press's reporting of Washington and so, many feel, to try to discredit its appraisal of their performance.

The public needs no coaching to mistrust the media. But there is much evidence that Americans do need to recognize that this clash over the openness of government is not simply a matter of journalists' peevishness, as officials might try to picture it; it is the public's battle as well. The truth of this finding was brought home with unexpected force even as we were completing the study, as the Watergate exposures unfolded.

Watergate already stands as a landmark in American journalism. It was the press, and essentially the press alone, that unearthed the most scandalous misuse of the powers of government in this century. Watergate showed again how all of us profit when a single news organization persists in a lonely crusade in the face of massive official pressure and public indifference. It demonstrates beyond words the press's responsible pursuit of its First Amendment charge to act as a free and independent check on government.

The exposures early in Nixon's second term seemed almost to be the fated result of the unprecedented official suspicion and dislike of the media that, we found, had grown up in Nixon's first term. The contempt that some members of this administration have shown for the role of a free press has, in good measure, visited this tragedy upon them, and upon the country. Had there been more access to officials, more frankness in government, more honest dialogue about the press's role instead of harangues on its failings, restraints might have been set on the secretive

instincts of the officials who created a web of covert political operations that led to their downfall.

But; while government clearly has hampered the press in its reporting during the Nixon years, this was not meant to be a one-sided study. Another lesson of the Watergate is that that are many in the media who did not try to search further when they might have, and many other stories of government that remain untold. Thus, before examining further the deterioration of press-official relations, it seems appropriate to first look generally at the state of reporting from Washington.

THE PRESS'S FAILURE TO KEEP UP

Changing public needs flash by the press with stunning rapidity these days. But, despite the new demands that this places on the federal government, America's news organizations rarely seem to pause to review their coverage to ensure that they are keeping up with government's changing responsibilities. Too often the news media seem to leave it to officials to "discover" problems and prescribe national priorities for dealing with them—frequently in terms of their own political fortunes rather than the public's interest.

We found no shortage of men and women in the national press corps who are clear-eyed about the press's failings. They know that it is not necessarily true to its independent role here, no matter how often editors and reporters may invoke the press's freedom to be independent under the First Amendment. Indeed, some felt that the news media should be held to account equally with public officials for any breakdown in "the system" that can be attributed to the public's poor information about the state of government and the country's other political and social institutions.

But the 'press corps' that fans out in Washington each day is hardly monolithic either in the thoughtfulness of its members about the reporting of government, or their wherewithal to tell the story. One or two-man bureaus that must daily grind out items for strings of newspapers or broadcast outlets might as well be on another planet from the 41-man Washington staff of reporter-analysts for The New York Times, or the network newsmen whose names are household words for millions of Americans.

They do look alike in one respect: all often seem to be scrambling helter skelter in pursuit of the day's story. Washington press practices still develop nearly as "informally and haphazardly" as when Douglass Cater wrote that line about them more than a decade ago. Reporters still move in herds much of the time, writing the same stories and following formulas for coverage of Washington that may no longer be relevant to the reporting of complex issues.

The press thrusts itself compulsively into the task of chronicling all the 'breaking' news, often at the expense of providing explanation and analysis. Much federal decisionmaking remains a mystery to the public, making it hard for people to intelligently debate policy that may change their lives. The press explores government's mistakes only on a hit-or-miss basis, and it rarely alerts people to tomorrow's problems until they are upon us.

The press corps still can count some notable successes during the last four years. The Washington Post and others acted in true press tradition when they pursued the Watergate scandal undaunted by supposedly authoritative government denials and derision. The Pentagon Papers fight gave new heart to reporters to ferret out information that government tries to conceal. And aggressive probing produced many in-depth newspaper, magazine and television stories that showed how government aggravates social problems as much as it solves them.

But the wrenching experience of the Vietnam war, and other policy failures, have made many more journalists conscious of how often they have left it to high officials to make vital national decisions without the challenge of informed public debate. And some correspondents concede that there are whole areas of government—the Congress, for example—that the news media scarcely penetrate despite their enormous impact on people's lives.

The press has been looking at itself more in the last four years, at least in part because of the sudden spotlight of criticism from the White House and others. But even with advances in coverage, it cannot be said that news organizations are moving smartly to deploy their forces to give people a better picture of the workings of the system. While they fend off critiques by self-interested politicians, America's news executives have only timidly reached out for suggestions for improving reporting on government so that the public achieves a better grasp of what is going on in that "mystery off there" that so often decides their fate, as Walter Lippman once described the federal government.

The need for such soul-searching seems particularly acute at a time when public confidence in both the press and government is perilously low. It also may be that America's journalists have less time than they think to stake out their role in government news reporting before others do it for them. Today's attempts to manipulate coverage may well seem tame by comparison with the apparatus for instant publicity that could open up to public officials as cable television and other new technology generate a sudden pressure for more news of Washington.

The changes ahead obviously pose great opportunities for the news media. But they also will lay on them an even heavier responsibility to exercise independent judgment in newsgathering and reporting. If they fail to meet that challenge, it inevitably will mean that America's news media more than ever will be leaving it to the politicians to feed the public a steady diet of "constructive" news of government.

A NARROW VIEW FROM THE TOP

Eight years ago, in a report to a group of leading House Republicans (called Operation Enlightenment), Bruce Ladd pointed out to the GOP that they have "no exclusive monopoly on truth." He said that even if a journalist may personally favor the Democratic Party, officials should recognize that "a newsman's personal political beliefs rarely have influence on his professional competence as a reporter." Newsmen, like politicians, "want superior performance in reporting," Ladd said. He called this "the mutual interest and mutual challenge" of both the press and Republicans.

Officials professed to pursue that interest in the first Republican Administration since Ladd wrote those words. But, as they seized upon the "bully pulpit" of the White House to discuss media responsibilities, Nixon Administration leaders showed little of this spirit of a shared search for better reporting of government. It seemed to be attack, not dialogue, that Vice President Agnew and others most had in mind.

There was no hint of an admission of their own frailties. No official critic would concede that his favored brand of "objective" reporting well might abet the Administration's purposes without really serving the public's interest in knowing what goes on in government. None showed much sympathy about the pressures on the news media.

In short, with their narrow-gauged approach, and statements salted by such oversimplifications as "Eastern establishment" and "ideological plugola," top Nixon officials debased a genuine opportunity to give the public a greater appreciation of the news media's problems in developing more thoughtful reporting of Washington. It is almost as if they were telling Americans that the more simplistic the reporting of government, the better off they would be.

THE DETERIORATING ADVERSARY RELATIONSHIP

In the end, the study's main concern was to go beyond the public exchanges and examine what had happened in day-to-day relations between Nixon officials and journalists, and how that affected the quality of reporting of government.

We found in the press corps an overwhelming feeling that Washington's traditional adversary jousting between journalists and officials had deepened into an attempted freeze by government on any but the most superficial "straight news" reporting of the Nixon presidency.

Even in the worst moments in previous Administrations, correspondents felt, most Washington-wise politicians seemed to adopt certain unwritten rules for their encounters with news people. The adversary battle was a love-hate relationship. You talked to the press, even if you wanted to say as little as possible. You were friendly when it served your purposes, suddenly unavailable when you didn't want to talk. You could play favorites. You could rage at the reporter who, you thought, had 'burned' you. You could even cut him off for a while, though rarely for good. After all, you did need the press.

And sometimes both of you could even let down your hair over a late-afternoon scotch, with the greater mutual understanding between the journalist and his sources that develops over a period of time. You gave a little to get a little, and everybody had a vague feeling that somehow good government was being served, even if journalists and politicians could never agree on exactly what the public should know what went on in Washington.

In the first Nixon Administration it was different, the correspondents say.

White House and other officials who came here with little previous experience in national politics were not used to having reporters hanging around outside the door while they were making decisions and picking over policy after it had been set. They were not inclined to abide by the traditional adversary conventions. From there, it was only a small step to trying to put the press on the defensive by discrediting its reports about government.

Indeed, Nixon Administration officials reacted to the traditional give-and-take by framing a policy of massive official hostility to all but a few, selected portions of the news media—even while they argued that it was the press that was overreacting to *their* criticism.

The hard-nosed reporter who had gone through the minuets of the Eisenhower and Kennedy years, and the often unprecedented slugging matches in the Johnson Administration to get sound information on policy decisions, felt that there was now a calculated effort to make it difficult for him to report on anything other than the official view of what was going on in the federal government.

Was Richard Nixon's first Administration an 'open' one, as promised? we asked. Most said that, to the contrary, this was the most 'closed' Administration in memory, both in the access to information, and in access to the people who knew how the decisions had been made.

There was praise for communications director Herbert Klein's efforts to make agencies more responsive on routine requests for information and interviews. There was ready acknowledgement that some officials (most notably Henry Kissinger) did give out reliable information on policy on a regular basis, as had key officials in past administrations. But the people interviewed felt that the

whole approach of the White House on even minimally sensitive questions was to discourage such dialogue and to try to diminish whatever impact their reporting might have on the public's insight into this administration.

White House reporters, especially, felt that they were at the mercy of a very sophisticated presidential public relations apparatus that aggressively sought out television coverage in controlled settings, simultaneously downgrading the importance of in-depth questioning about policy, and trying to undermine the integrity of the national press corps in the public's eye. The Nixon people "tried to shift the credibility gap from the presidency to the press," as one person put it.

All the other moves of the last four years—the disdain for the tradition of periodic presidential press conferences, attempts to bypass the press corps to influence local editors, the 'suggestions' from Clay Whitehead about the content of network news, the subpoenaing of news people—were seen by correspondents as part of the pattern of throwing fences up around free and searching reporting of the federal government, and trying to keep the most influential—and most troublesome—news organizations on the defensive.

Some correspondents felt that the official freeze probably could not, and would not, be sustained in Nixon's second term. But most of the members of the press corps whom we interviewed felt that the basic Administration attitude toward the news media would not change, even if there were periods of more amicable relations.

THE URGENT NEED

It is hard to be certain at this point whether this burst of attention to Washington reporting will prompt a sharper awareness of the press's responsibilities, or whether the deepening resentments of the last four years have pushed further out of reach the ultimate objective of getting across to the American people the real news of Washington—what Cater has called the "essential truth" about government that makes democracy possible.

In the long run, debate of any kind seems a sign of health. Anything that is so important to good government as improved reporting should be a matter for national discussion, and the news media should welcome that. It is difficult to argue that their operations in Washington cannot stand more scrutiny and planning. Nor is it to be doubted that the local view of the federal government, which Nixon Administration officials have so passionately sought, must be heard in the press and on television.

But national leaders don't enhance the debate if they play politics with journalism's shortcomings. A politician might decry "instant" analysis of government; a statesman will also call for fuller, more thoughtful analysis by America's news media. He will seek the common objective of full reporting by all agents of a free press, no matter what risk that "multitude of tongues" might hold for his own public image.

We found in this study an urgent need for a will on the part of both officials and journalists to seek superior reporting of complex public issues and of the decisions being made by the most powerful government in the world. If 'the system' is in trouble, then it would seem to be in the interest of this (or any) administration, and of the press—adversaries though they may be—to awaken to the fact that the American people need to know what's really going on at its center in Washington if they are to feel more a part of democratic government than they do now.

CHAPTER 2

JOURNALISTS AND OFFICIALS TALK ABOUT THE ROLE OF THE PRESS IN WASHINGTON

Top national reporters believe that officials in the first Nixon Administration had a sharper restricted understanding of the traditional give-and-take between American journalists and federal officials and virtually unprecedented tunnel vision about the role of the press in Washington.

In 21 wide-ranging interviews, journalists—some of them veterans of covering as many as eight presidential administrations—could recall no other recent period when their latitude to report the workings of government had been so severely limited by such a narrow approach on the part of high government officials to their relations with the national press corps.

Bureau chiefs and White House correspondents for major newspapers, magazines and broadcast outlets told us that news people who wanted to give the public insights into the planning of policy and other government actions found themselves thwarted by the concentration of power among a small circle of decisionmakers who were far less accessible for information than presidential staffers and other high officials had been in past administrations.

Reporters felt that this declining access to knowledgeable sources and key information was reinforced in the bureaucracy by the hard line taken toward the press by leading officials in public statements, turning what President Nixon promised would be an open period in American government into one of the most closed administrations in memory.

The White House officials who consented to be interviewed for the study (all three were press officers, not policymakers) felt that they had maintained an open administration despite considerable problems in getting fair press coverage. They complained that many news people—some of whom had always been hostile to Nixon, they felt—shaded their reporting with a liberal bias. They also felt that some Washington correspondents tend to slip into a parochial, Washington-oriented approach to reporting that does not take into account the view of government held by many Americans.

The Nixon advisers said there is a need for the press to explain what government does. But they felt that many of the 'interpretative' stories correspondents think are essential to explaining government's actions really amount to "advocacy" journalism—stories that promote a particular point of view.

The deep estrangement between the press and government in the first Nixon years clearly posed serious problems for both institutions, and for the public whose interest both journalists vow that they are representing in Washington. To examine the causes of this rift and its effect on the flow of information to the public, we asked correspondents and those White House officials who agreed to talk to us (plus some media commentators) to discuss such broad issues as the press-official 'adversary' relationship, how "open" this administration had been, and the charges of bias and attempted intimidation that have been traded between the press and officials.

THE CORRESPONDENTS

The correspondents were deeply troubled about the attacks on their credibility and the subsequent public feud between the press corps and the Administration. Some described it in impassioned terms as a struggle over the press's constitutional right to report the news free of government interference, and the public's right to know what the government is doing.

To reporters accustomed to fencing with those in power, it seemed natural that the Nixon Administration would try to manage the news. "Every President . . . tries to tell his story the way it does the most good for him. That's human nature," said Benjamin Bradlee, executive editor of the Washington Post. News people for their part tend to be suspicous of government statements and press handouts, and not a little "ornery" toward those in power, as one correspondent put it, because they have been manipulated so often by public officials.

But reporters came to believe that Nixon advisers failed to accept the traditional adversary sparring despite the President's own avowed relish for "tough questions" in his encounters with the press. Correspondents felt that White House aides, in particular, persistently misread the news media's professional probing of the people in power as personal hostility toward the President. The officials seemed to lack the experience of dealing with reporters who are as "knowledgeable and skeptical" as the experienced Washington correspondent often is, media critic Ben Bagdikian said.

When we asked about the charge that the press corps' approach to reporting was colored by a "liberal" outlook and personal bias against Nixon, several newsmen branded this as a White House attempt to neutralize the press's effectiveness by using a broad-brush condemnation of its reporting.

Were they biased against Nixon from the start? To the contrary, said Dan Rather, White House correspondent for CBS. News people were so determined to keep any biases out of their reporting that they, in fact, "leaned the other way," especially during the early months of the Administration. Rather and others felt that Nixon received a full measure of the uncritical press 'honeymoon' that is invariably accorded a new President. Besides, said Newsday bureau chief Martin Schram, what is often forgotten is the fact that there are many reporters "who liked Mr. Nixon personally" from the beginning of his first term.

Most of the correspondents interviewed conceded that a majority of the press corps probably votes Democratic (though some disputed even this assumption), and that reporters often are "liberal" in the sense that they are impatient about seeking solutions to the public problems they encounter.

But the crucial question, newsmen said, is whether this outlook affects their ability to report fully and fairly about government, no matter who is in power. A number of people said that the fact that the national press corps was tougher on George McGovern than it was on Richard Nixon in its coverage of the 1972 campaign was, as Wall Street Journal bureau chief Alan Otten put it, "a perfect refutation of the liberal bias theory."

On the other hand, some of the correspondents do think that their colleagues exhibit a bias in the way they select sources and what they choose to report. Liberals in the press "tend sometimes to color their copy or (let) their sentiments get in," said Hugh Sidney, Time bureau chief. "But the suggestion that because we are liberal we are constantly . . . out there to belittle the President is nonsense."

Clark Mollenhoff, bureau chief for the Des Moines Register and Tribune and a former White House and himself, charged that many of those in the news media who aggressively probed the Watergate case had failed to pursue government scandals with equal vigor during the Kennedy and Johnson Administrations because, he felt, they had a partisan bias. Severest with his colleagues was syndicated columnist Robert Novak who maintained that it is no longer a point of pride among many reporters to cover a candidate for office or an official without letting their personal beliefs creep into their writing. He said that such reporters are "not very interested in pursuing objectivity" but, rather, are advocates of a "liberal" line.

But some correspondents, such as Martin Nolan, bureau chief for the Boston Globe, said that whatever bias there might be in the press corps is far offset by the fact that the American press as a whole is overwhelmingly conservative.

Nearly all the correspondents denounced "advocacy" reporting, though a few said that

it sometimes finds its way into the news columns, usually in subtle form. But many reporters said that interpretation of government news that goes beyond what officials say is happening is a must if readers are to understand how complex federal action will affect their lives. News people said that they would mislead their readers if they reported just the bare "facts" of an issue.

What does the Nixon Administration's coolness to the press corps really cost the news media? Newspapers still sell and the networks manage to get the news of Washington out every night. But newsmen and women here believe that the Nixon aloofness has exacted a high price in reporting by limiting their ability to describe what goes on in government the way they think the story should be told. And, ultimately, contended Courtney Sheldon, bureau chief for the Christian Science Monitor, "if you and I do not know what's going on in the White House, there is one big loser—the American public."

THE OFFICIALS

The White House officials interviewed felt that they had helped to conduct an open Administration during the first Nixon term.

They described themselves as the "propress" people in the White House, and said that they had compelled foot-dragging federal bureaucrats to provide more information to reporters than they had before. Herbert Klein, director of communications for the executive branch, specifically noted that he had used the Freedom of Information Act as "a major help in forcing open the bureaucracy."

The question of what constituted "openness" in government and help to the press was hotly disputed. While Washington newsmen said they were shut off from access to the President and top policymakers, the press aides argued that, to the contrary, the White House improved journalists' access to government by opening the Administration to reporters and editors who work outside of Washington.

"Newsmen around the country have had more opportunity to question Administration officials than in all previous administrations put together," said Klein. DeVan Shumway, public affairs director for the Committee for the Re-election of the President, said that the Washington press corps "considers itself deified . . . but I don't think it has a vested right in talking to the President of the United States."

A chief weakness in some reporters, the officials said, is that they lack initiative and a willingness to probe for stories. "Too often, reporters don't take the trouble to make the extra call or dig for the extra fact, (though) maybe that's because of deadlines," said Klein. "And when there's a correction, it often doesn't get the same play as the original."

Ken Clawson, deputy communications director, said one way a newsman can get a response out of the White House is to "get off your butt and go to work and come up with material of a meaningful nature that nobody else has got. Then, by God, the White House guy doesn't have any choice but to talk to you."

He and his colleagues complained about "advocacy" reporting where, as Clawson described it, "you weave your own feelings into the material." All three singled out the ITT-Kleindienst confirmation hearings as a prime example of the correspondents' urge to advocate a cause and their obsession with what the presidential aides saw as "negative aspects" of a story.

"All you'd hear on a day-by-day basis was somebody making a critical statement—usually Senator Kennedy or Senator Tunney or Birch Bayh, someone of this kind," said Klein. ". . . The public got a distorted picture of what was happening until the results (of the Senate vote) came out (confirming Kleindienst's nomination). It was a big surprise. . . ."

But the three spokesmen felt that there was one period during the first Nixon term when the Washington press corps was notably fair in its reporting: the 1972 presidential campaign. Said Klein: "I raised the question as to whether newsmen might become emotionally involved in this particular election and would tend toward more bias in their coverage. Having observed what happened, I don't think that took place."

(The interviews were conducted between November 1972, and March 1973):

Question. Was this an "Open Administration," as President Nixon had pledged it would be?

Answer. I think it's probably the most closed administration since I've been in Washington, and that goes over 25 years. Maybe it's part of a continuing trend and we'll be saying this about each succeeding administration. I rather doubt it . . . I think when Nixon came in he did make some moves in the direction of openness. There was a period when some of us hoped for better days. The Johnson Administration had not been terribly good from that point of view. But I think the Nixon Administration has gotten increasingly worse as power has centralized in the White House, as the decisionmaking circle has drawn tighter and tighter, and their suspicion and distrust of the press has deepened.—Alan Otten, Bureau Chief, Wall Street Journal.

Mr. Nixon is a closed man, so the idea that he was going to run an open administration is probably impossible to begin with. He's constitutionally incapable of it. Beyond that, he has a deep distrust and dislike of the press. He always has had, probably always will.—Hugh Sidey, Bureau Chief, Time.

Now I happen to believe that there are certain people within this administration who sincerely believe that theirs has been an open administration. There are some (who) know damned well that it hasn't been. There have been efforts to open up in some very important ways . . . Particularly in the beginning, cabinet officers were more accessible than they had been in the preceding administration. But in the most important way—the accessibility to the President himself—this administration has been closed. It isn't simply a case of not being as open as preceding administrations. It has been closed.—Dan Rather, White House Correspondent, CBS News.

Well, I think it's on a par. As a matter of fact, I think we get more information than ever . . . in this administration than in some previous ones . . . If a reporter has a reputation for being fair and honest and not out to advocate an adverse point of view—not out to make a monkey out of somebody—he can generally get to see whomever he wants to.—Garnett Horner, White House Correspondent, Washington Star-News.

I have seen three administrations and would rate them just about even. The Kennedy Administration, when Salinger was press secretary, was perhaps the most flamboyant operation. I think Bill Moyers was probably the most opinionated news secretary, and Ron Ziegler is the best one.—Raymond McHugh, Bureau Chief, Copley News Service.

An administration should make everything about the public's business available unless there is a national security question involved, and I don't mean an imaginary national security issue . . . These people have a tendency—as every administration has—to fail to distinguish between their own political security and national security.—Clark Mollenhoff, Bureau Chief, Des Moines Register and Tribune.

This is the fourth administration I've been in Washington for . . . and none of them has been very open. I doubt seriously that I'm going to see an open administration . . . Government of any kind—whether it's democratic or authoritarian—wants to keep secrets and, particularly, to cover up its mistakes. So this so-called "openness" is mostly a public relations gimmick.—Robert Novak, Syndicated Columnist.

I think that if you really opened up the government—if you answered questions honestly—pretty soon the novelty would wear off and it would be treated normally. There would be no condemnations for things that went wrong—or there would be less of it . . . It just seems to me that (in order to govern effectively) in this country, an administration has to keep the people as much informed as possible about as much as possible.—Richard Valeriani, White House Correspondent, NBC News.

Question. What has been the effect on the news media of Vice President Agnew's critiques?

Answer. I don't regard Agnew's (comments) as serious or meaningful journalistic criticism. He was engaged in a political exercise against certain parts of the press. The fact is that he has not been exercised at all about some of the worst performers in the press field . . . because their political communes are closer to his . . . I think it is a mockery that he did, in fact, pick on the most effective journalistic operations.—Max Frankel, Sunday Editor, New York Times.

Journalism, like every institution, needs reform. He latched onto popular . . . suspicions about journalism and a few truths, and painted (the field) with a broad brush. And whether he intended to do so or not, he used the traditional technique of the demagogue in pitting one group of people against another . . . On balance, I have to say this has had an adverse effect because it has poisoned the air. It has (caused) unnecessary rancor between reporters and their sources, and between reporters and the public. From that standpoint, you would have to say that it has hurt—and hurt a lot.—Dan Rather, CBS News.

In many cases . . . it created kind of a psychological undertow that forced some people in our business to pull their punches, to be a little more cautious than they might be justified in being.—Peter Lisagor, Bureau Chief, Chicago Daily News.

The purpose of a good part of these attacks was not to set the record straight but to intimidate the press—particularly television and radio, which are more directly subject to government control. I think it was completely and obviously nonsense to say that they were seeking fair coverage. They were seeking coverage that would be quote—'fair'—unquote, in their favor Unfortunately, they have succeeded to a considerable degree in intimidating some people, particularly in the broadcasting field, and making other people lean over backwards to give them a much fairer shake than they sometimes deserve.—Alan Otten, Wall Street Journal.

I would guess that I've answered more questions from newsmen or from the public than anybody in the Administration, and in four years I've not met an intimidated reporter. I (don't) expect to and I don't think I should. I think the idea of intimidation by the Administration is not well taken at all. The Administration should not, has not and will not (intimidate).—Herbert Klein, Director of Communicatons for the Executive Branch.

Question. How do you feel about the suggestion that the Administration has encroached on some news freedoms? There have been complaints in that area.

Answer. I think that that's the most ridiculous thing I've ever heard of.—Ken Clawson, Deputy Director of Communications for the Executive Brach.

I think the press is a little oversensitive to criticism of itself. The right to freedom of

the press is a terribly important part of our Constitution, which we've got to protect. There's a sensitivity in the press that when you criticize them and you're in an official government position, you're stepping on that right. Well, you're not . . . You're protecting that right.—DeVan Shumway, Public Affairs Director, Committee for the Re-election of the President.

(His critiques) probably were ill-advised, but they were accurate on facts . . . He's got every right to . . . argue with the press on anything. We certainly should not be beyond criticism. The problem (comes) when they suggest governmental control or cutting into our free access (to information). (The criticisms) are a hell of a lot less of a menace than is the negligence of the press itself in not taking care of its own rights.—Clark Mollenhoff, Des Moines Register and Tribune.

The (critiques) probably had a good effect overall because they've made the intelligent editor be self-critical and examine the (journalistic) decisionmaking proceses . . . But it also has had a negative effect in making it popular to be critical of one of the major institutions of a democratic society. I don't think a society whose institutions are constantly under attack and disbelieved is healthy. Agnew's attacks have made the journalist's job more difficult.—Benjamine Bradlee, Executive Editor, Washington Post.

Question. What understanding does this administration have of the traditional adversary relationship between officials and journalists?

Answer. Not many public officials (understand). Most really believe . . . that the press's (job is to) make their decisions understood and accepted by the public. The (officials) have looked at the alternatives and come to this decision . . . And they see the press as spoiling it . . . by reporting contrary arguments that they already have struggled with . . . I don't blame them for feeling that way. I blame them for not understanding the Constitution and the way our society should operate. This administration, in a way, has said publicly what most politicians feel privately: that we want support from the press and we want them to give hell to our enemies.—Ben Bagdikian, Media Critic.

The President understands (the adversary relationship) very well. The way he was quoted in the (Washington) Star-News interview indicates his understanding of it. That doesn't mean he always likes it, but he understands it.—Herbert Klein, Director of Communications for the Executive Branch.

No person who is on the other end of it ever enjoys it. (But) by the time they're reached the upper reaches of a (presidential) administration . . . politicians ought to be able to understand its importance . . . The key people in this administration—partly because of their lack of background in government—do not understand this, and just completely regard us as the enemy.—Alan Otten, Wall Street Journal.

I am in favor of the adversary relationship. I think the people in this administration . . . understand it. The problem is that the adversary relationship gets out of hand . . . and reporters begin to become prosecutors . . . The adversary relationship gets exaggerated, and (reporters) run amuck.—James Keogh, Author, President Nixon and the Press.

(The Administration) goes through elaborate charades to make sure that they put out just what they want to and to hide other things . . . Our purpose is to put out the whole story . . . I hope there's never a resolution of the adversary relationship. If there is, it means that we're working in concert with them. And, if we're working in concert with them, we're not doing our job.—Martin Schram, Bureau Chief, Newsday.

They would like to make cheerleaders out of newsmen. And when newsmen don't agree to be cheerleaders, we have the constant struggle to find out more than they want us to know . . . You can invest that with all kinds of grandiloquent rhetoric, but it boils down to the simple fact that we're in the business of finding out what's going on, and they're in the business of only telling . . . us what they think we, or the public, ought to know. And as long as we represent the public's interest, we'd better keep at it as aggressively as we can. I suspect that the more aggressive we are, the less inclined they may be to withhold (information).—Peter Lisagor, Chicago Daily News.

Question. How accessible have the principal Nixon administration policymakers been to news people?

Answer. I feel that when you look at the complaints, there's certainly been no lack of . . . access basically to most people. It's just that all reporters haven't been able to get to all the people at the right time for themselves.—Herbert Klein, Director of Communications for the Executive Branch.

Most of the top officials in the White House act pretty much on their own. As a former White House reporter, I can tell you how you get dealt with. You can get off your butt and come up with material of a meaningful nature; and then, by God, the White House guy doesn't have any choice but to talk to you. When you've got the material, his choice evaporates, because . . . any damned fool knows that you're better off talking about it than not talking about it.—Ken Clawson, Deputy Director of Communications for the Executive Branch.

They maintain a closed shop over there . . . I happen to think it's a tragedy. They should share with the people the deliberative process of government—where you create legislation or (policy) ideas. This crowd in the White House now has a very limited concept of the idea of government of the people, by the people, for the people. I think they have a duty to inform the public, and to create public debate, which they are ignoring.—Hugh Sidey, Time.

The truth in government is infinitely harder to get at because the people in the White House are harder to get at. For all Lyndon Johnson's bellyaching—God knows he bellyached about Newsweek—the White House was a more open place. You could call up an aide on the White House staff, for instance, with a reasonable assurance . . . that you'd get phone calls back, and that you could get in to see (him). In this administration, frankly, all you do is pray that the phone will ring. We've gone for months where the phone calls would not come back on routine things. I know reporters who have been on the so-called freeze list where orders have been issued someplace in the White House not to return their phone calls. There are other officials there who make it a policy never to return phone calls of certain publications . . . In general, there are reporters and publications who have been in the doghouse. The difference is that when we were in Lyndon Johnson's doghouse, we'd still get to see people.—Mel Elfin, Bureau Chief, Newsweek.

Question. Is there a "liberal" bias in the Washington press corps and does it affect what correspondents write?

Answer. The press's performance in explaining what's going on is, unfortunately, tarnished by this obsession with the negative, and with a preconditioned, left-of-center political point of view . . . (The liberal bias) has affected coverage of President Nixon very considerably. It has affected what has been reported, and how it's been reported. The Washington press corps tends to give the impression that if the Administration would only follow what is the liberal solution, then the problems would be easily solved. Well, that's a distortion of both the problem and the possible answer.—James Keogh, Author of President Nixon and the Press.

This has to do with the insecurities of the President and those closest around him. They are the one who came to own . . . with their bias packed in their suitcase, and they still have it to a very large degree . . . The reporters' biases, when they existed, were far less than the biases of, let us say, (H. R.) Haldeman, (John) Ehrlichman and certainly (Pat) Buchanan.—Dan Rather, CBS News.

(It's the) people around Nixon who are doctrinaire. They came to Washington without the experience of dealing with a press that is knowledgeable and skeptical . . . Suddenly, they find that there are people who don't take at face value anything that a public official says . . . (and) who will call them on changes of policy or contradictory things that are said . . .

(And) they have a very simplistic view of American society and what it ought to be. They really believe in the Norman Rockwell Saturday Evening Post cover picture of America, and they are offended by all of the complexities of urban life. As a matter of policy, they will tell you privately that they have given up on the inner city. They talk about the real America being west of the Appalachians where people still believe in the homilies, meaning, I guess, the Ten Commandments. That's a very simplistic view of modern life, and the Washington press has a number of people who simply know better.—Ben Bagdikian, Media Critic.

What may be regarded by some people as a liberal bias in the press is a reflection of a current generation of reporters . . . It's the old story: today's liberalism becomes tomorrow's conservatism. Things change. If your mind's closed to change, we'd all be in trouble.—William Theis, Bureau Chief, Hearst Newspapers.

Most reporters do tend to be liberal, in the loose definition of that word . . . They're more marinated in the problems of this society. But what difference does that make? When they cease being professional about their work, they ought to quit or be fired . . . I know some of the most prejudiced people in this town who are straight, honest, objective reporters . . . I know people who hate given government officials, and write very straight accounts about them . . . All of these charges simply ignore the fact that there is a high degree of professionalism in the press corps.—Peter Lisagor, Chicago Daily News.

I just think (the liberal bias) happens to be a matter of fact, and it's one that you live with. There is in the leading press of Washington a liberal bias . . . and the facts are interpreted with that bias in mind . . .

The President went out to Portland, Oregon, about a year and a half ago . . . The Seattle and Portland newspaper stories had a sort of 'gee whiz' flavor to them. The Washington and New York papers had a 'well here we go again' flavor to them. There's a lot of difference between the two. I think the average person is very impressed with the President of the United States, and very interested in his activities down to the slightest detail. And I think the papers in Seattle and Portland in that case did a much better job of reporting those activities than did those in Washington and New York.—DeVan Shumay, Public Affairs Director of the Committee for the Re-election of the President.

This (liberal bias charge) is the biggest canard. The American press, generally, is right wing. There are 1,200 papers in this country, and I would guess that 1,100 must be Republican . . . The majority of the Columnists have been on (Nixon's) team, that's for sure . . . The White House press corps is,

I think, pro-Nixon . . . The bias always is with authority—Martin Nolan, Boston Globe.

I think . . . this business of us being a bunch of parlor pinks, limousine liberals and Harvard-educated pink-tea types who look down our noses at anybody who was born west of the Hudson River . . . is a lot of baloney . . . There are certainly plenty of very respectable, very conservative . . . reporters in this town . . . This business that we're all a bunch of Spock generation liberals is a lot of baloney.—James Deakin, White House Correspondent, St. Louis Post-Dispatch.

Question. Was press coverage basically favorable or unfavorable to President Nixon in his first administration?

Answer. I think there's basic sympathy for the man in the White House. There is a respect for the office and the institution . . . If you added it up, I think you'd come out (with the fact that) . . . a majority of the reporting—and of the whole press approach—was favorable to Nixon.—Hugh Sidey, Time.

Despite all the bitching going on around here, by and large, the Nixon Administration has gotten a pretty good press, (and) I think that some people within the Nixon Administration would agree to that.—Peter Lisagor, Chicago Daily News.

Reporters were much more forgiving and much more generous, and much less critical with the Kennedy Administration than they have been with the Nixon Administration. And I think the reason is, by and large, President Kennedy was extremely popular with the press corps and President Nixon is not.—James Keogh, Author, President Nixon and the Press.

Probably in the initial stages (reporters) suddenly discovered a Nixon they didn't understand. He was better than they thought. So you probably had more favorable coverage in these initial stages. It ebbs and flows. You can look at a time when they feel there ought to be more press conferences, and they become more critical. Or you can look at a time when they're deeply impressed with the President for what he's done in China or the Soviet Union, and you probably have an underlying factor that's more favorable.—Herbert Klein, Director of Communications for the Executive Branch.

Overwhelmingly favorable. Pick up papers from around the country and you saw overwhelmingly what the President and other officials have said, and nothing else. That's one reason that (the Administration) hates The Washington Post and The New York Times so much. The Post and the Times have contrary voices in their stories for background and interpretation . . . And even in the Post and Times, most of the stories are pretty much straightaway.—Ben Bagdikian, Media Critic.

Any administration is going to have to suffer some critics . . . But in terms of what actually gets in the paper—what's on the front page and the editorial page—Mr. Nixon has done exceedingly well.—Courtney Sheldon, Bureau Chief, Christian Science Monitor.

The President pursued the image of a man who addresses problems and does things dramatically . . . How can you look at the election result and not feel that the President ultimately came across to the country more or less as he wanted to be portrayed.—Max Frankel, New York Times.

Chapter 3

The Nixon Administration Critiques the News Media

Journalists and public officials throughout our history have cast themselves in the role of chief protector of the public's right to know what government is doing. And each frequently has rushed to paint the other as playing fast and loose with the public's interest by grasping for power, manipulating information and arrogantly refusing to admit their errors.

This time the setting for the charges was not the muckraking and yellow journalism period of the early 1900s, but the interpretative reporting age of the 1970s. It was the Vice President of the United States, joined by a cadre of high officials, who abruptly challenged the news media's entire approach to the reporting of government, and set forth what came to be seen by many as the Nixon Administration's official line of media criticism.

At no time in memory had the press as a whole been attacked from the White House with such startling directness and persistence. The first two speeches in November, 1969, were to be followed by at least nine others by the Vice President during the first term that were devoted substantially to analyzing the media.

Agnew's first media speech apparently was prompted by the Administration's pique at commentary by the networks following a televised address to the nation on Vietnam by President Nixon. Speaking before a meeting of the Midwest Republican conference in Des Moines, the Vice President accused the media of rampant parochialism and of distorting the news. The President's address, Agnew said, had been subjected to "instant analysis and querulous criticism" by a "small band of network commentators and self-appointed analysts, the majority of whom expressed, in one way or another, their hostility to what he had to say."

The television commentators and producers were "a tiny and closed fraternity of privileged men, elected by no one, and enjoying a monopoly sanctioned and licensed by the government," Agnew said. Further, they were unrepresentative of the country as a whole: "To a man [they] live and work in the geographical and intellectual confines which Agnew said "bask in their own provincialism." He also charged that the networks were preoccupied with bad news and dissent. "The upshot of all this controversy is that a narrow and distorted picture of America often emerges from the televised news," he said.

A week later, the Vice President broadened his attack to cover The Washington Post and The New York Times. He pointed out that the Washington Post Co. controlled not only the Post, but also one of the city's four major television stations, an all-news radio station and Newsweek magazine. He claimed that these four outlets were "all grinding out the same editorial line." The Times, he said, had failed to report that 300 congressmen and 59 senators recently had signed a letter endorsing the Nixon policy in Vietnam (in fact, the Times had carried the story in other editions, but not the one the Vice President read in Washington). New York, now a three-newspaper city, was just one example of the "growing monopolization of the voices of public opinion," Agnew said.

The President, himself a bitter battler with the press in the past, for the most part remained above the fray. But it became clear that Agnew was speaking for more than just himself, as a phalanx of presidential assistants (H. R. Haldeman, John Ehrlichman, Patrick Buchanan, Charles Colson, William Safire, Clay Whitehead, etc.) and other Administration figures (Robert Dole, John Connally, L. Patrick Gray III, Helen Bentley) made public statements over the next three years echoing these criticisms.

The themes were the same: the networks had assumed unchecked power over public opinion; much of the national reporting was tainted by an Eastern, liberal bias; and a kind of journalistic Gresham's law prevailed, as bad news drove out the good, and the media emphasized the negative in American society and, especially, in the Nixon Administration.

Thoughtful critics conceded that the Agnew speeches had raised legitimate questions about the role and performance of the media—notably, the issue of growing monopoly control of newspapers, magazines and broadcast outlets. But many questioned whether the Vice President really intended to stir a reasoned debate of the press's role by such cannonades from the highest office in the land.

If he wanted to raise questions about monopoly, critics asked, why did he select his examples only from media concentrations in New York and Washington? The attack against the Post and Times, for example, was delivered in Montgomery, Ala., which had its own closed media situation—representative of many other, more conservative monopolies around the country. Quite obviously, the main Agnew target was those news outlets which were best equipped to keep officials under close scrutiny, and considered least friendly to the Administration.

In broadcasting, people saw the Vice President's remarks as a thinly-veiled threat of tougher oversight of the government-regulated industry, or even censorship. Even ABC's Howard K. Smith, generally regarded as the most conservative of the network anchormen-commentators, detected "a tone of intimidation."

Some correspondents found particularly disturbing the Administration suggestion that the news media somehow must be "made more responsive to the views of the nation." The Times's Tom Wicker wrote that "no institutional or professional formula" could enable the press corps to cope with "this age of transformation." " 'Let a hundred flowers bloom' is the only recommendation anyone can make," Wicker said. CBS's Eric Sevareid told an interviewer: "I'm not about to adjust the work I do according to the waves of popular feeling that may come over the country. No responsible person can do that. They ought to be out of this business if they do."

Some of Agnew's specific charges would not bear scrutiny. The "instant" analysis of the Nixon Vietnam speech, for example, had hardly been instant, since the networks had received in advance a text of the President's remarks, and reporters were given an official briefing by Henry Kissinger before the speech was delivered. The Washington Post, Newsweek, WTOP-TV and WTOP radio did not in fact "grind out" the same line, and they had differed editorially on some major issues, including the war.

News people argued that, far from contributing to an understanding of the press's role and problems, the Nixon Administration was trying to make the media a scapegoat. Life magazine chided the Vice President and others who "at a time of extraordinary . . . contentiousness in U.S. public life" foster the idea that the "medium is the menace." John S. Knight, editorial chairman of Knight Newspapers, wrote a column entitled, "If the World's in a Mess, Don't Blame the Press." To the charge that the media exercised vast, unchecked power, Sevareid retorted that it was the power of government, not of the press, that had mushroomed in recent years, "and within government, the power of the presidency."

Two former White House aides tried to add a semi-scholarly patina to the criticisms. Former White House domestic affairs adviser Daniel P. Moynihan wrote in Commentary magazine that:

Journalism is becoming more and more dominated by a liberal, Eastern, Ivy League elite, heavily "influenced by attitudes generally hostile to American society;"

The Washington press corps relies heavily on information leaks which are often "antagonistic to presidential interests;"

The news profession lacks a tradition of self-criticism and self-correction.

And in a book entitled President Nixon and the Press, James Keogh, onetime chief of the White House research and writing staff (and later to become USIA director), said that the combination of an anti-Nixon liberal "orthodoxy" in the major media plus the press's "frantic reach for the negative" precluded any possibility of balanced news coverage of the Administration. Top presidential aide Haldeman said flatly that many news people had "an interest in the unsuccess" of the Nixon policies.

Agnew had stated the obvious: that journalists are human and inevitably have points of view. But he had failed to suggest any reasonable ideas for dealing with that age-old problem, wrote Vermont Royster of The Wall Street Journal. Few responsible observers in or outside of the media denied that the profession could profit by more criticism—reasoned criticism. But neither could they see in the partisan complaints of Agnew and other White House spokesmen much besides a petulant appeal to "tell it like the Nixon Administration sees it."

CHAPTER 4

THE PRESIDENTIAL PRESS CONFERENCE

Richard Nixon, December 1969:

"I try to have a press conference when I think there is a public interest—not just a press interest or my interest. . . . If I considered that the press and the public need more information than I am giving through press conferences, I will have more. I welcome the opportunity to have them. I am not afraid of them—just as the press is not afraid of me."

Richard Nixon may truly have "welcomed" the opportunity for press conferences when he spoke these words, but he ultimately was to hold fewer of them than any President since Herbert Hoover, prompting correspondents to charge that he had undermined the traditional exchange between the public and their President.

Each of the last five Presidents averaged more than twice as many press conferences a year, and some gave many more. Nixon held 34 (through June 1, 1973), an average of about 7 a year. John Kennedy averaged 21 a year, Dwight Eisenhower 24, Lyndon Johnson 25 and Harry Truman 40 a year. Franklin Roosevelt held an average of 83 press conferences a year—or close to two every week—compared to fewer than one a month by Nixon.

The presidential press conference is a uniquely American institution. It is not the only route to a healthy public dialogue with government, but the Washington press corps rightfully sets great store by it. The press conference remains the only forum in which the immensely powerful head of one of the world's major governments can be cross-questioned about his policies and intentions between elections. An American President, unlike some other national leaders, need not answer to the political opposition directly. But he is expected to meet with the press on a reasonably regular basis, and to submit to their on-the-record questioning on most any topic. Many Americans may even consider that the White House press conference is an integral part of government.

The Nixon era has marked a sharp downgrading of this institution. While he maintains that he relishes encounters with reporters, Nixon in fact has avoided their questioning. In addition, the White House has belittled a process that the preceding five Presidents had made an important part of government communication with the public. Despite the President's deference to the "public interest" in press conferences, during his first term he and associates tried to foster the impression that these sessions were largely of interest to correspondents. They had less importance in the President's eyes, said aide John Ehrlichman, because he winds up getting "a lot of flabby and fairly dumb questions" from the national press corps.

Nixon also seemed to attach less importance to the live, televised news conference, which was first made popular by President Kennedy. As of this writing, he had not held one for 10 months (since June 29, 1972), and he had held only two in nearly two years.

At first, the President seemed to favor these full dress sessions in the East Room of the White House which the public could watch on television. Eight out of the 9 news conferences he held in his first year in office were in that format. But, by the last year of his first term, he clearly had opted for a different approach. Five of the seven news conferences in 1972 were held in his White House Oval Office, and live television cameras were not permitted. The limits continued this year as Nixon held only three news conferences in the first three and a half months—all of them in the White House press briefing room, with cameras present only for taping.

All in all, the press conference is the President's own vehicle. As experienced politicians, most chief executives can hold their own in them and appear to advantage. The intangibles of the occasion work in their favor. The President has the aura of high office. The reporters are there as his guests: they rise as he enters the room. Aggressive news people who might challenge a lesser figure generally feel more constrained in his presence. He recognizes whomever he chooses.

He can answer questions as briefly or as fully as he likes. Presidential replies can range from a terse "no comment" to a lengthy ramble that may use up a considerable part of the customary 30 minute session. A President often can escape with having to answer only one or two queries on a sensitive issue, and he is only confronted with a small sampling of the many issues his administration has to deal with. Followup questions usually are only possible in the smaller briefings. If he wants to look statesmanlike, or to avoid certain subjects, he can brush aside whole areas of inquiry, such as diplomatic negotiations, administration appointments, partisan politics or hypothetical, "iffy" questions.

Each type of conference has its own usefulness to the President. The live, televised conference in the White House's capacious East Room is political theater. The President is talking directly to the public, selling himself and his policies as he makes it seem that he is "glad you asked me that"—pleased that the correspondents have given him the opportunity to discuss his thinking on knotty issues. Viewers often react most to impressions rather than substance: the President looks responsive, he's in command, he's on top of things, he has an answer for everything—though he also runs the risk of fumbling a response, as happened this year when his press secretary had to admit that Nixon had "misspoken" in a press conference statement.

The conference in the Oval Office removes him from direct public view. Should he "misspeak," he can correct it right away. Reporters usually have only one to three hours advance notice, so they have less time to hone their questions, and only about 30 to 50 usually attend (compared to 300 to 400 for full scale conferences). The absence of live television and more advance notice generally means that these questions are dominated by news people who cover the White House regularly and, especially, by the "pencil press." For their part, correspondents can bore in more with followup questions and search out the issues more deeply than is possible with the East Room smorgasbord.

When conferences are held in the press briefing room, as has been the case this year, about 100 to 150 reporters attend. Though these sessions are less intimate than those held in the Oval Office, news people still can crowd around the President, and their exchanges are more conversational than in East Room sessions. But the format militates against specialized writers and other reporters who don't cover the White House regularly, and there is still little time for preparation. Some White House regulars prefer this variation, however, because it gives a good number of correspondents a chance to be present, retains an air of informality and also enables the public to see the President later through television tapings.

While the press vents its frustration at not being able to establish a regular dialogue with President Nixon through press conferences, he has turned to alternative means of getting his message across to the public. In 1972 he delivered a total of 23 radio or television addresses to the nation. In this format he is not, of course, subject to press questioning, though the networks have attempted to put television speeches in context afterwards, at the price of Vice President Agnew's celebrated polemic against 'instant analysis.'

The President also has conducted television interviews with TV correspondents and anchormen. But many press corps members feel that these sessions, though valuable, cannot match the long range value of regular news conferences with a wide-ranging format.

Indeed, most correspondents feel that there can be no substitute for regular White House press conferences. Our politics is more free-wheeling than that of most democracies. But once a man is in the White House, he has great control over his contacts with the people and, for all its shortcomings, the press conference provides the only ongoing record of a President's reaction to the flow of events, giving press and public a chance to appraise his views and gauge changes in his mood and outlook. It is virtually the only time in the four years between elections that people can remind him directly of previous positions he has held and pledges he has made.

Press conferences seem to take on even greater importance with a President who has been relatively isolated from public exchanges as this one has. He almost never sees reporters on an informal or background basis, and his associates have emulated this buttoned-up style. The public is left with little choice. Neither they nor the press can compel a President to conduct more news conferences. He will make himself available only when he wants to be available. He can choose the frequency, timing and format of meetings with the press. He controls the process completely.

It is important, nonetheless, that the public recognize when an American President is not submitting himself to such questioning in accord with traditions that have been firmly established by his predecessors. And it is important to understand that, ultimately, when the President does not meet with the press, it is not the press corps itself that suffers. The main casualty is the American people and their confidence in the openness of their government.

CHAPTER 5

FREEDOM OF INFORMATION IN THE FIRST NIXON YEARS

Herbert G. Klein, Director of Communications, May 1969: "Truth will become the hallmark of the Nixon Administration. I'm charged directly by the President to emphasize to every department of government that more facts should be made available. With this kind of emphasis, we feel that we will be able to eliminate any possibility of a credibility gap in this Administration."

It has been a long, winding road from this early promise of open government and closed credibility gaps. While some information has been opened up in the last four years—often with Herb Klein's help—it is doubtful that

history will recall Richard Nixon as the promised champion of truth in government during his first administration.

There was every hope in the glow of a new inaugural that the public's right to know would be honored as never before. The President installed Klein, a respected editor and close personal friend, as government's first director of communications. To break through the walls of the bureaucracy, he had in hand the Freedom of Information Act which had been in effect for 18 months, but was seldom invoked in the waning months of the Johnson Administration.

But, in the view of Congress, information experts, scholars, lobbyists and the press, the cause of public access to reports, records and other materials in the federal government's vast tangle of agencies was advanced little, and was sometimes actively hindered, during the four years of the first Nixon Administration. In 1972, after 41 days of hearings with 142 government and private witnesses, the House Foreign Operations and Government Information Subcommittee, which created the Freedom of Information law, characterized its administration as "five years of bureaucratic foot-dragging"—and three and one-half of those were Nixon years.

In some cases, Herb Klein, using his White House powers, was able to convince the bureaucracy to honor the FOI Act and release data that news people sought:

The Agriculture Department had to identify those hotdog makers who used so much fat in their product that they did not make both ends meat;

The Office of Emergency Planning finally named the man who had been selected to head an Office of Censorship in the event of a national emergency;

The Housing and Urban Development Department was made to disclose the salaries of government employees at an experimental housing site in Indiana;

The Labor Department reluctantly released an evaluation of a federal job training program in Ariozna.

But, generally secrecy-minded bureaucrats still held tight control of public records, and they usually had the backing of the Department of Justice:

The previously buried Defense Department record of U.S. involvement in the Vietnam War came into the press's hands only because of the pursuit of the publication of the "top secret" Pentagon Papers by Daniel Ellsberg;

Most of the records of the 1968 My Lai massacre and the military investigation of it still were hidden at the end of the first Nixon term in spite of repeated prodding by investigative reporters.

Parts of a report on the Interior Department's publicity program remained censored even though it commented largely on the photogenic qualities of the Secretary of the Interior;

THE COURTS AND FOI

But these specific cases of government secrecy merely issustrate the continuing restrictions on access to information caused by the efforts of many federal agencies to dodge the spirit and intent of the FOI Act. According to the congressional report, prolonged delays in responding to requests for public records, and exorbitant fees charged for searching and copying them, have undermined the Act.

The House committee also pointed out that the Justice Department went to court in more than 40 cases during the first Nixon Administration to help prevent disclosure of sought-after government information. A pattern of favorable court intepretation of the public's right-to-know under the law seems to be emerging, nevertheless. An analysis by the Library of Congress of the first four years in which cases were decided under the FOI Act showed that the courts consistently rejected the government's most often used argument that information came under the section of the law allowing exceptions for "privileged or confidential" information.

The courts also rejected the government's argument in 60 per cent of the cases where it was claimed that public records could be withheld because they were "inter-agency memoranda." But they unanimously upheld the government in cases where it contended that the data involved "investigatory files compiled for law enforcement purposes."

In every case, except those involving national defense and foreign policy matters, the courts rejected government arguments that judges should not look at the documents in question. The courts did not always come down on the side of disclosure after they had looked at the documents that the government wanted to withhold. But judges at least provided a separate judgement on the material as a third party, free of other obligation.

The most celebrated court decision on concealed information in the first Nixon term was, of course, the Supreme Court's 6–3 ruling against the Administration's virtually unprecedented effort to restrain two newspapers—The New York Times and The Washington Post—from publishing the Pentagon Papers.

But, even as they acted to uphold the First Amendment, the justices on the whole did not extend their opinions into a strong stance for opening up such classified information. Moreover, Nixon Administration lawyers went on to pursue prosecution of Ellsberg, and they did nothing to foreclose the possibility that they might also bring charges against some or all of the newspapers that printed the documents that Ellsberg had single-handedly declassified.

DECLASSIFICATION ORDER

The first Nixon Administration did, however, compel the military bureaucracy to change its system for classifying and controlling government information in the name of national security. In June, 1972, Richard Nixon became the third U.S. President to completely revamp the classification system.

Shortly after World War II, Harry Truman issued an executive order setting up the first government wide classification system. The first major revision in system was ordered by Dwight Eisenhower 10 months after he took office.

President Nixon's Executive Order 11652 retains the top secret, secret and confidential categories and makes few changes in the definition of documents which qualify for the three stamps. But it does make other changes. For the first time, the order sets up an appeal procedure which might give the press and public a tool to ferret out documents that military and foreign service officers would rather keep hidden.

The Nixon order sets as 10 years the period during which many documents can be kept classified "top secret," and made eight years the limit for keeping material "secret" and six for "confidential" data. Many documents will be declassified automatically at those times, though the order also has a provision for bypassing this process if a top official specifies the reason for the exception in writing.

It turns out, too, that the Nixon order for the control of national security information still leaves untouched other mechanisms that the bureaucracy can use to keep information from being declassified and publicized. In addition, many of the same bureaucrats who have always been administering the secrecy system still hold the reins over information.

In the first tests that news people made of the new Nixon security system, they discovered that bureaucrats did not even have to use the most obvious loophole built into the Nixon order—the provision that the automatic declassification procedure need not be applied if there is a written statement that the document being sought falls within certain broad categories. Instead, the bureaucrats used the standard tactics of delay and obfuscation.

Soon after the Nixon classification order was issued. The New York Times requested 31 documents which appeared to fall under the automatic declassification section of the new order, and the Associated Press requested eight items.

At first, the State Department security experts handling the two requests were unable to identify the papers sought. Then, after pressure from the White House, they identified the material, but estimated that it would cost the news organizations some $7,000 to search out and copy it. When the Times zeroed in on three documents, the records were provided for $195 and, upon declassification, turned out to contain no information that had not already been published officially.

While the new Nixon order fails to prevent bureaucratic foot-dragging in the name of national security, it does make an attempt to reduce the number of controllers. It reduces from 37 to 25 the number of government agencies which have authority to use the confidential, secret and top secret stamps, and requires that officials who have the power to classify documents be designated in writing by the head of the agency. These new restrictions have reduced the number of stamp wielders in government by 63 per cent in the major departments—from 43,586 to 16,238.

By the end of his first term, Richard Nixon had achieved considerable control over the government's whole information apparatus, and so entered his second administration with even more direct power over how much information government will disclose to the press and public.

All of the top-level publicists in government agencies are his appointees, and many of the middle-level officials have been appointed or promoted since January, 1969. A survey of government agencies covering the first two years of the Nixon Administration showed that at that time 51 per cent of all information directors and their deputies had achieved their positions in the first term, and that figure has risen as vacancies have been filled.

After its hearings last year, the House information subcommittee urged that administration of the Freedom of Information Act be taken out of the hands of lawyers or program operators, and turned over to the government information experts. The subcommittee concluded that this action would not only improve administration of the Act, but it would also recognize the role of public information officers as "the bridge between faceless government and its citizens."

There was some movement during the first Nixon Administration in the direction of giving more force to the role of the government information officer. Two public affairs experts were added at the assistant secretary level, thus making a total of four agency appointees with enough clout to argue for the public's right to know at the policymaking level. And there was hope that more top-level information experts would be recruited.

But whether such moves will lead to more information being made public by government, or to self-serving propaganda, depends largely upon whether the second Nixon Administration pursues the ideals expressed by former newsman Klein in the early Nixon days in Washington, or follows instead the manipulative information policies prompted by advertising and public relations men who held top posts in the White House as the second term began.

CHAPTER 6

THE PRESIDENT'S PRESS SECRETARY

For 10 months White House correspondents listened to adamant and caustic denials that anyone at 1600 Pennsylvania Avenue was involved in the activities surrounding the Watergate affair. The White House press secretary called it nothing but a "third-rate burglary" and he and other Nixon Administration officials derided the press for its stubborn refusal to take their word as fact.

Then, suddenly, on April 17, 1973, press secretary Ronald Ziegler put an "inoperative" stamp on all that he had said before in this respect. Ziegler had not coined the word, but he quickly seized upon it as just the phrase he was looking for—and the 'inoperative' briefing seemed destined to live for years as a symbol to correspondents of the problems they face when they try to search beyond official statements to explore the activities and thinking of the President and his staff.

The President's chief spokesman had suddenly found himself in a situation no press secretary in memory had faced. Ziegler's personal integrity, as well as the credibility of the news his office dispenses, was publicly challenged. He had to apologize to the Washington Post for once accusing that newspaper of "shabby journalism" in pursuing the Watergate case. Calls for his resignation were heard, and some observers felt that it might take months or, perhaps, years for the reputation of the news secretary to recover from such an arrant disregard for truth from the highest office in the land.

Every press secretary inevitably puts the President's view of information first and foremost. "He is not there to tell as much as possible, but as little. He is not supposed to be effusive, merely quick. And these rules, while unwritten, are very clear because he is not the press's secretary but the President's," wrote New York Times correspondent James M. Naughton in a Times Magazine article about the Nixon press aide in 1971.

Yet, when he came to the White House, Ziegler—like his predecessors—had to decide not simply how he would promote the President's image and reflect his attitude toward the press, but also how forthrightly he would deal with the press and the public's need for information. Some press secretaries have attempted to nurse along both objectives, trying to give the press more than just minimal guidance on policy questions and even having the President endorse their suggestions for improving press relations and access to information.

Ziegler turned out to be more the loyal foot-soldier than the battlefield innovator. Ironically, it was President Nixon himself who pointed up this fact when he told a White House Correspondents Association dinner this year how he had kept an eye on Ziegler's daily briefings of the press, and felt that his spokesman had been "loyal" to both of his masters, the press as well as the President. "I must say you have really worked him over, however," Nixon went on to say. "This morning he came into the office a little early, and I said, 'What time is it, Ron?' and he said, 'Could I put that on background?'"

That was more like the Ziegler that correspondents had known for more than four years. Though this superfealty is built into his role, leaders among the correspondents who regularly cover the White House still feel that Ziegler has been especially single-minded in his devotion to shielding the President from the press, and has shown little "loyalty" to the press or public's need for more information about presidential activities and decisionmaking. They feel that he has given reporters an almost continuous diet of evasions on important matters—with little sign of the helpfulness shown by those past press secretaries who have tried to recognize a journalist's need for fuller explanation.

Questions which try to draw more out of Ziegler invariably cause him to resort to an endless assortment of euphemisms for 'no comment,' at times pushing him to the point where he says, "I have said all I am prepared to say on the subject." White House press regulars say that in the few instances when Ziegler does put something 'on background' for their guidance, it often involves superficial information, such as when the President's plane will depart for Key Biscayne or San Clemente.

Despite his tight-lipped approach, the Nixon press secretary himself has said that he makes it a point to keep informed on matters that he might be questioned about. "I think I know as well as anyone else what is happening in the White House," he told the New York Times' Naughton. Every morning Ziegler talks with key people on the President's staff about the news and what they think should or should not be publicized, often asking them (as one such official recalls) to "just tell me the main point" of some issue that he might be asked about. It apparently was this approach that led to Ziegler's many months of tossing off Watergate queries, and to his subsequent public embarrassment when it turned out that the very officials who were giving him 'the main point' were involved in the scandal.

The convolutions that Ziegler will go through in order to avoid answering reporters' inquiries—and the consequent cost to enlightenment of the public—is illustrated by one exchange that occurred early in the Watergate affair when the allegations of Republican political espionage by Donald Segretti suddenly broke into public view before the 1972 election.

News accounts reported that Segretti had had frequent phone conversations with Dwight Chapin, a White House aide who worked for H. R. Haldeman, then Nixon chief of staff. Asked about this, Ziegler said that the stories were not fundamentally accurate. Could Chapin then come out and explain for himself? reporters asked. No, replied Ziegler. Could the press secretary at least tell them if the White House had records of phone calls between Chapin and Segretti? Ziegler demurred. Would the White House switchboard personnel answer questions if reporters asked them directly? "I would hope not," Ziegler replied with a smile. And there the matter ended.

Some White House reporters feel that Ziegler and those who advise him at times have gone to absurd lengths in their zeal to portray the President as always being fully-informed, decisive and right.

When the President said in a press conference early in his second term that North Vietnam had the right to replace forces in South Vietnam, correspondent Courtney Sheldon of the Christian Science Monitor immediately asked lower echelon members of Ziegler's staff if the President had made a mistake. They quickly checked it out, and one of them said that "the President misspoke himself." The next day, however, no amount of questioning at the daily briefing could elicit any such admission from Ziegler himself.

Despite the problems, the White House's daily briefings are still well-attended. Correspondents pick up presidential messages, hear Administration officials explain background details on policy announcements, and press endlessly for small scraps of information. They also attend the briefings to be certain that they are there in case the President should call a press conference. During most of the first three and a half years of the Nixon Administration, there were two briefings daily. But this has been cut back to one a day, with a "posting" scheduled for the afternoons in which statements or releases are handed out and Ziegler or his deputy are usually available to answer questions about them.

In many ways, Ziegler's performance has been no different from that of predecessors, who were also in the business of protecting their boss and rationing information. He did lack the press secretary's customary training in the news media itself. But as a one-time account executive for the J. Walter Thompson advertising agency, he soon was able to acquire the shadow language of his new trade, and learned how to remain unruffled even when the terriers of the White House press contingent were snapping at his heels.

He also learned the games that press secretaries play with correspondents and their news organizations to give presidential nods to those who provide friendly coverage, and how iciness to frequent Nixon critics. Several leading correspondents feel that the snubs have been particularly heavyhanded in this Administration. There have been many reports of officials' refusals to take, or return, telephone calls, of correspondents being kept waiting unnecessarily for interviews, and of people who offend the Administration—or their news outlet—being barred from representation among the pool reporters who travel closest to the President.

Soon after Nixon was reelected, Dorothy McCardle, a longtime social affairs writer for the Administration's nemesis, the Washington Post, was suddenly closed out of White House events. Garnett Horner, correspondent for the Star-News, a Post competitor, was blessed with an exclusive interview with the President, and his newspaper was given some scoops on Administration plans—moves that many correspondents construed as another slap at the Watergate-probing Post.

Similarly, five news organizations who had covered the White House regularly—the Boston Globe, Newsday, RKO General Radio, the Buffalo Evening News and Golden West Broadcasting—were not allowed to make the trip with the President to China and were supplanted by individuals or organizations which did not cover the President nearly as much.

If Ziegler's briefings sometimes deteriorate into bitter exchanges with the press or games in one-upsmanship, there are also times—particularly after the Watergate exposures—when the press secretary has been more self-effacing. It is not all open warfare, as the good-humored, boyish-looking, 34-year-old press secretary will banter a good deal with press corps veterans, and is not heedless of their demands.

The White House Correspondents Association has taken up with him matters such as pool arrangements, and they feel that a better understanding of their problems has resulted, even if the concords do not always last. Ziegler also moved to eliminate the restrictions on naming the source of briefings by national security adviser Henry Kissinger after some correspondents who had felt coopted broke unwritten press corps vows of silence over the source of such high-level briefings.

Ziegler's deputy is Gerald Warren, a former newsman from San Diego. Warren often takes calls from reporters who may be working on deadline and cannot get through to Ziegler himself. Some White House reporters feel that while Warren's approach to their inquiries is restrained and cautious, he gives a credibility to the press operation by checking out everything that he is allowed to pursue.

Personnel under Ziegler and Warren has turned over several times, but hard-working secretaries smoothly dispense the official statements and other materials that pour out of the White House printing machines each day, and correspondents generally feel that the Ziegler office is an efficiently-run operation—not always the case with some past press secretaries. The comforts of the always fussy correspondents also have been looked after, with the improvement of working space in the White House and the booking

of the best hotels whenever they travel with the President.

There is a general feeling that Ziegler's durability so far stems from the fact that he has served well as the right spokesman for a President like Nixon who has preferred to remain more aloof from exchanges with the press and public.

"Not programed to interpret or explain presidential policy," Newsweek wrote after the Watergate exposures, "Ziegler has harnessed himself so closely to the man he serves that his personal credibility is wholly a reflection of the President's." Adding to this impression of Ziegler is the fact that while he reportedly meets frequently with the President, he has not developed anything like the stature of President Eisenhower's James Hagerty or President Johnson's Bill Moyers, who reputedly had an independent impact on news and other policy. Nixon appeared to upgrade Ziegler's role early in June when he made him an assistant to the President.

There probably never will be an ideal press secretary from the standpoint of the news media. It seems unrealistic to expect that anyone in the post can be "loyal" to both the President and the press, as President Nixon has suggested.

But most correspondents still hope for the kind of presidential press secretary whose loyalty to the President is conditioned by a professional awareness of the need for the chief executive to know what the press and public is asking about his programs and policies, and the necessity to offer some substantial response—not simply adroit sidesteps—to the questions that are on people's mind.

Chapter 7

The Director of Communications for the Executive Branch

American Presidents have always sought to manipulate the mass media, since their roles as chief policymaker and opinion leader for the nation are so closely intertwined. To put across his programs, the President "must persuade, bargain, exhort and, on occasion, bribe," writes Elmer Cornwell in Presidential Leadership of Public Opinion. Above all, he must "win and channel public support."

Like his predecessors, Richard Nixon was determined to use the media in his own way. In the process, he altered the traditional White House relationship with the press by creating a new press/public relations apparatus that put the most emphasis on appealing directly to the public and to the press outside of Washington, downplaying the role of the press corps. To the correspondents, this attempted bypassing of their scrutiny was one more sign that the Administration did not intend to be truly "open" about government.

In 1968, while candidate Nixon was crisscrossing the country, a smooth public relations and news operation developed to "sell" the future President through various media. Herbert Klein, newspaper editor and longtime Nixon friend, who had served as press adviser in each of his campaigns since 1948, helped plan news strategy in the campaign, while Ronald Ziegler, a former advertising executive, buffered Nixon from a restive travelling press corps.

When Nixon came to the White House, Klein was named to the post of Director of Communications for the Executive Branch. It was a new wrinkle in presidential staffing. While Ziegler would deal with the people who cover the White House regularly, as press spokesman, Klein would coordinate all Administration information operations and try to make the federal bureaucracy more accessible to the entire press corps. Klein promised that this was to be no ministry of propaganda but an effort to "get more information" out to the press. He said that it would "lead to a more open Administration."

Klein was to win the thanks of many Washington news people for the help he gave in opening up the bureaucracy and arranging interviews with policymakers, especially at the outset of the Administration. Peter Lisagor, bureau chief for the Chicago Daily News, recalls that at one point correspondents were having trouble getting through to people in the Justice Department. "They tried to structure it so that matters had to go through the press office. An assistant attorney general in the Civil division or criminal division was loath to speak unless it was cleared. Herb worked that out. He saw that it created bad will in town." Cabinet officers also were more available for interviews and press conferences early on. And Klein helped to work out information for frustrated reporters in some cases under the Freedom of Information Act.

But some correspondents felt that the new "openness" did not extend to unearthing matters of substance about policy. And they became wary about the Klein office's principal purpose as its other activities emerged. An important aspect of the new Nixon press policy, it turned out, was to make "a clearly visible end run around the national news corps," as former White House aide James Keogh put it in his book, President Nixon and the Press.

Klein began his 'end run' by mailing to publishers, broadcast executives, editors and editorial writers outside of Washington thousands of copies of presidential statements and speeches, and news articles favorable to the Administration.

The mailings weren't a new idea, but the size and organization of the Nixon effort was. Former press secretary Bill Moyers says that in the Johnson Administration "when the President made an important statement on Vietnam, for example, we'd send it over to the State Department and they would mail it out." But he feels that this was quite different from the setup in this administration where Nixon staffers "want everything to be controlled and centralized. Our relations with the press outside of Washington were erratic and unorganized." Andrew Hatcher, associate press secretary to President Kennedy, says the same about their press operation. The Kennedy White House would mail out press releases on request, he said, but there was no "mass," indiscriminate mailing.

Under the new Nixon operation, on the other hand, while the President was delivering his State of the Union address in 1971, for example, Klein was busy sending to 3,827 news people a six-page list of questions and answers about the message. Presidential speeches against campus protest were mailed to 8,000 editors of weekly newspapers. And, early this year, 1,500 editors, editorial writers and station officials were to receive copies of the President's statements on the economy and his veto messages.

The information/propaganda campaign reached beyond the press, too. John Pierson wrote in The Wall Street Journal that during Nixon's first term "special interest groups ranging from 131 Negro insurance executives to 77,000 blue collar workers" were sent Administration materials through the mail.

Klein insists that the mailings help to keep the entire press more informed, and he chides the press corps for having a parochial view of what is "openness" in government: "One of the big things we have done is to open the government more to newsmen outside the confines of the District of Columbia." Correspondent Jules Witcover says that the main point of the Klein operation is to put the Administration view across to thousands of radio stations and small papers who aren't represented in Washington—"without having it filtered through the Washington press corps" which usually is more knowledgeable about issues and more skeptical of Administration political rhetoric.

There is some duplication in the Klein operation. Veteran correspondent Sarah McClendon, who reports for newspapers and broadcast outlets in several states, feels that "the main activity of Herb Klein's office is to send your editor—and occasionally to you—copies of speeches with notes that imply that maybe you overlooked this item, or maybe you ought to give it more space."

Another White House device for 'opening' government was to deliver the Administration to editors, broadcast executives and reporters in the form of regional press briefings. In 1969, Klein had arranged a briefing for Washington reporters on the new U.S. postal service, and then struck upon the idea of sending the government briefers out to editors and news directors around the country, according to Witcover. "The approach worked so well that Klein was soon forming briefing teams on other major Administration proposals and dispatching them to the hinterlands," he says.

In July 1971, for example, the communications director accompanied the President, two of his aides, and then HEW Secretary Elliot Richardson to a Kansas City, Missouri, briefing for 141 news people from nine midwestern states. The President also made visits to selected newspapers for editorial meetings at various times. Another example of such briefings were week-long tours that White House consumer adviser Virginia Knauer made across several states to brief news people on Nixon's consumer protection legislation.

Klein says that journalists around the country "have had more opportunity to question Administration officials than in all previous administrations put together." Don Larrabee, whose Washington bureau serves more than 30 papers in various states, feels that the briefings are "a good device for Mr. Nixon to sell his policies" to local news people. Larrabee thinks that many of the people who attend the briefings don't feel that they've learned much that they had not already read from Washington. But it still is "intriguing for the local editors to see the President in action, and they invariably write a story about it," he says.

How successful was this President overall with his reliance on a new press/public relations apparatus?

A majority of the people interviewed for the study felt that Nixon had a 'good press' in his first term. They acknowledged the skill with which Klein and others in the White House had manipulated the media to try to put the Nixon message across to the public. CBS's Dan Rather even commented at one point during the 1972 campaign that Nixon chief of staff H. R. Haldeman "thinks he knows as much or more about my business than I do, and I'm inclined to think he's correct."

Klein announced that he would be leaving early in the second term. Some said he had lost ground in an internal struggle with White House advertising and public relations interests. Press secretary Ziegler was put in charge of all press operations and, while the new communications office continued, it was expected to play a subordinate role.

In any event, in his first administration, Nixon and his staff were to find, as many Presidents had, that there are limits to how much you can control the flow of government information, contain a maverick press corps or shape the image of your administration. As correspondent Lisagor put it, this administration was to discover "as all administrations discover, that government is an untidy business. It is operated, even in its news policies, on an ad hoc basis. You can't compress your news setup into a table of organization."

CHAPTER 8

THE OFFICE OF TELECOMMUNICATIONS POLICY, AND TELEVISION NEWS

A new White House Office of Telecommunications Policy (OTP) was established during the First Nixon Administration, adding a powerful new government voice to decisions about the role and content of broadcasting in this country. OTP's pronouncements in news and public affairs programming in particular suggested the possibility that an American President could acquire greater influence over what people see or hear about government and public issues on television.

Despite a politician's natural urge to want to control broadcast news, U.S. high officials—unlike those in some other democracies—usually have drawn back from actions that might give even the appearance of government censorship. Indeed, the director of OTP, Clay T. Whitehead, himself insists that his pronouncements in this area have been misread, and that the White House has "no intent or desire to influence in any way the grants or denials of licenses by the FCC."

But the furor raised by statements by Whitehead and other officials is evidence that mere suggestions about television programming from the President's own staff inevitably carry great weight with the federally-regulated broadcasting industry, and their impact could carry over into the news media's reporting of government.

OTP was set up in 1970 by Richard Nixon to fulfill a need for a central policymaking body on communications matters that had been foreseen in recommendations made by a Johnson Administration task force. Under Whitehead, the office soon became spokesman for major policy guidelines on commercial and public television, cable television and satellite communications.

Advocates of the public's interest in broadcasting themselves long have argued that somebody must keep a closer watch over the burgeoning channels of mass communication in this country if they are to be allocated fairly and be used for civic purposes, not simply to reap excessive profits or political power for special interests.

But, to many, OTP's statements on the role of the news media were seen not so much as a watchdog effort to protect the public's interest in open communication, but rather as a move to put seemingly unfriendly news organizations on the defensive. Critics saw this as one more sign of the Nixon Administration's love-hate affair with television. The White House sees TV as a powerful means to inform the public of its policies and gain acceptance of them. But it is very unhappy whenever network news people pursue deeper analysis of Administration policy pronouncements as good journalists should.

The most dramatic OTP move came in December, 1972, scarcely a month after Richard Nixon had achieved one of the largest election mandates of any American President. Telecommunications director Whitehead announced that the Administration would propose broadcast license renewal legislation making clear that "station managers or network officials who fail to act to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants to be held fully accountable . . . at license renewal time . . ."

He said that local broadcasters should not automatically accept network standards of "taste, violence and decency," and that they should make stronger effort to curb what he termed "ideological plugola" and "elitist gossip" in the news broadcasts of networks with which they are affiliated.

Even as he raised the hackles of the networks and individual broadcasters, Whitehead also proposed giving station owners more immunity from license challenges. He called for a five-year period between renewals instead of the current three years, and also suggested setting up rules that would make it more difficult for citizen groups and others to challenge a station's license. Whitehead, in effect, seemed to be telling network affiliates: Be more "responsible" in judging network news and other programming; but don't worry too much about those in the community who might disagree with your definition of civic responsibility.

The storm broke immediately. Renegade FCC commissioner Nicholas Johnson, himself a longtime critic of network practices, said the Administration was attempting to work a "deal" with broadcasters, giving them longer periods between license renewals in exchange for a "crackdown on the news and public affairs . . . from the networks, especially if it came from CBS." "Ideological plugola" was simply "Nixonese for anything unfavorable to the Nixon Administration," Johnson said.

Rep. Torbert Macdonald (D-Mass.), chairman of the House Communications subcommittee that later would pass on the legislation, called the proposal part of "Nixon network neurosis." The Administration was saying "stop the criticism or we'll stop you," Macdonald told a meeting of California broadcasters.

As broadcasting and other journalistic groups issued a barrage of denunciations, Whitehead said that he had been misunderstood. His proposals simply were intended "to remind licensees of their responsibilities to correct faults in the broadcasting system" instead of passing that responsibility on to the networks. He insisted to the Senate communications subcommittee that the proposed legislation would give broadcasters no obligations for programming that they did not already have.

When it was finally introduced, the Nixon bill called for stations to respond to community needs and interests, and to emphasize "localism" in programming. In addition to providing for five-year renewals, the measure would restrict the FCC from requiring reports on news and public affairs programming, and from using percentage standards for different categories of programming in judging a station's performance for license renewal. Whitehead's strong rhetoric of December, not unexpectedly, was not repeated in the bill or the accompanying explanation, and he maintained that, contrary to earlier fears, their bill "would remove the government from the sensitive area of making value judgments on the content of broadcast programming.

But news people did not feel reassured. Skeptics in Congress were not likely to leave unexplored the OTP director's allusions to "imbalance" in the news or other suggestions for more "responsive" broadcast reporting of government news that have been advocated by a host of Administration officials. Leading Senate constitutionalist Sam Ervin of North Carolina said that the White House approach inescapably would bring government into the process of judging the news, and he called Whitehead's words "a thinly veiled attempt to create government censorship over broadcast journalism."

Government in this country usually has been circumspect about passing official judgement on radio-TV programming. The traditionally conservative Federal Communications Commission has kept to a general "public interest" standard in evaluating station performance at renewal time and, though it recently has set up its own guidelines for license renewals, the commission invariably has been reluctant to be too specific about program content. Congress, too, has been very wary about looking like a censor. Even the much-publicized hearings by the Senate subcommittee on communication into violence on television resulted in an admonishment to the networks, but no legislation of standards.

If the White House had not necessarily gotten involved directly in news censorship with Whitehead's pronouncements, it had at least ventured further than before into the twilight zone of government's judging what might be balance or objectivity in news. What a Whitehead might brush off as being "ideological plugola" or "elitist gossip" might seem to a correspondent to provide precisely the kind of interpretation the public should have to undertand federal actions.

It was not hard to see how such government guidance could set a legion of license-conscious station executives to fussing over network interpretative reporting, tempting them to try to screen out unpleasant issues in the name of 'balance.' 'Localism' in the news could lead to parochialism and for any who doubt its cost, media scholars note that the civil rights movement might not have moved the nation's conscience as it did if the TV networks had not for the first time provided Southern blacks with unfiltered national news about race relations.

PUBLIC TELEVISION

The Nixon Administration similarly began to scrutinize the content of public television programs. Its concerns were twofold: the White House wanted to shift programming decisions away from what Whitehead and others viewed as an Eastern "liberal" bias in the production of public TV programs; and they also questioned whether federal funds should be used to finance what they saw as politically sensitive news and public affairs programs which they felt could better be left to the commercial networks.

In 1972, the President vetoed a $165 million, two-year funding bill for public television. He called for a measure that, again, stressed "localism" in program development, and urged a one-year, $45 million authorization. The Corporation for Public Broadcasting (CPB), which administers government funds for public television, kept operating under a continuing appropriation. Senate Democrats went on to introduce legislation in 1973 that called for $140 million for CPB over the next two fiscal years, but Whitehead kept to the Administration's call for a one-year, $45 million budget.

By that time the plot had thickened as CPB, which holds the pursestrings, decided to take much of the power over program selection and scheduling out of the hands of the Public Broadcasting Service (PBS), and to cut back funding for several national public affairs programs which the White House also had disapproved. The reaction in the trade was bitter. After months of negotiations, CPB finally agreed to return basic control of the network to PBS, which is run by 234 public television station managers. The corporation did retain a say for itself in programming and schedules, however, and established a mechanism to work out CPB and PBS differences.

During this period, the new CPB board chairman, former Congressman Thomas Curtis of Missouri, suddenly resigned, claiming White House pressure against an earlier compromise. Whitehead denied that he had pressured people, and the Washington Post later reported that the board of the supposedly semi-autonomous CPB had tried to keep its distance from White House "orders," especially as the Watergate manipulations came to light.

Some analysts nevertheless saw this dispute as a warning that there should be a fresh look at the entire question of how public broadcasting is to be financed and kept insulated from political manipulation. Former Johnson press secretary Bill Moyers (whose TV program had been among those dropped) argued that "What is emerging is not public television, but government television shaped by politically-conscious appointees whose desire to avoid controversy could turn CPB into the Corporation for Public Blandness."

The White House in the Nixon years thus has put itself squarely into the area of television news and other broadcasting issues. The government-dictated "newsspeak" of George Orwell's 1984 was not necessarily upon us. But OTP well might be another bureaucracy in the making—this time in the sensitive area of the mass media, with the power of the presidency behind it. It seems clear that both the President and the news media need to be watchful that this office does not become just the voice of special interests, and that no one turns it into a 1984ish voice for deciding what is proper news of government and how it should be reported.

THE NIXON ADMINISTRATION AND JOURNALISTS' PROTECTION OF SOURCES

Courts seeking information from journalists is not a new phenomenon; in fact, 1974 will mark the centennial of the first such recorded case in America.

Through the 99 years since, prosecutors, politicians and others have found that new people's probings and confidences that they glean are a tempting source of legal material. In many cases reporters, seeing themselves as good citizens, have supplied such information. But at other times journalists have claimed a right—indeed, a responsibility—not to reveal the source of sensitive social and political stories, basing their stand on the First Amendment's guarantee of the press's independence.

In June, 1972, the Supreme Court sent reporters looking elsewhere for protection. In deciding the cases of New York Times reporter Earl Caldwell and two other newsmen who would not yield such material to grand juries, the high court ruled 5 to 4 that the First Amendment does not give journalists the right to refuse to disclose sources or other data under subpoena by grand juries.

But the Supreme Court also suggested that Congress should be the final arbiter of this issue. Some senators and congressmen moved quickly for legislation to help journalists to 'shield' their sources just as lawyers, doctors and clergy can protect confidences, triggering a lively debate in Congress and in the profession.

The Nixon Administration argued that reporters are covered adequately by means short of federal legislation. It has opposed bills that would provide absolute protection for news people and their sources, and has been lukewarm about those that would provide protection with certain exceptions. Asst. Atty. Gen. Roger C. Cramton told a House subcommittee in September, 1972, that absolute privilege would "unduly subordinate to the interests of the press the vital national interest in vigorous law enforcement." Cramton said that the Justice Department was not opposed, in principal at least, to some protection for news sources, but felt that legislation was "unnecessary" because guidelines for subpoenaeing that the attorney general had set up in 1970 would provide sufficient protection.

Some news people think that Nixon Administration law officials could have done more initially to discourage the subpoenaeing of reporters before the practice mushroomed. Courts, lawyers and legislators all over the country suddenly have been calling upon reporters to provide eyewitness reports, notes and tapes in various cases—sometimes because the material could not be obtained elsewhere, but often on legal fishing expeditions. CBS and NBC and stations they owned, for example, were served 122 times by groups and individuals in one recent two-and-a-half year period, according to congressional testimony. In time, four reporters from various news organizations—Peter Bridge, William Farr, Harry Thornton and Los Angeles Times Washington bureau chief John Lawrence—have gone to jail rather than disclose their sources, though none is still there at this writing.

The Nixon Administration guidelines, issued in August, 1970, by the then Atty. Gen. John Mitchell said that a journalist could be compelled to testify in a federal case if he is thought to have information that could prove or disprove someone's guilt—information that cannot be obtained from any other source. Federal officials first must negotiate with the journalist, and the attorney general himself must finally approve a subpoena.

Thirteen subpoenas have been issued by the Justice Department since August, 1970, but only two of the 13 were the result of a complete rebuff to the Administration by the organization being subpoenaed. In the past, news organizations often readily provided the government with information. Now, they still may be willing to cooperate, but request the formality of a subpoena so that they do not seem to be just a surveillance arm of the government. For instance, the government had to issue a subpoena to obtain film footage of the assassination attempts on Alabama Governor George Wallace.

Some witnesses before Congress have been less sanguine than the Administration about the guidelines. Attorneys general change, critics feel, and so, too, does their interpretation of the standards. The rules could be withdrawn at any time and, even if they remain in force, they still provide for subpoenas that "do not conform to these guidelines" in emergencies, and "other unusual situations."

In February of this year. Assistant Attorney General Cramton quoted to congressmen a letter from President Nixon to Robert Fichenberg, chairman of the Freedom of Information Committee of the American Society of Newspaper Editors (ASNE), in which the President said he would reconsider the Administration's position on shield laws " 'should it ever become apparent that the federal guidelines fail to maintain a proper balance between the newsmen's privileges and his responsibilities of citizenship . . ' "

In Congress, much debate centered on whether a federal law should give absolute protection to news people and their sources or include certain qualifiers, and whether the federal legislation should apply also to the states.

One of the principal bills, introduced by Sen. Alan Cranston (D-Calif.), calls for such blanket coverage. Early in 1973, Sen. Sam J. Ervin Jr. (D-N.C.), who probably will decide the fate of such legislation in the Senate, surprised many people by introducing a bill that also would apply to the states, and make an exception to protection of information if the reporters has actually witnessed, or has personal knowledge of, a crime. A bill introduced by Rep. Charles Whalen Jr. (R-Ohio) would apply at the federal level only, and would not protect the reporter if he has information about a crime that is not available elsewhere in a case involving a "compelling and overriding national interest."

The Administration opposes federal legislation that would apply to the states. White House press secretary Ronald Ziegler and communications director Herbert Klein told media groups this year that, beyond the attorney general's guidelines, they would leave the matter of protection to state shield laws. Some prominent news executives also have expressed doubts about the wisdom of federal legislation in this area. At a meeting of the ASNE in May there was strong sentiment that a federal law had its own perils and might create new complications in newsgathering.

Twenty-two states have shield laws and more are considering them. But some reporters contend that these laws cannot provide adequate, uniform protection. They point out that the main battle over the protection of sources is being fought out in state and local courts, and that reporters have lost out even in states where there already are shield laws because the courts have interpreted such laws narrowly.

Two national correspondents, Fred Graham of CBS and Jack Landau of Newhouse News Service—both members of the Washington-based Reporters' Committee for Freedom of the Press—have argued that anything short of an all-encompassing, federal-state law would not be adequate from a reporter's point of view.

Writing in Columbia Journalism Review, they note that the federal government is only one among many legal jurisdictions that include the 50 states and some 3,000 county court districts. They feel this means that, whatever the political difficulties, "it is absolutely essential that . . . the shield law protect every news reporter in the nation—not just those who, by happenstance, are involved in federal proceedings."

Many reporters have come to feel that protection will only be secured when media owners and publishers themselves join in court suits. Most news organizations have provided legal counsel for subpoenaed reporters. But some news people think that court fights would carry much greater weight if a few publishers and station owners forced the issue. They were encouraged by the fact that New York Times publisher Arthur Ochs Sulzberger recently claimed ownership of the notes and records of an employee in one case, thus making himself liable to court action.

Graham and Landau feel that ownership also could be helpful in the fight in Congress. They point to publisher's successful lobbying for the Newspaper Preservation Act that gave newspapers special privileges when it came to anti-trust action. "The conclusion is quite simple: what the media owners want from Congress, the media owners get from Congress," they say. "The only question that remains is whether the First Amendment is of as much concern to the media owners as was exemption from the anti-trust laws."

For the reporters, then, there still is my assurance that they will secure from Congress or state legislatures the protection of infomation that the courts, from the Supreme Court on down, have denied them and their sources in most cases. Nor has the Nixon Administration given any indication to-date that it would help forestall further jailings of news people.

Thus, until there is legislation, or a breakthrough in the courts, the individual reporter apparently will have to learn to live with the inability to assure sources that he can protect them from public exposure which might prove embarrassing or hazardous for them. More reporters, and possibly editors and publishers, may go to jail, and the uncertainty will persist as government, the media and public wrestle with the question: How free should a free press be?

CHAPTER 10

POLITICIANS, REPORTERS AND BACKGROUNDERS

India and Pakistan were at war late in 1971 and the United States wanted the Soviet Union to help exert a restraining influence—so much so, that an unidentified source told a pool of five reporters in a 'background' briefing that President Nixon might be forced to reconsider plans for a 1972 summit talk in Moscow if the Russians did not act.

The comment was made, of course, by Nixon's national security affairs adviser Henry Kissinger. He was immediately named as such in a story by The Washington Post, a paper which had not had anyone in the reporters' pool. The Post said it had "learned Kissinger's identity independently," and it did not feel bound by the Washington rule that reporters present at background briefings cannot identify sources or quote them by name.

In this case, Kissinger's identity was meant

to be kept even more hush-hush since the announcement was made on a "deep background" (or Lindley Rule, for its originator Ernest K. Lindley) basis, meaning no attribution of any kind—with reporters left to resort to such spongy allusions as "it was learned" or "it was understood" in reference to the source of the story.

In the end, India and Pakistan went their ways, the President went to Moscow and the backgrounders went on. But for a time this peculiar media event had made a few headlines. Administration officials, the Post and the press corps became embroiled in one of those Washington insiders' debates which, while it might have left the general public yawning, nevertheless did have some bearing on the depth of news about policymaking that the press reports.

Backgrounders came into vogue early in World War II as a device for officials to brief reporters without being identified. In the 30 years since, they have become a Washington institution as little bands of correspondents also sprang up to invite officials in for not-for-attribution tete-a-tetes over bacon and eggs or London broil in private dining room of posh Washington hotels and restaurants.

The guest usually is a public figure who has been much in the news at that moment. Sometimes, a group will extend a standing invitation to a well-known official to which he responds when he has something he wants to talk about. Or it may be that a hitherto press-shy official decides to surface at least part way. But the backgrounders initiated by reporters are far outnumbered by the official background briefings, such as the Kissinger session, which are called by the White House and other government agencies to tell news people about new legislation, discuss an important address or send messages to Moscow.

The question at stake is whether the information derived from the backgrounder is worth the compromises it entails on the part of the press. After the Post-Kissinger incident, officials of the White House Correspondents Assn. said that backgrounders are "a fact of life" in Washington, and contended that government officials often will "speak more frankly and provide more information on a 'background' basis than when they are to be identified."

If officials did, indeed, uncover the policymaking process to reporters, and both parties jawed about the problems of getting more information out to the public, backgrounders well might be educational for both politicians and journalists. But such deeper exchanges are hardly the rule. Few officials trust themselves enough in a group of news people to really let down their hair, and few correspondents can forsake the quest for a 'good' story that will make headlines overnight. It is very hard to resist turning that confidence from a nameless "high source" into an 'inside' story that may impress your editor, if not necessarily a public that's not in on the game. This is the case even though correspondents know that these 'confidences' soon may become a matter of public record—or ought to be.

On the other hand, all correspondents find that in the normal course of their reporting, there are instances where they feel bound to publish important government information and news tips, and must mask their sources to protect them. "Without the use of secrets, there could be no adequate diplomatic, military and political reporting of the kind (Americans) take for granted," says Max Frankel, Sunday editor of the New York Times. "A lot of skulduggery in government and in Congress would never come to light if everything had to be attributed," says Julius Frandsen, retired Washington bureau chief for United Press International.

Backgrounders also have been used to alert correspondents to news that they might have overlooked, soothe the fears of the public about certain events, or to explain government policy which, for legitimate reasons, had only been discussed by officials in vague terms.

But many news people feel that officials more and more have violated the spirit of backgrounders by using them simply to ladle out self-serving information and official versions of the news, or float trial balloons to test public sentiment for proposed actions. The Time's Frankel feels that "backgrounders sometimes serve the public interest, but most usually serve only the government's interest." And Washington Post executive editor Ben Bradlee argues that "in backgrounders, a reporter doesn't get his story, he gets *their* story, the press gets used, and the public gets short-changed."

The potential harm done by the loose news practices that can grow up around the backgrounder was never so dramatically evident as with the information being fed to the press corps about Vietnam. "The Vietnam War was initiated, escalated and waged to the orchestration of official backgrounders," says Erwin Knoll, Washington editor of The Progressive. Richard Harwood, national editor of the Post, has spelled out the process:

". . . Various factions in the (Johnson) Administration were deliberately and consciously leaking top-secret plans and recommendations in order to build support for further U.S. action (in Vietnam) . . . and it seems, in retrospect, that both the Administration and the newspapers were deluding themselves in assuming that leaks were an adequate substitute for the kind of awakening and education that arises from vigorous public debate by officials."

The Kissinger incident seems to be another prime example of how the press was used, in this case to float a trial balloon on a policy—the threatened freeze toward Moscow—that never materialized.

Caught by surprise by the Post's blowing of Kissinger's cover, the White House sniffed that the action was an "unacceptable" breach of press protocol. Post editor Bradlee shot back that the Post would set up guidelines to get the paper out of the business of "distributing" the official government line without identification. But the Post also drew the wrath of some colleagues for breaching agreed-upon rules. One of the five Kissinger pool reporters, David Kraslow, who was then Washington bureau chief for the Los Angeles Times, called it "cheap journalism," and said that everyone travelling with the President was bound by the pool arrangement. Officers of the White House Correspondents Assn. agreed.

Did the public airing reduce the trafficking in 'background' goods? Kissingers briefings now are on the record. Reporters feel that some departments also were more straightforward than they had been, at least right after the affair. The White House even said that President Nixon wouldn't mind scrapping backgrounders completely, if the press wanted that.

But press critic James Aronson feels the arrangement won't change because news people don't want to alter "an extremely comfortable private relationship between government and the press." Former Johnson press secretary Bill Moyers says that backgrounders permit the press and government "to sleep together, even procreate, without having to accept the responsibility for the offspring." And members of the press corps have been "consenting adults" in the practice, says Moyers.

Some correspondents think that the only way to end the ambiguities surrounding backgrounders is for people to boycott them and force all information on the record. But that is not easily done. Even the new policies instituted by the Post and the Times after the Kissinger incident, while restrictive, do not totally exclude attendance at backgrounders or the use of unnamed sources. On the other hand, Alan Otten, bureau chief for The Wall Street Journal, suggests that there may be another way to dispel many of the problems over unattributed information:

"An administration that reveals most of its discussions and actions as it goes along obviously will have fewer secrets to worry about leaking out later, and government officials, lawmakers and the press would be far readier to accept its judgment on the need to keep other matters in confidence."

CHAPTER 11

CONCLUSIONS AND RECOMMENDATIONS BY THE PROFESSIONAL RELATIONS COMMITTEE OF THE NATIONAL PRESS CLUB

The following statement of conclusions and recommendations was approved by the Professional Relations Committee of the National Press Club on June 12, 1973:

It is a coincidence that work on this study paralleled in time the gradual unfolding of the Watergate scandals; the study had broader, independent origins. Yet, those scandals serve unexpectedly, and with dramatic intensity, to focus the diverse issues in the Nixon Administration's relationship with the press.

The Watergate scandals grew and flourished in an unhealthy atmosphere of secrecy, official lies, and attempted manipulation of newspapers, radio and television. Moreover, only an administration so insulated from the press and so contemptuous of its reporting function could have ignored the press's disclosures of scandal over the last year and attempted the complex cover-up which is now breaking down.

The Professional Relations Committee of the National Press Club on the basis of the facts set forth in this study, which are corroborated by our own daily experience as journalists, concludes that President Nixon has not only fallen short of his publicly-stated goal of achieving an "open administration," but has actually moved in the opposite direction. The Nixon Administration is the most "closed" administration in recent decades.

We find evidence of numerous and persistent attempts by the Administration to restrict the flow of legitimate public information necessary to the effective functioning of a responsible government in a self-governing society.

At the highest level, President Nixon has failed to hold regular and frequent press conferences, and has thereby deprived the press of the only forum in which it can question the President, and deprived the public of vital access to presidential thinking on public issues. By holding fewer news conferences in the last four years than any of his predecessors in the previous 36 years, Mr. Nixon has seriously weakened a well-established and essential American institution. To renew a regular and continuing dialogue with the public, we recommend that the President hold once-a-week press conferences announced in advance.

The White House press secretary has been reduced to a totally-programed spokesman without independent authority or comprehensive background knowledge of Administration policies. Rather than opening a window to the White House, the press secretary closes doors. Information about public business is supplied on a selective, self-serving basis. Legitimate questions about public affairs are not answered on a day-to-day basis; even worse, such questions are often not seriously considered.

Ronald Ziegler as White House press secretary, particularly during the Watergate disclosures of the past year, has misled the public and affronted the professional standards of the Washington press corps.

We believe there is need for a better public understanding concerning the function of a White House press secretary, or any other

government information officer. They hold public offices paid for by public funds. The only justification for such an office is to improve the flow of information from the government to the public. There is no need, for example, for a White House press secretary in the name of "improved coordination" to control the access of working reporters to responsible Administration officials. Such contacts ought to be on a person-to-person basis. Officials entrusted with the conduct of important government business can be expected to be mature enough to manage their own relations with the press without arbitrary outside control. Ideally, the White House press secretary would intervene in these relations only to open up access for reporters with officials who proved unresponsive to press queries. If the post of White House press secretary is to serve a function for the press and public, it should be occupied by an individual—not necessarily with news experience—but of stature and broad background.

The Office of the Director of Communications has operated as a propaganda ministry. There is no place in our society for this kind of operation.

We commend the Administration for adopting a policy of on-the-record news conferences for Henry Kissinger, the President's national security adviser. As against that gain, however, we have to set the fact that Administration officials seriously abused the Washington institution of the "backgrounder" which, notwithstanding its inherent difficulties, has served a useful purpose. If abuses have been less frequent in the last two years, that is because the number of backgrounders has dwindled.

Despite Administration claims to the contrary, we conclude that the cause of freedom of information—public access to government reports and records—made no net progress in the first Nixon term, and was sometimes actively hindered. Many federal agencies dodged the spirit and intent of the Freedom of Information Act.

We note specific dangers in the Nixon Administration's aggressive attitude toward public and commercial television. It has sought to influence the news, commentary and documentary programs of public broadcasting stations. We strongly recommend that the institutional structure of public broadcasting be strengthened and its financing arranged in ways that will guarantee that the content of its programs is completely and unquestionably insulated from direct control by the White House or Congress.

The Office of Telecommunications Policy has raised the specter of government censorship of commercial television more seriously than at any time in history. The Administration appears to want a role in deciding what news should be reported about its own activities and how it should be reported. Nothing could be further from the spirit of the First Amendment to the Constitution.

Threats to the freedom of the press in the last four years have come from the courts as well as from the Administration, but in several cases the Administration has been behind these threats. Four reporters have gone to jail for protecting sources and the prospect is that more will go in the future, perhaps joined by editors and publishers. Although this issue spans Congress and the courts as well as the executive branch, it has to be noted that the record of the Justice Department under the Nixon Administration has been particularly hostile to adequate legal protection for newsmen in the practice of their profession.

In this context, the nation's press is not wholly without blame for the unfavorable drift of public policy. We deplore the failure of many publishers, network officials, radio and television station owners, and editorial page editors to protect vigorously the Administration's incursions into press rights, the concealment of information, and the narrowing of news channels.

In summary, we conclude that the Nixon Administration has engaged in an unprecedented, governmentwide effort to control, restrict and conceal information to which the public is entitled, and has conducted for its own political purposes a concerted campaign to discredit the press. The Administration appears unwilling to accept the traditional role of an independent press in a free society. It is to be hoped that this Administration attitude will change, but we see no strong likelihood of such change. We urge the nation's press to muster all of the resources at its command to resist any and all forms of intimidation and control, and to assert its legal rights and the proud traditions of its profession.

TESTIMONY BY SENATOR HELMS ON URGENT NEED FOR FUEL IN HARVESTING TOBACCO

Mr. HELMS. Mr. President, earlier today I testified before the Subcommittee on Agricultural Research and General Legislation, chaired by the distinguished Senator from Alabama (Mr. ALLEN). Both Senator ALLEN and I are members of that subcommittee of the Agriculture and Forestry Committee.

The purpose of the subcommittee hearings this week is to explore the acute fuel shortage in some sections of the country, particularly in terms of how farmers are being affected adversely.

Our No. 1 concern at the moment in North Carolina, Mr. President, is our tobacco crop which is now just a few weeks away from being brought in. Without sufficient fuel to harvest and cure this crop, the economic situation in my State could be disastrous. But it is a national problem also, Mr. President, because of the important role tobacco plays in our export and balance-of-payments picture.

Mr. President, I ask unanimous consent that the text of my testimony today be printed in the RECORD.

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

TESTIMONY BY SENATOR HELMS

Mr. Chairman, members of the subcommittee, ten or fifteen days from now the tobacco crop in North Carolina will be ready for harvesting. It will be a bumper crop, because the acreage allotment was expanded by 10 percent this year. Yet many of our farmers do not have the gasoline and diesel fuel needed to operate the tractors and pickups to bring in the crop. And when the crop is brought in, many of these same farmers are going to be short the No. 2 fuel oil and propane gas necessary to cure the tobacco.

Unlike some other crops, tobacco is not a crop that can wait for curing. A matter of a day or two can be critical, and will determine whether the farmer gets a fair price, a low price, or none at all at the auction.

I don't have to tell this Committee that tobacco is the No. 1 agricultural crop in North Carolina. North Carolina's reputation for fine tobacco began even before this country was founded as a nation. The name of North Carolina and the names of her cities are identified with tobacco all over the world.

Nor do I have to tell this Committee that tobacco is essentially a crop of the small family farm. The average acreage allotment is about 3 acres. Yet it is a labor-intensive crop that requires every able-bodied person on the farm to pitch in where needed. Despite the small allotments, tobacco remains the chief economic mainstay of the little farmer and his family.

This is not one of your giant agribusiness crops produced by vast machinery and absentee owners reaping large benefits. When the tobacco crop is hit, it hits the small fellow struggling to hold on to his land.

I had a call just yesterday from Mr. Hap Collier, of Collier-Rose Fuels, Inc., in Whiteville, North Carolina. I cite it because it is typical of what is happening. Mr. Collier reports that in the next 90 days he needs 216,000 gallons of fuel oil for tobacco barns, 428,400 gallons of kerosene for tobacco curing, 253,400 gallons of gasoline for farm tractors and pickups, and 151,500 gallons of diesel fuel.

Mr. Collier supplies very few gasoline stations; most of his business is direct with farms and producers. He has 1600 customers who will not get the above mentioned quantities of fuel, because he has none.

What has been happening to Collier-Rose has been happening to many of our dealers. Mr. Collier was a branded dealer selling Arco products. Yet Arco, for the most part, has pulled out of eastern North Carolina. Mr. Collier then was able to get supplies from Gulf; but now Gulf has refused to supply him.

Indeed, the situation in North Carolina has been aggravated by the fact that all of the so-called independent suppliers, representing 24.53 percent of the gasoline market in North Carolina, has pulled out in whole or in part. Overall, this alone amounts to about ten to fifteen percent of our supplies.

Murphy, for example, has cut back 75 percent. Crown Central has cut back 75 percent. Tenneco has cut back 33 percent, Texas City has cut back 50 percent, and is under a court order prohibiting further attempted cutbacks. Arco has cut back close to 90 percent, and BP is out entirely.

On top of this, we must add the shortages among the majors, and the increase in the tobacco allotment, resulting in a situation of critical magnitude.

Mr. Chairman, I have with me the North Carolina share of the market report for gasoline for April, 1972 which clearly shows the dependence of North Carolina on the independents in the period just before the shortages began.

Mr. Chairman, I would now like to focus on the tobacco curing problem in our State and its importance to our hard-working farmers.

We have 71 counties that produce flue-cured tobacco in North Carolina. There are 114,954 farms that raise tobacco, and between 60 and 70 thousand farm families involved in tobacco production. We have 200,000 seasonable laborers involved in tobacco manufacturing, marketing, and processing with a gross salary of approximately $572 million.

The allotted acreage in 1973 was 431,000 acres. This breaks down into 181,711 allocated acres in 1973 of type 11 flue-cured tobacco, 198,570 allocated acres in 1973 of type 12, and 50,678 allocated acres in 1973 of type 13.

Mr. Chairman, I have some small maps of North Carolina which illustrate the allocated acreage of tobacco for 1972 and 1973 and clearly demonstrate that tobacco growing is concentrated in the eastern and border counties of the State. It is precisely in these rural areas that there is the most difficulty in getting adequate supplies.

Mr. Chairman, there are approximately 120,000 tobacco barns in our State. About 60 percent of these use propane for fuel, and about 40 percent use fuel oil or kerosene. There is no practical way to convert from one type of fuel to another. Nor would it do much good, since all types of fuel are short.

I have been in contact with the North Carolina Liquified Petroleum Gas Association, Inc., on the shortage situation in propane. The Executive Secretary of the Association, Mrs. Bobbie O'Neal, wrote to me as fol-

lows: "In summary, please be advised that as of this date, the State of North Carolina is short 50,000,000 gallons of propane to cure our 1973 agriculture products (tobacco, grain, soybeans, peanuts, potatoes, poultry and livestock farms)."

I asked Mrs. O'Neal to survey her members on the situation, and this was the result of the survey completed three weeks ago:

67 dealers reported that they had a propane gas contract, and 26 said no.

39 said that they had enough propane gas on contract to carry them through the tobacco season, and 33 said no.

32 said they had an adeqaute supply of propane to carry them through 1973, and 41 said no.

1,640 customers had already been cut off.

Mr. Chairman, these figures represent a stocking situation, and the tobacco curing season has not even begun yet.

Mr. Chairman, the propane situation is getting worse. Reportedly cutting back in propane supplies to the North Carolina market are Shell, American, Cities Service, Mobil, Phillips Petroleum, Sun Oil, Texaco Petro-Oil, Union Petroleum, Union Texas Petroleum, Wanda Petroleum, and Warren Petroleum. Only Exxon is reported holding relatively firm.

I have been concentrating on tobacco in this report, it certainly is not the only crop in our State that requires fuel for drying or curing. It is however, the major crop, and the crisis is upon us now. I, therefore, make the strongest recommendation to this Committee that the Oil Policy Committee include tobacco in with other agricultural crops in making top priority allotments in the distribution of supplies in the voluntary allocation program. The shortages which we are now experiencing are due to the dislocation of the market and the supply and demand curve created by the lack of a national energy policy. Uncertainty over government intervention and restrictive economic controls have put a tight squeeze on the supplies available to consumers.

It is easy to make industry the whipping boy. But the fact is that the demand curve has gone up spectacularly, while the industry has been struggling along under outmoded restrictive government policies of ten and twenty years ago. These policies, like most government regulations, have been too inflexible to meet consumer demand or to foresee the needs of the economy.

In the interests of the consumer—and in that term I include the individual citizen, the industrialist, and the farmer—these rigid policies will have to be changed. In propane, for example, the market has increased by 11.2 percent in 1972 over 1971 alone. That's an amazing one-year jump from 456.7 million barrels to 573.3 million barrels. Yet at the same time, the price ceilings invoked on propane have discouraged refiners from increasing their production.

In the long run, the free market price is the best allocator of scarce supplies. I strongly recommend that the ceiling price be removed from LP-gas. This is certainly only one factor in shortages, but it is a significant disincentive.

Nevertheless, it is better to have a dependable supply available, even at a higher price, than no supply at all. We must face the fact that energy is going to cost us more in the years ahead.

There are other long term steps that can also be taken. Environmental restrictions ought to be eased to lessen the pressure on the market for clean-burning fuels. Tax incentives for new exploration and development are desperately needed if consumers are to have adequate supplies. But these considerations, I believe, are beyond the immediate concerns of these hearings. In the short run, it is of the utmost importance to North Carolina to have tobacco included in the high priority allocation formula for agriculture products set by the Oil Policy Committee.

TEST BAN

Mr. KENNEDY. Mr. President, today, the Senate Foreign Relations Committee approved Senate Resolution 67, urging the President to take a new initiative to achieve a permanent halt to all nuclear testing.

I introduced this resolution on February 20 of this year with strong support from bipartisan list of Senators.

Today, the major sponsors of this resolution, which represents an amalgam of resolutions which I and Senators HART and MATHIAS introduced last year, issued a statement following the committee action. I ask unanimous consent that this statement be printed in the RECORD.

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

STATEMENT BY SENATORS EDWARD M. KENNEDY, PHILIP A. HART, CHARLES MCC. MATHIAS, JR., EDMUND MUSKIE, HUBERT H. HUMPHREY, AND CLIFFORD P. CASE ON SENATE FOREIGN RELATIONS COMMITTEE APPROVAL OF TEST BAN RESOLUTION

We are pleased that the Senate Foreign Relations Committee today has voted 14 to 1 to favorably report Senate Resolution 67 calling for an immediate and permanent end to all nuclear testing.

This resolution which Senator Kennedy introduced with Senators Hart, Mathias, Muskie, Humphrey and Case now has 33 Senate co-sponsors.

Ten years ago this week, President Kennedy announced a similar suspension of nuclear testing in a speech at American University and concluded the Partial Test Ban Treaty with the USSR less than two months later.

With the pending arrival of Soviet General Secretary Brezhnev, we urge the President to act now on the resolution reported by the committee by proposing to Mr. Brezhnev that both nations immediately suspend all further underground testing and undertake new negotiations for a permanent comprehensive test ban treaty.

A mutual end to nuclear testing would symbolize more forcefully than any other single action the determination by the major powers to clamp a lid on the arms race. A year ago, SALT I was concluded, placing the first ceiling on the quantitative arms race. A CTB would be the first major qualitative restriction, one which both complements and reinforces the SALT agreement itself.

The resolution sets forth the history of efforts to halt the spread of nuclear weapons including the adoption of the non-proliferation treaty of 1968. Adoption of Comprehensive Test Ban Treaty by the major powers would be the single most important element in reinforcing the Non-Proliferation of Nuclear Weapons Treaty and reducing the chance of the spread of nuclear weaponry to other nations.

The resolution does not tie our hands in any way as to the kind of proposal that should be put forward at Geneva, but it does affirm Senate support for a new initiative to be taken. New technology in the field of verification makes it feasible and desirable for a new proposal to be set forth.

The resolution urges, first, that the President propose a suspension of underground testing to the Soviet Union, a suspension which would remain in effect only so long as the Soviet Union respects it. Second, it proposes that a new proposal be set forth to the Soviet Union and other nations for a permanent treaty to ban all nuclear tests.

The U.S. has not made a new proposal to achieve a Test Ban during the last decade. During this period of ten years, our ability to detect Soviet underground tests have improved immensely, the negotiating climate has changed dramatically, and our arsenal has grown immensely.

Now is the time for the unfinished business of arms control to be completed. The test ban is a test case as to the degree of commitment of the major nuclear powers to turn the energies of man away from the weapons of mass destruction.

LIEUTENANT PELOSI AND THE HONOR CODE

Mr. JAVITS. Mr. President, last Wednesday one of my constituents, Lt. James J. Pelosi of West Hempstead, L.I., graduated from the U.S. Military Academy at West Point. Like thousands of other young men who graduate from our service academies every year, he entered the Academy with high ideals and a deep commitment to serve and defend the American people.

Lieutenant Pelosi retains those ideals and that commitment despite his having undergone a personal ordeal which severely challenged his courage and his determination to finish his course and become an officer.

For more than a year and a half, he was subjected to an extraordinary form of punishment, rooted in the long traditions of West Point—the "Silence."

Despite the fact that a finding by the Honor Board that he had taken too long to complete an examination was reversed by the Superintendent of the Academy, Lieutenant Pelosi was nevertheless virtually isolated from his fellow cadets.

Mr. President, I extend my congratulations to Lieutenant Pelosi, I commend his extraordinary perseverance and the great strength of character which enabled him to survive the impact of so severe a punishment. He is a great credit to the Army and to the Academy.

An article in the New York Times of June 7, and an editorial in the Washington Post of June 10, entitled "Honor Comes in a Code—And in a Man," chronicle the case of Lieutenant Pelosi. I ask unanimous consent that the text of these materials be printed in the RECORD.

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

[From the New York Times, June 7, 1973]

SILENT AGONY ENDS FOR CADET AT POINT

(By Linda Greenhouse)

WEST POINT, N.Y., June 6.—James J. Pelosi was graduated from the United States Military Academy here today, more than a year and a half after he was officially "silenced" by his fellow cadets.

Beginning in November, 1971, Cadet Pelosi, who received his commission today as a second lieutenant in the Army, had roomed alone and eaten by himself at a 10-man table in the cadet mess hall. Almost none of the 3,800 other cadets talked to him except on official business, in class, or to deliver a message.

A 44-member Honor Committee, senior cadets elected by their companies, had found Cadet Pelosi guilty of completing an answer on a quiz after the examiner had given the

order to stop writing. Although he denied the charge and produced witnesses on his behalf and although the conviction was reversed, the Silence was imposed by his fellow cadets.

When his name was called to step up and receive his diploma today, Lieutenant Pelosi, who was 452d in a class of 939, expected that his classmates might boo him as silenced cadets have been booed in the past. But only a brief moment of silence greeted his name, and there were welcoming handshakes when he made his way back to his seat in Michie Stadium.

"It was just as if I were a person after all this time," he said.

In the last few months before graduation, the rigid observance of the Silence had all but broken down, at least among cadets who had been Lieutenant Pelosi's friends before the Silence began.

Standing with his family on the field after the ceremony, Lieutenant Pelosi exchanged warm congratulations with members of his class, and there were no visible traces of the ostracism that had marked the last third of his career here. According to some of the other cadets, many of his classmates had come to respect Lieutenant Pelosi for his determination to stay at the Academy and graduate.

In the first few months after the silence began, Lieutenant Pelosi, a 21-year-old native of West Hempstead, L.I., lost 26 pounds, found his mail destroyed and his possessions vandalized, and saw his cadet peer rating drop from among the highest in his 100-man company to 979th, lowest in his entire class.

AN UNWRITTEN PROVISO

A member of the Cadet Honor Committee himself, Lieutenant Pelosi was accused of violating the honor code at the beginning of his junior year. In his attempt to maintain his innocence, he found himself caught in an aspect of the honor system that is unique to West Point among the nation's service academies, little known to the public at large, yet almost as old as the honor code itself.

The "Silence," a total form of social ostracism, is defined in an official Army memorandum as "a traditional and unwritten proviso of the Honor System designed to deal with a cadet found guilty of an honor violation, but who does not elect to resign and cannot be discharged because of lack of sufficient legal proof."

The Silence is rarely imposed, because most cadets faced with the prospect chose to resign. Perhaps the best known victim of the system was Benjamin O. Davis Jr., who was silenced during all his four years at West Point, 1932 to 1936, because he is black. He went on to become a lieutenant general in the Air Force.

Under the Cadet Honor Code—"A cadet will not lie, cheat or steal or tolerate those who do"—the charge against Cadet Pelosi was construed as cheating by the Honor Committee.

Cadet Pelosi refused to take the usual course of resigning from the Academy and appealed his case to a board of officers. "When you're right, you have to prove yourself," he said the other day in an interview at the Bear Mountain Inn.

It was a decision that changed the young man's life. "I'd do it over again," he said. "I'd hate to have seen some guy silenced who might have given in to it and quit."

COMMAND INFLUENCE

An officer board was convened, but halfway through its hearing Cadet Pelosi's military lawyer, Capt. David Hayes, moved to have the case dismissed. He learned that the Honor Committee, before it made its decision, had seen a note from a high-ranking officer urging the members to "expedite" the case because it was a clearcut honor violation.

Lieut. Gen. William A. Knowlton, the West Point superintendent, ordered the case dismissed for "command influence" and ordered Cadet Pelosi returned to the Corps of Cadets in good standing.

In response, the Honor Committee decided to impose the Silence, a step that was supported by a referendum of the corps.

Lieut. Col. Patrick Dionne, public information officer for the Military Academy asked yesterday to supply details of the case, said that under the pressure of preparing for graduation, no one on the staff would have time to look up the records.

By his own account and the accounts of cadets who know him, Cadet Pelosi endured the Silence for almost 19 months with an almost stoic calm, turning back cat-calls with ironic humor, ignoring occasional rocks and ice cubes thrown his way, confiding his thoughts only to the journal he recorded in a green looseleaf book in the few free minutes before 6:15 breakfast each morning.

A KIND OF GAME

At times, he said he felt compelled to make a kind of game out of his experience. During one vacation this year, he drove some of his high school friends to West Point. Dressed in civilian clothes, he stopped random plebes and asked them if they had ever heard of "a guy named Pelosi," and then watched his friends' reactions as the first-year cadets described what a "terrible" person he was.

Cadet Pelosi agreed to talk about his experience during the four-hour interview a few days before graduation. But he had mixed feelings about telling his story, not because he feared reprisals, he said, but because "I don't want to wreck this place."

"I put in four years here and it means something to me," he asserted. "I don't want people to look at me like a martyr. I'm happy with myself. There's nothing I regret."

He had finally decided to share his experience, he said, because "if people know, it might help to implement some change."

"Maybe people around here can start examining their own consciences instead of always watching everyone else's," he said. "I have the greatest respect for my classmates who abide by the rules and regulations, but no respect at all for someone like the Honor Committee who can't admit they made a mistake.

They have placed themselves above the law, and no one has the right to do that. If I'm such a heinous criminal who deserves such suffering, then why has the Academy allowed me to stay here as a thorn in their side for all this time? There is wrongdoing here and it can't all be mine.

"I've told myself I didn't care. I changed myself to suit the circumstances. That's how I beat them. I read a lot. I went to the gym. I found friends among the civilians here, the waiters in the mess hall, the M.P.'s. No matter what anyone did, I never let it get to me. But if I thought I could make a difference, then maybe I would care."

PAYING A PRICE

But each time Cadet Pelosi repeated that he had "never let it bother me," he sounded less convinced that he had been quite so untouched. There is evidence that he paid a price for his rigid self-control. For one thing, there was the rapid weight loss, down to 132 pounds on an already spare 5-foot-11-inch frame. He has gained back only about 10 of the 26 pounds he lost.

And there was the good friend, the one who cried the night Cadet Pelosi was convicted, but who waited six months after the Silence began to find his friend and ask how he was getting along.

"Yes, I guess that bothered me," Cadet Pelosi said. "That's what bothered me the most—no one has ever asked me what it was like. I never expected anyone's sympathy. But at least I expected some concern for my health and welfare, after they isolate a guy and torment a guy."

"Sometimes now I feel like two people," he added after a moment. "The one that it didn't get to and the one it got to."

A STARK RECORD

His diary entries provide a stark, almost emotionless record of his daily life:

"Friday, 26 November: I returned to my room after class in the afternoon and found a letter from Richard C. ripped up and placed on my desk . . . I believe it is a Federal offense to destroy a person's mail."

"Friday, 10 December: I inspected my gym locker as part of my preparation for the next day's inspection. All my articles of clothing had been thrown in the shower, soaked and then dragged around the floor of the latrine."

"5–7 May: Ring Weekend for the class of 1973. On Saturday, 6 May I received a telephone call in the F–1 orderly room. The unidentified caller said, 'Pelosi, we're going to get your ring if we have to cut off your finger to get it.' On Monday evening, 8 May I received another phone call. The caller said, 'Pelosi, you wear that ring and you're dead.' "

Cadet Pelosi did accept his West Point class ring, but he has never worn it—not out of fear, he said, but because the idea of wearing it no longer appealed to him.

A DRAMATIC IMPROVEMENT

Cadet Pelosi's life improved dramatically when the Commandant of Cadets ordered him transferred back to Company B–4, his original company, after 14 months of nearly total silence in Company F–1.

His civilian lawyer, Edwin Cooperman, a former member of the judge advocate general's office here, had threatened West Point with a lawsuit on the ground that the transfer out of his original company had been an official act furthering the Silence, which Academy officials have always maintained is an unofficial and spontaneous action of social sanction by the cadets.

With his transfer back to B–4, where he had many friends, the Silence became, by common admission here, almost unenforceable. In the last few months, as many as half his classmates have talked with him openly, visited his room, even sat with him.

Last week, Cadet Pelosi received a letter from his class president informing him that "because of the situation in which you find yourself" he would not be allowed to attend last night's graduation banquet and dance, the social highlight of June Week.

Cadet Pelosi protested and, somewhat to his surprise, the class officers reversed themselves and gave him an invitation. But at the last moment he decided to dine out with his parents instead.

"I just had it in my mind that I might be stuck off in a corner somewhere and it meant more to me to be with my family," he said.

[From the Washington Post, June 10, 1973]

HONOR COMES IN A CODE—AND IN A MAN

A freshly minted lieutenant in the United States Army—he graduated from West Point on Wednesday, June 6—has already proved himself to be an extraordinary man. Perhaps he may also have taught the United States Military Academy something about honor as well. The man's name is James P. Pelosi and since November 1971, he has endured an exquisite form of punishment, called "the Silence." Normally, that means that a man lives alone, eats alone and is not spoken to by other cadets except in class or on official business or for the delivery of messages. According to one old West Point graduate, that's how it's supposed to be. The silenced cadet is neither to be hindered nor helped—it's as if he has ceased to be a cadet. The assumption apparently is that no ordinary man, confronted by the Silence, would wish to continue on at West Point.

In Lt. Pelosi's case, however, that's not how

it worked out. It started with an allegation that he had cheated. He was brought before the cadet Honor Committee, of which he had been a member, where the case was made against him. He denied the charges and produced witnesses who supported his denials. He was found guilty and appealed to a board of officers, but while the appeal was proceeding, his military defense lawyer learned that before the Committee had made its decision, it had seen a note from a high ranking officer, urging the Committee to expedite the case because it "was a clear-cut honor violation." The lawyer moved to dismiss the case and the superintendent of the academy did dismiss it on the ground of "command influence."

One would think that that would have been that. But no. The honor committee responded to the dismissal by imposing the Silence, which is described in an Army memorandum as "a traditional and unwritten proviso of the honor system designed to deal with a cadet found guilty of an honor violation, but who does not elect to resign and cannot be discharged because of lack of sufficient legal proof." Usually a cadet will resign. But not cadet Pelosi. Believing himself to be right and the honor committee to be wrong, he decided to tough it out—as did Benjamin O. Davis, Jr., who was silenced during his whole 4-year stay at the academy during the thirties, simply because he was black.

The question in Lt. Pelosi's case is, where's the honor in all of this? West Point graduates will tell you that it is splendid to be able to go through four years without ever having to question a man's word. We don't doubt that, nor do we doubt that instilling this pure discipline in future officers has toughened and strengthened the Army over the years. But the system clearly broke down in cadet Pelosi's case. The essence of the dismissal of the case against him was that the deliberations of the honor committee had been tainted by "command influence." If that means anything, it means that the Honor Committee could not be sure that it had not been influenced by the note from the high ranking officer, that cadet Pelosi had not received a fair trial and that no one could determine whether the Honor Committee's verdict was just, or for that matter, honorable. Nevertheless, the Honor Committee, meted out its punishment anyway.

Despite the unwritten rule that the silenced man is not to be hindered, cadet Pelosi was harassed. His mail was sometimes destroyed, his gym clothing was taken from his locker, soaked in the shower and dragged over the latrine floor and he received anonymous phone calls telling him that if he ever put on his class ring, it would be cut off his finger. So much for honorable adherence to unwritten rules. But Lt. Pelosi endured, though during part of his ordeal, he lost 26 pounds.

Now he has graduated and is an officer. According to a news account, he was reluctant to talk about his ordeal because, as he put it, "I don't want to wreck this place. . . I put in four years here and it means something to me." There, it seems to us, is true honor. The Pelosi experience—his grit, and his decency in the face of an antediluvian and dehumanizing "punishment" are things that the Academy, the members of the committee who passed judgment on him and the high ranking officer who denied him due process can ponder. Hopefully, they may come to conclude that all honor is not to be found in blind and repressive adherence to anything so simple as an Honor Code.

THE PLIGHT OF THE CARABANCHEL 10

Mr. KENNEDY. Mr. President, in 1970, a number of Basques were sentenced to death in the now famous Burgos trial. It was only after vigorous protest by millions of people throughout the world that their sentences were commuted.

Today we must again raise our voices in protest over the jailing of a group of Spanish labor leaders. According to news reports, these men, known as the Carabanchel 10, are being held without bail and are to be tried by the Spanish Government for "illegal association." Each of these workers face sentences from 12 to 20 years for the crime of seeking to form free labor unions with the right to strike.

Freedom of association and the organization of trade unions has been an essential factor in improving the rights and dignity of the working class throughout the West's industrial history. Workers must have the right to protect and promote their own interests without fear of oppression or prison sentences.

The plight of the Carabanchel 10 confirms the fact that Spain has yet to achieve a society where the free exercise of fundamental rights is protected by the institutions of government.

Mr. President, I ask unanimous consent that the articles reporting on this situation which were published in the Nation on April 16, 1973, and in the Village Voice on May 3, 1973, be printed in the RECORD.

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

[From the Nation, Apr. 16, 1973]

THE CARABANCHEL TEN

A group of Spanish metalworkers, but including also a lawyer, a taxi driver and a priest-construction worker, are shortly to be tried by the Franco dictatorship for illegal union activities. The plight of these men, known as the Carabanchel Ten, is quite unrecognized in the United States; we are allied with so many dictatorships that a crackdown on labor in one or another is hardly news. The Canadians are more aware: there is in Toronto a Canadian Committee for a Democratic Spain.

After thirty-four years of Generalissimo Franco's rule, Spain is on the way to becoming a tinderbox, and Franco and his henchmen know it. Their response is a pretense of liberalization that fools no one. Franco, now 80, declared in his year-end address that his National Movement "will accentuate the participation of all Spaniards in political work, opening increasingly wide channels for the incorporation of those who feel concern for public affairs." Everyone understands that this participation must be within the limits decreed by the dictatorship.

The crime of the Carabanchel Ten is that they seek to form free labor unions, with the right to strike. Spain has labor unions—vertical syndicates imposed on Spanish workers by the Falange at the end of the 1936–39 civil war. These syndicates are about as effective for worker protection as the all-inclusive Nazi labor organization, presided over by Gauleiter Robert Ley. As in Nazi Germany and Fascist Italy, the basis of the Spanish dictatorship is the exploitation of the underlying population. Hence the ban on trade unions and the right to strike. When workers strike in defiance of the law, they speedily find themselves in jail.

Constant repression is required by the alliance of the big industrialists with the regime; it is not confined to labor, but extends to housewives, dissident priests and the whole working and lower-middle class. The police are everywhere. When the price of a subway ride was increased from 3 to 4 pesetas, Madrid policemen and the even tougher Guardia Civil were stationed at the ticket windows and on the platforms; each time the price of bread goes up, they are in front of the bakeries. When students seek to meet on their campuses, the police move in to break up the gatherings.

Henry Giniger described the general situation adequately in the March 18th *New York Times*, but he made no reference to the ten labor leaders in jail since last June for "illegal association," and facing sentences ranging from twelve to twenty years, mostly the latter. Trade unions have protested in Britain, France, West Germany, the Soviet Union, Italy, Poland, Venezuela, Bulgaria, India and Canada, but in the United States only President Leonard Woodcock of the UAW has spoken out. Most Americans are oblivious of repression in Spain, largely because neither the printed nor the electronic press is interested in reporting it. Apparently the sentiment is that as long as Franco allows us to keep our military bases in Spain (at a stiff rental) all's well in the world of the Falange.

[From The Village Voice, May 3, 1973]

THEY STAND ACCUSED OF TRYING TO UNIONIZE

(By Anna Mayo)

If no country is quite an island unto itself, still Spain has formidable historical pretensions to that topography. It is a counter-reformation country, much given to periodic expulsions of the better half of its population (the Jews in 1492, the Republicans in 1939) and the definition of crimes non-existent in other parts of the Western world, such as the organization of trade unions, an activity acceptable in the West for as long as anyone cares to remember.

In Franco's Spain, individuals suspected of such activity routinely draw sentences of 12 to 20 years. Of the thousands of recent and current prosecutions of workers and labor lawyers suspected of trade unionism, none is likely to elicit more international attention than that of the Carabanchel 10, defendants accused of being the leaders of not merely a local but a national movement. The police report denouncing them argues that, given their home addresses in all four corners of the peninsula, they must have come together in the town of Pozuelo as a coordinating committee for the whole country.

The 10 will be defended by conservative Catholic lawyers, some of whom are thought to be weary of the "imperio hacia Dios" (from the Falangist slogan: "the empire that keeps its sights set on God"). The defense will have to dispel the government's contention that the accused advocate a violent overthrow of the state; for instance, it will have to establish that metalworker Marcelino Camacho is associated with a leftist faction which favors gradual democratization, and that another principal, Francisco Garcia, is not a Communist at all, seeing that he is one of the country's many worker-priests. This clarification of the 10 defendants' political beliefs, plus the refutation of the police report by establishing that they were in Pozuelo on business other than organization—all this will have to be accomplished in a trial which will run at most two hours.

The presence of conservative counsel reflects Franco's growing middle-class opposition, now embracing lawyers, doctors, architects, and other intellectuals, many of whom face prison sentences for their actions in defense of the working class. In addition a wing of the Church up to the hierarchial level of bishop is also protesting the excesses of Francoism.

The mood of the working class is one of defiance; it provides Spain with more strikes than any other European country. In 1970 25,000 workers struck the SEAT automobile industry plant in Barcelona for two months until they were fired upon by the police.

Spain has 17 categories of police for all seasons, those who stand at the subway turnstiles when the fare goes up, those who stand at the bakeries to defend the rising price of bread, those who search for clandestine literature in the backrooms of bookstores, and, of special interest to Americans, those who, since 1953, have guarded the security of the three Yankee bases in Spain.

For these properties the United States pays some $400 million in annual rent. Further, private American capital is a cornerstone of the thriving Spanish economy. Optimistic Spaniards sometimes speculate that American employers will grow impatient with Franco's so-called vertical unions, state syndicates after the Hitler-Mussolini models wherein the officers are government functionaries and employers share equal membership with workers—an Orwellian equality. Liberals foresee that employers have had enough of negotiating wages and salaries only to find that the arrangements are not agreeable to workers. Even the attractions of 12-hour days and a minimum of $3 a day may not compensate management for the inconvenience of strikes.

Against this background the 10 prisoners wait, bailless in Carabanchel, for a trial on a date to be announced only at the last moment. Outside the country trade union protests are already taking place in the United States, England, France, West German, Italy, Venezuela, India, Canada, and several Communist countries. National and international legal associations will send observers to the trial. With this kind of continuing and mounting pressure, Franco may even stop asking for whom the bell tolls and grant the workers of Spain the minimal 20th century rights to organize and bargan collectively.

SCHOOLBUS SAFETY

Mr. BEALL. Mr. President, on January 29, I joined in cosponsoring a resolution that would authorize the President to proclaim a "School Bus Safety Week." This measure, Senate Joint Resolution 43, is presently pending in the Judiciary Committee's Subcommittee on Federal Charters, Holidays, and Celebrations.

I am concerned, Mr. President, by the lack of interest and lack of effort that has been made in the direction of schoolbus safety. A great deal of attention is focused on the structural design of automobiles, and some advocates even proposed legislation requiring the use of seat belts. Remarkably enough, schoolbuses which transport millions of young Americans to and from school every day are, by and large, ill equipped to provide maximum safety features for their passengers. This point was recently brought out to me in a letter I received from a number of students who attend McCoole Elementary School in Allegany County, Md. In a very brief letter, these first-grade constituents of mine have expressed very vividly their concern about their safety as they ride their schoolbus to and from school each day. As a result of this letter, I have written to the Department of Transportation, and to other appropriate officials; and I intend to bring the replies I receive to the attention of my colleagues.

Mr. President, I ask unanimous consent that the text of the letter I received from Mrs. Patricia Correll's first-grade class at McCoole Elementary School in McCoole, Md., be printed in the RECORD.

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

DEAR SENATOR BEALL: In school we are studying about safety in the car and on the school bus. We are worried because we don't have safety belts on our school bus. Our bus driver has a seat belt, but we dont. Can you help us.

Sincerely,

Grade One, McCoole School. Michael Dailey, William Yocum, Crystal Grogg, Timothy Ahern, Christophe Doolan, Wayne Cook, Kelly Gryeen, William Cook, Joyce Kile, George Kimble, Tina Feaster, Jeffrey Kasmier, Lester Cunningham, Herbert Llewellyn, Dawn VanPelt, Carrie Broadwater, Wendy Merrill, Karen Cavey, Sonia Purdy, and April Fike.

THE DANGER OF UNREGULATED STRIP MINING

Mr. MANSFIELD. Mr. President, one segment of our population which has a greater stake in the development of coal deposits in eastern Montana, are the Northern Cheyenne and Crow Indians who have vast acreage of land with significant coal deposits. Strip mining for coal on these lands can have a great influence and the future of the Indian culture and the people now living in the area. Proper development of these deposits must be taken into consideration and I am delighted to report that the Indians themselves are beginning to realize what could happen through unregulated strip mining.

The Washington Post for June 11, contains an interesting feature story on the Indians testing the U.S. policies on coal development. I ask unanimous consent that this story be printed in the RECORD.

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

INDIAN, COAL FIGHT TESTS U.S. POLICIES

(By George C. Wilson)

LAME DEER, MONT.—The political leaders on this Northern Cheyenne Reservation close to the Custer battlefield are preparing for another Last Stand—this time to save what land they have left from being stripmined for coal on the white man's terms.

The stakes could hardly be higher.

For the Northern Cheyennes, the stakes include "tribal survival," as some of the Indians here see it; millions—and maybe billions—of dollars, and the land Cheyenne forbears walked from Oklahoma to claim for their people.

For the Nixon administration, the contest is viewed as a highly visible test of its new Indian policy of "self-determination," with another Wounded Knee a possibility if things go wrong. It also affects the administration's master plan for finding new sources of energy and holds up for public evaluation its whole platform on safeguarding the natural environment.

The order of battle is different from when Gen. George Armstrong Custer lost to the Cheyennes and Sioux near here in the Little Big Horn disaster of 1876. For one thing, the white ranchers holding thousands of acres of land around the reservation are allied this time with Cheyennes against the coal companies. For another, the Cheyennes are not as united against the "intruders" as they were 97 years ago.

The "intruders" from the viewpoint of the Indians trying to mobilize the Cheyennes against them, are the coal companies and speculators who have discovered millions of tons of coal just under the surface of the reservation. They want to dig it out through strip mining.

Somewhat belatedly, the Tribal Council—the ruling body for the 3,000 Northern Cheyennes enrolled at the reservation—is trying to keep the coal from being mined as previously agreed to under existing leases.

The council in March asked Secretary of Interior Rogers C. B. Morton to cancel the contracts for looking for coal on the reservation and digging it out. The council argued that the Bureau of Indian Affairs superintendent at the reservation failed to follow required procedures in granting the permits and leases, including the failure to set forth rules for restoring the land after it is mined.

The Seattle law firm of Ziontz, Pirtle, Morisset and Ernstoff—specialists in Indian land law—has just been retained by the Northern Cheyenne tribe. The firm asked Secretary Morton to delay acting on the council resolution until it had time to study the whole case—a request that the Interior Department has granted.

How Morton ultimately rules will affect coal leases on other Indian reservations as well, including the coal-rich lands of the Crows adjacent to the Northern Cheyennes here.

The Indians' concern about what will happen to their land if it is strip-mined also is part of the larger national picture—the argument over whether it is environmentally safe and sound to rip up the often fragile prairies to get at the coal.

The controversy, in geographic and mineral dimensions, is much larger than the one over strip mining of Appalachia. This is because most of the nation's remaining coal within easy reach lies in the West, not the East.

The Library of Congress, in a report prepared this year for the Senate Interior Committee, noted that almost half of this western lode of "black gold" is in Montana, North Dakota and Wyoming—the new frontier for the strip miners.

With President Nixon urging a stepup in coal production to ease expected energy shortages, the coal rush in the West is on. So, again, the Cheyenne controversy represents in microcosm the tough choices which this rush presents to the people living on top of the land covering the coal.

Rep. John Melcher (D.-Mont.), whose congressional district includes the reservation and who has taken a leading role in controlling strip mining, said that on the Southwest flatlands of Black Mesa and Four Corners—the area where Arizona, New Mexico, Utah and Colorado meet—"they had development before they had protection" from strip mining.

The same thing must not happen in Montana and other western states where strip mining is just getting started, he said. "We must have protection before we have development," Melcher said. He added that the Indians' "sacred regard for land" and their conviction "it should be protected so it can be used by everybody" is "an attitude the rest of us are just swinging around to."

The Indians and their allies among the white ranchers trying to keep the land from being stripped are colliding with the Nixon administration master plan to develop the energy resources of the West.

Allen Rowland, the 47-year-old tribal chairman of the Northern Cheyennes, is the first to admit he is outgunned in this new fight.

The land involved—a country of prairie and roughed-rock parapets—looks refreshingly untrammeled, with seemingly endless sky and prairie. In an interview in his modest home off the red-dirt road running along Muddy Creek, Rowland said if it is left up to him, the land he loves will stay this way. He is against strip mining in any terms.

But he is not sure the whole tribe—perhaps not even the majority of it—stands with him.

So, the council resolution asking a cancellation of the coal leases and permits is only his first line of defense. Rowland knows he may lose to the Interior Department.

If he does, Rowland plans to set up a second defense line by taking the tribe's request to the courts. And if he loses there, too, the tribal chairman intends to impose the toughest rules anywhere as far as what the coal companies would have to do toward restoring the dug up land.

As he surveys the options, Rowland said he can feel the hunger of his fellow tribesman for a way out of their spiritual and economic depression on the impoverished reservation of 440,000 acres. He knows they are faced with a cruel choice.

"If I got everybody in the tribe a room and asked who is an environmentalist, who is for protecting our land, why everybody would raise their right hand. But when it came to voting by secret ballot who was for selling the coal, I'm not sure how it would go."

This is why Rowland is not galloping into the battle with the Interior Department and coal companies but advancing carefully—as he did during World War II as an Army rifleman before he was machinegunned in the left arm by the Japanese on the Pacific Island of Ie Shima.

"I don't know, I don't know," Rowland said soberly in pondering whether the majority of the tribe can long resist of the lure of money from coal. "So many here have had it hard for so long."

If he wins the first fight and gets the leases and permits cancelled, Rowland intends to let everyone 18 and over in the tribe vote on whether to renegotiate the leases to get more money or leave the land alone. If he loses all down the line, the chairman intends to let the tribe vote on whether to lease the uncommitted part of the reservation to the coal prospectors.

The voting will provide a dramatic test as Indians—this nation's first environmentalists—weigh ancient traditions against immediate needs.

Peabody Coal Co. of St. Louis is the only firm with leases to dig coal. Several other companies have permits to prospect for coal on the reservation which, in the managements' view, give them the right to mine any profitable deposits they find in the process.

Peabody, under the 16,000-acre lease the Cheyennes want cancelled, would pay the tribe 17½ cents for every ton of coal stripped out of the reservation. Rowland said this is a ridiculously low price, citing the $21 a ton Japanese are willing to pay for coal.

Even at 17½ cents a ton, though, the coal under the Northern Cheyenne reservation represents a big economic lift to the tribe which has many of its members at or below the poverty level.

The Indians here give figures ranging from 2 billion tons to 10 billion tons when asked how much coal lies near the surface of the reservation. A Peabody spokesman said it plans to mine 550 million tons over a period of 30 years, to feed two plants on or near the reservation that will convert coal to gas.

Even that 17½ cents a ton royalty for 2 billion tons of coal would work out to more than $116,000 for each of the 3,000 Indians—certainly tempting on this reservation of partially paved roads, few jobs and little hope for anything better.

"I had a meeting with the elder chiefs of the tribe," said Rowland, "and they all said there must be another way to help our people. I agreed. But then I asked them, 'What?' They told me, 'That's why we elected you.'"

Why, given the desperate needs of his tribe, is Rowland so dead set against strip mining?

"Because," he answered, "we would end up as a minority on our own reservation."

By that, he explained, he means that the workers coming into the area to man the coal gasification plants—2,000 of them for each plant, by Rowland's estimate—would outnumber the Indians on the reservation almost 3 to 1.

Rowland bases his estimate on the expectation that there will be four plants rather than two. He says he was told that by a coal company. W. G. Stockton, vice president for public relations at Peabody, said his firm knows of plans for only two, with 600 employees at each.

But other companies with exploration permits for the reservation might build other gasification plants.

Among those firms and the acres covered in their exploration permits are: Amax Coal Co. of Indianapolis, 55,398; Consolidation Coal Co. of Pittsburgh, 23,399; Chevron Oil Co. of California, 27,795; Bruce L. Ennis, 16,216; Meadow Lark Farms, Inc., a subsidiary of American Metal Climax of New York, 71,547 acres.

Also, Rowland said meetings he has had with Indians from areas already strip-mined—including Black Mesa and Four Corners—have convinced him there is no way to restore prairie land to a state approaching its original condition. The National Coal Association and Peabody voice an opposite view, that land can be reclaimed after being stripped.

The majority of the Tribal Council is supporting Rowland on at least his first line of defense, the effort to vacate the current leases. So are other members of the Cheyenne leadership.

"It scares me. The biggest problem would be the influx of people working at the gasification plants. We aren't ready for that," says James Dahle, 39, a rancher and chairman of the tribe's mineral committee which has drafted a tough reclamation bill in case strip mining takes place on the reservation.

"We're like a foreign nation. We have no jurisdiction over non-Indians. And who would take care of the schools, the hospitals and all your law? . . ."

"Some people say that we walked back 3,000 miles from Oklahoma to this country, and why should they dig it up?"

"We're not prepared for strip mining—especially not the influx of people. We have no planning to meet what can come with coal development," says Ted Risingsun, 46, chairman of the Busby school board and director of the bilingual program on the reservation to preserve the Cheyenne language and culture.

"What little progress we have made in our history would be reversed.

"Supposing we get a whole bunch of money, will it help us? I'm more afraid of pollution from gasification plants than what will happen to the land. Those plants mean air pollution, water pollution, the whole bit . . .

"Preservation of our culture depends on us. This is going to disrupt our entire way of life. Who is going to pay attention to the real basic essentials of life if we all of a sudden get some money?"

"Strip mining would completely destroy this country," says David C. Robinson Sr., president of the recently formed Northern Cheyenne Landowners Association. "Our fight is to get the resolution (vacating the coal permits and leases) through . . ."

Interviews with a cross section of Northern Cheyennes on the reservation produced evidence of the splits in the Indian ranks that Tribal Chairman Rowland worries about:

"It couldn't be any worse here than it is," said Ervin Small, 18, who makes $98.50 a week on the Indian Action Team where he is studying welding now but has no assurance of finding a job on the reservation.

"I think they should mine it," said Mary Miller, 15. But her companion, Anita Onebear, 14, took a contrary view: "You can have land-forever, but you can't have money that long."

"It would be the final destruction of our tribe" because of the influx of people that would come with the strip mining, said Ruby Sooktis, 25. She is a staffer on the Northern Cheyenne research group collecting and organizing information about the tribe as part of the effort to preserve its heritage.

"They should mine the coal because everybody else needs it," Raymond King, 21, asserted. "They aren't going to ruin the land.

"People would go on a big spending spree with the money. But alcoholics sell what they buy. So after everybody went broke again, we'd go back to normal. But most of my friends are against it because once coal does come in, Indians will be a minority."

The Jimtown bar just outside the reservation's boundaries—curious rules provide that no beer or liquor can be bought or consumed on the reservation itself—adds evidence for King's prediction about what would happen if coal money came suddenly to the Northern Cheyennes.

"Buy me some cigarettes," a young Indian male with a can of Olympia beer in his fist demanded of the white "colonial" entering the bar. "You have money, don't you?"

Encountering some resistance, the Indian offered to exchange his watch for a pack of cigarettes. Nothing, it appeared, had any lasting value to those among the Indians who saw no future for themselves. The moment at hand was everything.

"Sometimes," said the white girl tending the counter at the recreation hall on the reservation itself, "Indians will come in here and offer to pay $90 to anybody who will drive them to Billings to buy a $300 car. Or they will give away anything they have for a ride to Jimtown."

But some members of the tribe believe that selling the coal lying underneath the Northern Cheyenne reservation offers the best way out of the Jimtowns for young Indians. James King, 50, head of several federally funded youth projects on the reservation—including the National Youth Corps and Operation Main Stream—takes this view.

"There has to be a change," said King in an interview in the library he helped get for the reservation. The money from the coal, he argued, could be invested and the earnings spent for financing education for Northern Cheyennes. He said the tribe could keep strip mining from ruining the land "if it is careful."

Tribal Chairman Rowland said that change may indeed come, despite all his efforts to hold back the white man's idea of "progress." Whichever way the battle goes, Rowland said, he is not going back to the drinking-fighting-tumbleweed life he led before he got a sense of mission about his tribe.

His wife, in a voice mixing bitterness and humor, called to him from the kitchen of their home: "Yeah, you're going to die right here and they're going to give you a chunk of coal for a tombstone."

As Secretary Morton weighs the Northern Cheyenne request to cancel the leases and permits, he cannot help but worry about how the Indians will interpret it. The Northern Cheyenne leadership is portraying its request as a test of President Nixon's pledge of "self determination" for the Indian—with his Indian affairs message of July 8, 1970, the signal document.

However, as Bureau of Indian Affairs and coal companies point out, Rogers must be guided by the law—not by what he would like to do—governing contracts like the coal leases and permits. The self-determination statements which the Indian leaders refer to in discussing the Northern Cheyenne reso-

lution include these words from Mr. Nixon's 1970 message:

"The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions. . . .

"Self determination among the Indian people can and must be encouraged without the threat of eventual termination . . . This must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community.

"We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support."

ACCEPTANCE ADDRESS OF HON. GEORGE L. RUSSELL, JR., AS PRESIDENT OF THE BAR ASSOCIATION OF BALTIMORE CITY

Mr. MATHIAS. Mr. President, last Thursday night I had the honor of being present at the induction of the Honorable George L. Russell, Jr., as president of the Bar Association of Baltimore City. Judge Russell, challenged the bar to address itself, personally as well as professionally, to the grave problems faced by a society governed by laws. I ask unanimous consent that his remarks be printed in the RECORD. His analysis of the current opportunities for the legal profession should be read by all who have an interest in justice and a desire to pursue the principles of equal justice under law.

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

ACCEPTANCE ADDRESS OF HON. GEORGE L. RUSSELL, JR.

I am honored at the trust you have shown in me, by electing me the 95th President of the Bar Association of Baltimore, its first black one, and the fifth who also served as City Solicitor. There is no greater tribute a man can receive than recognition by his peers.

It is a challenge to follow in the footsteps of other City Solicitors such as Bernard Carter, John Poe, William Shepard Bryan, Jr. and Edgar Allen Poe—all of whom served as President of this Association; and of such great lawyers and distinguished men as William L. Marbury, Eli Frank, Michael J. Manley, (whom I succeeded on the Bench), R. Dorsey Watkins, Reuben Oppenheimer, Rignal W. Baldwin, Edwin J. Wolf, Charles Mindel, Judge Charles Harris, Bill Somerville, Leroy Preston, Harrison Roberston, Pete Moser and my immediate predecessor, Wilbur D. Preston.

They are indeed hard acts to follow.

I know that my best efforts are called for, and I am prepared to do all I can to justify membership and leadership in this association of true professionals.

I hope, however, that the Bar Association does not ever become an "exclusive" club, "exclusive" in the sense of detachment from or superiority to the critical issues of our time.

In fact, I hope to continue and expand our efforts in the lay community, and to become more integrated—if you'll excuse the expression—in the world around us.

I would like, if I may, to take a few moments to tell you why. Our age, it seems to me, may go down in history as the Age of the Gap.

There's the Generation Gap, the Communication Gap, the Education Gap, the Housing Gap.

Whichever aspect of society you choose to focus on, you will find some Gap, somewhere. I don't intend to be facetious, but I do think that one of these gaps is threatening our nation, its laws, its attitude toward the laws, its economic, political, and social systems, and its government.

That Gap, one that profoundly affects all the others and overrides them in importance, is The Dollar Gap.

It yawns wider all the time between the haves and have nots—in this country, and all over the world.

The poor are simply getting poorer, and the rich richer, faster than ever in history.

While the gap has always existed, in the past it was meekly accepted. Today, in our more sophisticated society, it is no longer acceptable.

That's the new element—and the explosive one. The poor are sufficiently informed by education and by mass media, constantly rubbing it in. They now are aware of what is happening and likewise know that it need not happen, that it *can* be changed, and *must* be changed.

The major revolutionary situation developing in my mind, is the key issue of our times.

The question we must ask is: what are we going to do about it? Face it, or ignore it as long as we can? Accept it, or fantasize it? Act voluntarily to change the status quo while we still retain that option, or blindly wait until we are jolted by burning cities and escalating violence, born of desperation?

Simply stated, the philosophical basis for the dollar gap—individual difference and superiority—is no longer valid. In past times the difference between the economically deprived person and the affluent ("serf" and "lord") was reflected in the difference between a hut and a castle—but not the difference today that is the intolerable one of that between a $2,000.00 and $200,000.00 annual income—with all the differences between deprivation and luxury which such income entails.

Not when each individual is fundamentally no more or less human than his neighbor.

Not when each is presumably born free and equal, with the same opportunity of sharing in the bounties of the richest nation that ever existed.

Not when each knows—despite all the rhetoric of equality—under the law—that in attaining and measuring success, prestige and the value of human life—we employ two sets of standards, two sets or rules of conduct, and two sets of laws—one for the rich and powerful, the other for the poor and weak.

Now let me make two things "perfectly clear," to borrow a phrase.

The first is: *I am not talking about blacks,* but about all the poor people in our land, white, brown, yellow and red. In fact, of forty million poor people in America, the majority are not black.

The second point is: I am not talking about Watergate, about upper-class immorality and criminality. The poor people find such power games fascinating but remote, like the unattainable high life style of a 1933 Hollywood film extravaganza, which made them drool with envy over the lavish corruption they could only dream about, while half starving. I am talking about what Supreme Court Justice Hugo Black referred to when he said "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."

Most of the lawlessness we see as lawyers, bears a direct relationship to the urban problems of poverty, unemployment, welfare, cost of living, miserable schools and blighted housing which inevitably result in broken families, drugs and violence.

In a materialistic society such as ours, preservation hinges on those who have a stake in it. In previous civilizations, those who derived nothing from this world fully believed they would get their just rewards in the next. Today, the poor feel that if they don't get it now, the loss is irretrievable. Moreover, we do not let them forget the luxuries and affluence they have failed to acquire. They are constantly tempted by their television screen with goods and services that must be possessed, and subtly for their inability to acquire them. They are verbally harrassed, degraded and unfairly characterized as costly, unproductive, inadequate and troublesome members of society who cannot cope. The hopeless frustrations that follow produce aggressive conduct and violent behavior. At that point, we call for law and order.

As lawyers, we must acknowledge that law and order are currently in serious jeopardy. In our parochial world of precedents, logical argument and respect for established rules, it is difficult to fathom that such civilized standards are completely alien to millions of Americans. The poor have borrowed from the establishment only one universally respected rule: Don't Get Caught. Anything goes that you can get away with. Better to be shrewd, selfish and rich than honest, unselfish and poor. That the meek shall inherit the earth is OK for Sunday morning, but for the rest of the week it is the powerful and ruthless. That, my colleagues, is the prevailing view.

Is it any wonder that in the midst of degrading poverty and cynicism, the most recognized law is that of the jungle?

I, for one, am extremely skeptical of current statistics tending to show that crime is decreasing. Law enforcement agencies underestimate the amount of crime, because their figures are based solely on crimes reported to police. The Eisenhower Commission, several years ago, indicated that violent crime, except murder, might be twice that stated by the FBI. Many citizens fail to report crimes because they either distrust the police or discount their ability to solve them. Some simply do not know how or where to report, or just don't care. Some fear reprisals. Whatever the reason, the crime rate has not decreased or stabilized. It has, in fact, alarmingly increased.

The murder rate has gone up over 25 percent in the past 4 years. Rape has risen by 29 percent, assault and burglary by 25 percent, robbery and larcency by 43 percent. I'm not talking just about the inner city, or even urban areas generally. I'm talking also about crime in the suburbs, which has been rising at a faster rate than crime in the cities: 27 percent overall as opposed to 21 percent.

In '70 and '71, crimes directed against property such as burglary, larceny and auto theft increased 24 percent in the suburbs as against only 10 percent in the cities. While the plight of city dwellers is more aggravated, with the widening of the poverty circle, the suburbanite has begun to experience the effect of violent crime.

Our concepts of law, and our free democratic government based on law, are merely several hundred years old. Viewed in the broad perspective of man's history on earth a few hundred years is not very long. Most of our past, and hence most of our instincts, especially in times of stress, cause us to strain against the double leash of law and freedom. Legal restraints and community mores are still unnatural for us; because man's nature was formed in times of anarchy and under various forms of serfdom.

The question confronting us is whether this precious, but very fragile and untested, system of law and freedom can survive here in our country, in a world that rejects the concept of individual liberty as unworkable.

The question is whether we truly believe in that inscription on the Department of

Justice Building in Washington: "Liberty is maintained in the security of justice."

And the question that you and I face, particularly as lawyers, is what we can and should do about trying to help save it.

The law has its roots in scholarship and the practice of law its roots in the practical application of that scholarship. Some of us have sought to think of scholarship and the scholarly approach to problem-solving as techniques reesrved for an elite. Scholarship must not, however, be clothed in isolationism. We must make its garments appropriate in size and conformation for every citizen in this community.

The application of scholarship has for us a rudimentary importance in that we must see ourselves as living in a huge classroom where teaching and learning are a part of the continuum of energy flow for our other basic living experiences. In concrete and practical terms this means we must accept the full responsibility for teaching, counseling and providing an optimum learning atmosphere for our colleagues at the bar as well as for citizens at large. To do this we must emerge from our lofty perches of self-adulation and become a part of the real stream of life in the streets and in the bush.

One scriptural reference indicates that "In the last days knowledge shall be increased and many shall run to and fro." The first part of this prophecy indicates a useful process and the latter the possibility of chaos. It is our responsbility to be in the foreground of the process which organizes and disseminates truth. *Truth is essential to the development of knowledge* since to have knowledge one must *believe* a transmitted truth.

Our disciplinary and educational committees should expand their functions to insure that the atmosphere within which this transition can occur is available to all our membership. Further, we should use our expertise and scholarship to promote emulation from the grass roots level of the community.

To these ends my term of administration is steadfastly dedicated.

We have many functioning committees that are "people-oriented"—and I want to see them strengthened and expanded.

I would like to see greater involvement in our Lawyer Referral Service.

I would like to see more of our members active in Legal Services to the Indigent.

I would like to see an upgraded priority for our Equal Justice Under the Law Committee.

I would like to see greater interest and participation on our Urban Law Committee, and our Committee on Prepaid Legal Services.

I believe it is our duty, as members of the bar and responsible citizens, to help protect, and to achieve, rights for the poor, including welfare recipients and indigents accused of crime, as well as the rights of consumers, minorities, women, and the incarcerated.

National figures show an average of one lawyer for every 637 of the population as a whole.

But they show only one black lawyer for every 23,000 blacks, in ten Southern states, and only one Chicano lawyer for every 9,000 Chicanos in states like California. Therefore, the WASP American of some means has at least ten times more opportunity of getting quality legal counsel than the minority poor American citizen who must face exhausting entanglements with the law over schooling, juvenile justice, public housing, welfare, crime and police indifference. As we all know, the poor have the most legal problems. Fast-talking salesmen take advantage of them. Landlords harass them. Husbands, wives and children get hooked on drugs. Teenagers get into trouble. Legal problems are constantly arising with social security, the military and governmental agencies.

The Constitution promises equal justice for all. I think it is our responsibility as lawyers to see that it is provided—WITH fee wherever possible, and, where not, without it. Free legal aid for those who can't afford it is absolutely essential to the preservation of our legal system.

With federally supported legal services being curtailed because of reduced budgets, however, there are many cases that can't just be left to Legal Aid. The elderly person dispossessed. The young boy mistakenly accused of committing a crime, facing jail confinement with hardened criminals. The old woman denied social security because she can't prove her age. Such calls for justice must never go unanswered.

Our "people-oriented" committees must also work to expand the law schools' capacity to teach the growing numbers who want to study law. By the most recent year's figures, almost 140,000 students applied to law schools that could handle only 28,000. It is predicted that law schools in 1980 will be turning away 200,000 applicants per year. Considering the desperate need for lawyers, it is our responsibility, as I see it, to work for increasing the supply to meet the demand.

Along with the need for greater participation *in* the community by The Bar Association, I see also the need for greater disclosure *to* the community of Bar Association activities.

I think the time is past for us to meet in strict privacy to discuss matters which concern our relationship with the total public except matters concerning grievances and ethics which should be public only *after* investigation, if appropriate.

I think we must start letting the press in on what we're doing in executive council and committee, as is done in other major cities—not with releases to the press afterwards, but with invitations *in advance* to the press. Why should we not open up our meetings? What can we hope to gain from keeping them closed? As matters stand now we seem to make the headlines only when a few alleged bad actors get top billing for some alleged questionable performances.

If the people don't know the facts, they propagate myths about us. They see us as the foundation of the Establishment, all right—and think of our ideas as solid concrete relics handed down from the 19th and 18th centuries.

Let's get some *good* publicity for a change, and a new image of the Bar Association as a constructive force in the community, and of the lawyer as a useful citizen.

It is time for us not only to confront issues, but also to let the public know it. We can be proud of the work we do, in our executive council, and in the committees—especially the ones I've mentioned.

It is time to get rid of the image of the lawyer as a slick operator in the same class with the used car salesman.

It is time, also, to sweep out the public's picture of us as fuddy-duddies living in the past. We must move into the present and the future. We must appear more frequently in the mainstream of public life instead of the backwaters. We are a part of the continuing process that is the Law.

These, then, are my plans for the Bar Association:

1. to exert all possible effort to see that everyone, regardless of rank, receives the full protection and support of the law;

2. to maintain our liberty in the security of justice;

3. to work toward expanding the capacity of our law schools;

4. to open up the activities of the Bar Association and thus improve our image.

In conclusion, I note that we are approaching the 200th birthday of our nation. We are the nation living under the world's oldest written Constitution and Bill of Rights. I would like to support the recommendation that, in celebration of the event, every American be given the opportunity to sign and ratify these historic documents—just as the Founding Fathers signed in 1776—and pledge, as they did, to defend them with their lives and sacred honor. I suggest that the campaign begin here—and now—and, Lord, let it begin with us!

COMMITTEE REPORT ON S. 1081, THE "FEDERAL LANDS RIGHT-OF-WAY ACT OF 1973"

Mr. JACKSON. Mr. President, yesterday the Interior and Insular Affairs Committee Report on S. 1081, the Federal Lands Right-of-Way Act of 1973 was filed with the Senate and ordered to be printed.

The purpose of this very important measure is to establish a comprehensive national policy and procedure for the granting of rights-of-way across the Federal lands for those transportation and transmission purposes which meet the requirements of the act.

Federal legislation on right-of-way authority is needed because the recent decision of the Circuit Court of Appeals for the District of Columbia on the proposed trans-Alaska oil pipeline has cast a cloud of uncertainty over the Secretary of the Interior's legal authority to grant rights-of-way for oil and gas pipelines, water lines, electrical transmission lines, communication facilities, roads, and other necessary transportation facilities across public and Federal lands.

The full reach and effect of the Circuit Court's decision in the case of the Wilderness Society et al. against Secretary Morton is not entirely known. It is clear, however, that many of the existing Federal rights-of-way statutes which have specific width limitations are no longer adequate. Rights-of-way granted in the past for many different purposes may now, in whole or in part, be illegal in view of the court's decision. In addition, the court's ruling means that with respect to proposals for large oil and gas pipelines, the Secretary and the heads of other Federal agencies with land management responsibilities do not now have the legal authority to issue rights-of-way of sufficient width to allow needed new transportation facilities to be developed.

This means that at a time when the Nation is experiencing critical shortages of gasoline, diesel, heating oil, and natural gas there is no Federal statute which will permit the issuance of right-of-way permits across Federal lands for large oil and gas pipelines. This is a situation which must be corrected.

Under S. 1081 the Secretary of the Interior and other agency heads would be granted the authority to issue rights-of-way for the proposed trans-Alaska pipeline as well as for other needed oil and gas pipelines which meet the requirements of the act.

Mr. President, I ask unanimous consent that a May 9, 1973, statement by the AFL–CIO executive council in support of S. 1081 and an early solution to the legal technicality which is holding up the grant of a right-of-way for the proposed trans-Alaska pipeline be printed in the RECORD.

Mr. President, I also ask unanimous

consent that the following provisions from S. 1081 and the committee report on this measure be printed in the RECORD:

First. Section 114 of S. 1081 and pages 25–28 of the committee report;

Second. Title II of S. 1081 and pages 18–25 of the committee report.

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

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON ALASKA PIPELINE

WASHINGTON, D.C.,
May 9, 1973.

It is tragic that while the United States is facing an energy crisis, including shortages of petroleum products, one of the largest reserves of petroleum—Alaska's North Slope—remains undeveloped.

At a time when the U.S. is forced to increasingly rely on oil imports—with resultant loss in American jobs, damage to this country's balance of trade and potential threat to national security—development of Alaskan oil reserves is blocked by outdated right-of-way requirements and environmental concerns, some real and some imagined.

The fastest, most economically feasible and most secure method of transporting Alaskan oil to the burgeoning American markets is by pipeline to Valdez and by tanker to West Coast ports.

Jobs for American workers would be generated not only in building the pipeline and related plant construction, but also in maintaining it and in manning the transshipment facility at Valdez. Approximately 33 new U.S.-flag tankers would be needed to carry the oil, thus stimulating employment in U.S. shipyards and for U.S. shipboard workers.

However, the key to transshipment is construction of the Alaskan pipeline, and construction of the pipeline depends on Congressional action to give the Secretary of the Interior legal authority to grant the right-of-way.

Congressional action is also necessary to legalize many oil and gas pipelines in all regions of the country which, as a result of a recent court decision, are technically illegal. Unless legal remedy is provided, these pipelines could be enjoined and the jobs of many workers endangered.

Senator Henry M. Jackson, chairman of the Senate Interior Committee, has sponsored legislation (S. 1081) that would solve the right-of-way program while providing very tough environmental safeguards and stringent liability requirements for damages caused by the pipeline. Additionally, the bill would insure that the Alaskan oil reserves are used in America's domestic markets. We urge immediate enactment of S. 1081 to eliminate a legal obstacle to construction of the Alaskan pipeline which we wholeheartedly favor.

Enactment of the Jackson bill would leave one hurdle to construction of the pipeline—a court challenge to the environmental impact study conducted by the U.S. Department of Interior in accordance with the National Environmental Policy Act. This question now properly reverts to the courts where a decision should be rendered without delay.

Various routes through Canada to the Midwest have been proposed as alternatives to the Alaskan pipeline. But this is not an "either . . . or" question—both an Alaskan and a Canadian route will be needed. But a Canadian route is considered by experts to be at least 10 years away from construction, and time is of the essence. We believe a study of a Canadian route has merit, because the resources in the Alaskan and Canadian Arctic will eventually require two or more pipelines.

Therefore, we support the provision in S. 1081 that establishes proper procedures for negotiations with the Canadian government leading to construction of a second, later route.

We recognize that full development of Alaskan oil reserves will not solve America's larger energy crisis. The future stability of this country's economy requires immediate measures to insure America's self-sufficiency in all forms of energy.

To meet this long-range need, we support S. 1283, introduced by Senator Jackson and 27 other Senators, that would mobilize the nation's scientific and technological resources for a 10-year, $20 billion crash program to develop alternative energy sources.

If America does not solve its immediate and long-range energy needs, this country will be forced to depend largely on foreign sources with political, economic and national security hazards.

Without sufficient energy resources America will not be able to meet its economic and social goals, but if the Congress acts now it can assure Americans both a better environment and a better life for everyone.

LIMITATIONS ON EXPORT OF NORTH SLOPE CRUDE

SEC. 114. (a) Any crude oil produced from the geographical area in which the President is authorized to establish special national defense withdrawals by section 10(b) of the Alaska Statehood Act (Act of July 7, 1958; 72 Stat. 339) shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements of the Export Administration Act of 1969 the President must make and publish an express finding that such exports are in the national interest and are in accord with the provisions of the Export Administration Act of 1969.

(b) Any violation of this section shall be subject to the penalty and enforcement provisions of sections 6 and 7 of the Export Admininstration Act of 1969.

2. EXPORTS OF ALASKAN OIL

The question of possible exports of crude oil produced on Alaska's North Slope has been raised repeatedly before this Committee and elsewhere in connection with consideration of alternative pipeline routes for that oil. Some have contended that, despite the national deficiency in crude oil supply, the oil companies with major reserve interests on the North Slope chose the Trans-Alaska alternative in order to be in a position to export a significant fraction of its through-put to Japan.

Despite strong denials by spokesmen for the companies and the National Administration, these allegations have not been *totally* implausible. Their most important foundation has been the possibility of a crude oil surplus on the West Coast. The throughput schedules announced for the Trans-Alaska pipeline in 1969 and 1970 considerably exceeded the anticipated domestic supply deficiency in P.A.D. District V (the West Coast) for several years after the pipeline's completion date. Notwithstanding this expected crude oil surplus on the West Coast, the owner companies indicated no clear plans for shipping Alaska oil to other United States markets.

With the prolonged delays in authorization of a Trans-Alaska pipeline right-of-way, and the repeated slippage of the expected completion date, however, projected West Coast oil demand in the early years of pipeline operation has greatly increased; at the same time, projected onshore production in California has declined. Current estimates by both the Interior Department and industry groups now indicate that demand in P.A.D. District V would substantially exceed domestic production in the District, even including North Slope production.

These recent projections from government and industry sources do not completely dismiss the possibility of crude oil surpluses on the West Coast after the pipeline is completed, however, because these projections assume that no major reserve additions will occur in the region. Areas in which there could be significant reserve additions include the Gulf of Alaska, Lower Cook Inlet and Santa Barbara Channel provinces, where major new lease sales are scheduled or are under active consideration.

Public suspicions that exports were to be a significant function for the Trans-Alaska pipeline have been rekindled from time to time by a number of circumstantial indications. Premier Sato suggested in a 1971 interview in Anchorage that Japan was looking forward to receiving crude oil by way of the pipeline; a consortium of Japanese companies obtained a part interest in some (as yet unproved) North Slope leases; and Phillips Petroleum Co. proposed to the Cabinet Task Force an Oil Import Control that barrel-for-barrel import quotas be granted to producers who exported crude oil from the United States.

The import-for-export proposal envisioned a crude oil excess in one part of the United States, presumably the West Coast, in the context of a general national deficiency, and was aimed at reducing transportation costs. Alaska crude oil could be sold in Japan, for example, offsetting Caribbean or Middle Eastern imports to the East Coast. Not only would the total tanker distance be less than an Alaska-East Coast route, but the shippers could reduce costs further by using tankers of foreign registry, rather than the domestic vessels required in the United States coastal trade. The importance of this proposal was probably exaggerated at the time, however. Phillips did not (and does not) control significant North Slope reserves. The proposal was not pressed nor endorsed by the companies that did have such reserves, and it was never seriously entertained by the Task Force.

Price relationships argued strongly in the past against the existence of plans to export Alaskan crude oil. Because of United States quota restrictions on oil imports, the prices of crude oil on the West Coast of the United States were until 1972 about $1.50 higher than landed costs of comparable Middle Eastern crudes in Japan, and U.S. Midwestern prices were on the order of two dollars higher. If these differentials continued, there would be little incentive to export Alaskan oil without the import-for-export allowance; it would clearly be worth while to transship any oil surplus in District V to the Gulf or East Coasts or even to the Midwest, rather than to export it.

Alternatives considered by the companies (but not actively prosecuted) for getting North Slope oil to Midwestern or Eastern U.S. markets included a tanker route around the Horn; a pipeline across Panama linking two tanker segments; reversing the direction of the Four Corners pipeline in order to carry crude oil from Southern California to Texas and thence to the Midwest; reversing the direction of the Transmountain Pipeline between Alberta and Puget Sound, then using the Interprovincial Pipeline to deliver crude oil to the Midwest; and construction of a new pipeline from Puget Sound to the Midwest along the Burlington Northern or Milwaukee Railroad right-of-way.

Although the prospect of significant crude oil surpluses on the West Coast of the United States in the late 1970's and early 1980's have diminished somewhat (but not completely), the rising world prices of oil and devaluation of the dollar have increased the comparative attractiveness of export markets. If crude oil prices in both markets (Japan and Southern California) are determined in the future by transportation costs from the Persian Gulf, so that landed prices per barrel in

Japan remain 25 to 50 cents lower than in California, this differential plus the 21-cent license fee announced in April 1973 (when the quota restrictions were removed) would seemingly more than offset the transportation cost advantage of shipping Alaska oil to Japan. But if the past two years' trends in exchange rates and world oil prices were to continue, North Slope oil would be marketable in Japan at considerably higher prices than on the West Coast of the United States by the time a Trans-Alaska pipeline could be on stream.

Three companies control more than 90 percent of the proved reserves of the Prudhoe Bay field, the largest in North America. This field, whose production will dominate West Coast oil supplies will be developed and produced as a single unit pursuant to state conservation law. The same companies will also own 82 percent of the Trans-Alaska pipeline, which is organized as an undivided interest joint venture. West Coast crude oil prices, the companies' profits and the state's revenues, and fuel prices for West Coast consumers, will all be affected powerfully by the amount of oil that the companies and the state permit to be delivered to District V markets. There is no assurance that all the oil which is "surplus" to the West Coast (and thereby "available for export") in the companies' eyes will be truly in excess from the standpoint of consumers, national security or national economic efficiency.

Because of uncertainty regarding the volume of District V crude oil production and the imponderable but almost surely enhanced commercial attractiveness of oil exports to Japan in future years, the Committee is of the view that even though it has had repeated assurances from the oil companies and the Administration that the former "have no intention" to export crude oil produced on Alaska's North Slope, there should nevertheless, be a statutory check upon such exports.

Section 114 of the Act expresses the Committee's concern that the companies that control the North Slope oil reserves might decide, on the basis of private commercial advantage, to make export sales or exchanges that result in net reduction of crude oil supplies available to the United States, or an increased dependence of the United States upon insecure foreign supplies.

The Committee did not believe that a categorical prohibition of oil exports would be wise, however. There might well be a situation in which export-for-import arrangements would be of benefit to both the United States and its trading partners. For example, the export to Japan of Alaskan crude oil surplus to west coast needs in exchange for Latin American or Eastern Hemisphere crude (which would otherwise have been transported to Japan) for the Northeast could, under some circumstances, be a better arrangement to bring the Northeast region additional crude oil supplies than either transcontinental pipelines or a tanker route around the Horn. A total prohibition might, in addition, encourage other countries to restrict exports to the United States, or cripple efforts to provide cooperation or sharing of restricted supplies among consuming countries.

Section 114 provides that any export arrangement be critically examined in light of the national interest to assure that a few pennies per barrel in private transportation expenses are not saved only at a great cost to the total security of national energy supplies. Issues that might be scrutinized in any such examination include whether any export at all is in the national interest, the duration of the export contract, the international consequences of diverting such exports to domestic use in an emergency, the availability of transport capacity to do so, and the net impact of any sale or exchange upon the United States balance of payments.

The provisions of the Section effectively place the burden upon an applicant for an export license to demonstrate that exports of North Slope crude oil are indeed in the national interest, and by requiring an express Presidential finding, compel an examination of that interest at the highest levels.

TITLE II—PIPELINES FOR ALASKA NORTH SLOPE OIL AND GAS

SEC. 201. (a) The Congress hereby finds—

(1) That facilitating the early delivery of the oil and gas available on Alaska's North Slope to domestic markets is in the national interest.

(2) That full development and delivery of Alaska's proved and potential oil and gas may best be attained by utilizing both maritime and overland transportation systems.

(3) That while a specific proposal for the transportation of Alaska's North Slope crude oil over a route that does not traverse any foreign country is at an advanced stage, and proposals for transportation of North Slope natural gas are currently being prepared, it is nevertheless in the long term national interest to initiate early negotiations with the Canadian Government to determine the feasibility of transporting North Slope crude oil on an overland route across Canadian territory.

(b) The Congress declares that it is the purpose of this title to authorize and request the President to initiate negotiations with the appropriate officials of the Government of Canada for the purposes set forth in sections 202 through 204.

SEC. 202. The President of the United States is authorized and requested, utilizing the services of the Secretary and the Secretary of State, to enter into negotiations with the appropriate officials of the Government of Canada to ascertain—

(a) the willingness of the Government of Canada to permit the construction of pipelines or other transportation systems across Canadian territory for the transport of natural gas and oil from Alaska's North Slope to markets in the United States;

(b) the need for intergovernmental understandings, agreements, or treaties to protect the interests of the Governments of Canada and the United States and any party or parties involved with the construction, operation, and maintenance of pipelines or other transportation systems for the transport of such natural gas or oil;

(c) the desirability of undertaking joint studies and investigations designed to insure protection of the environment, reduce legal and regulatory uncertainty, and insure that the respective energy requirements of the people of Canada and of the United States are adequately met; and

(d) the quantity of such oil and natural gas from the North Slope of Alaska for which the Government of Canada would guarantee transit.

SEC. 203. (a) If the President, on the basis of the negotiations authorized and requested in section 202, determines—

(1) that the Canadian Government is willing to entertain an application or applications leading to development of a transportation system for the movement of Alaska crude oil to markets in the United States; and

(2) that no technically competent and financially responsible private entity or entities have made and are actively pursuing such an application with the Canadian Government;

the President is authorized and requested to direct the appropriate Federal departments and agencies to initiate and undertake, or to collaborate with appropriate Canadian governmental agencies and responsible private entities in such studies, negotiations, engineering design, and consultations as are necessary to the preparation of an application to the Canadian Government and to enter into specific negotiations concerning the authorization of construction, certifcation, and regulation of such a transportation system.

SEC. 204. The Secretary shall, within one year of the effective date of this Act, report to the Committees on Interior and Insular Affairs of the House and Senate regarding the actions taken and progress achieved under this title, together with his recommendations for further action.

SEC. 205. This title shall not be construed to reflect a determination of the Congress regarding the relative merits of alternative transportation systems for North Slope crude oil or regarding the merits or legality of a grant by the Secretary of a right-of-way to construct a crude oil pipeline within Alaska from the vicinity of Prudhoe Bay to Valdez, nor to prohibit such a grant, nor to require that the Secretary in the execution of any of his statutory duties await the results of the negotiations with the Canadian Government provided for in this title before making such a grant.

SEC. 206. Such funds are hereby authorized to be appropriated as are necessary to implement the provisions of this title.

III. MAJOR ISSUES

1. ALTERNATIVE TRANSPORTATION ROUTES FOR ALASKA NORTH SLOPE PETROLEUM

In hearings before this Committee on S. 1081 and other pending bills no witness seriously proposed that it would be in the national interest to postpone the development of Alaska Arctic oil and gas indefinitely. The relative lack of controversy over this issue is in contrast to previous hearings before this and other committees, and reflects rapidly changing public perceptions of the nation's energy needs.

There is now an obvious and growing deficiency in domestic production of crude oil and natural gas, leading to a rapidly increasing dependence upon insecure Eastern Hemisphere imports. Moreover, the prices of imported oil make it no longer the bargain it appeared several years ago. With passage of the Clean Air Act, the low sulfur crude oil that can be produced from the Prudhoe Bay field has become significantly more valuable. Meanwhile, the risk of environmental damage from development of North Slope oil and its transportation to markets in the "Lower 48" has been substantially lessened as a result of the stricter environmental stipulations, redundant safety systems, contingency planning and better engineering imposed upon the proposed Trans-Alaska pipeline. Finally, until passage of the Alaska Native Claims Settlement Act, many citizens feared—with some justification—that unchecked commercial development might leave the nation without unspoiled scenery, outdoor recreation areas or wilderness in the vast and heretofore remote territory of Northern and Central Alaska. This apprehension was mitigated by the provisions in the native claims settlement act that at least 80 million acres of land in Alaska will be considered by the Congress for incorporation into new wilderness areas, wild and scenic rivers, national forests, national parks and national wildlife ranges.

Although there now seems to be a broad consensus that Alaska North Slope oil and gas should be developed rapidly, there is the route of its transportation. Serious consideration has been given in the past to the use of icebreaking oil tankers, submarine barges, railroads (a proposition recently revived and advocated by the Government of British Columbia), and even aircraft. The principal controversy today, however, is between advocates of (1) a 48-inch oil pipeline to be constructed from the North Slope to Valdez, Alaska, where the oil would be loaded onto tankers for transportation to ports on the west coast, and (2) a similar 48-inch pipeline overland through Canada to the vicinity of Edmonton, where it would join with exist-

ing pipelines (whose throughput capacity would have to be increased) in order to deliver the crude oil to the Midwestern United States and possibly to the Pacific Northwest as well.

The precise route of the so-called Trans-Alaska pipeline has been set out in the proposal of the Alyeska Pipeline Service Company to the Department of the Interior; the route of the so-called TransCanada's pipeline is far less certain. Routes considered to the Canadian border are (1) east along the Arctic Coast (through the Arctic National Wildlife Range), (2) south through the Brooks Range and east along the southern edge of that range toward the headwaters of the Porcupine River, and (3) south to the vicinity of Fairbanks, and then southeast up the Tanana River. Through Canada, a route up the Mackenzie River has been most often discussed, but an alternative generally following the Alaska Highway is also under consideration.

Advocates of the Trans-Alaska pipeline include the oil companies with reserves in the Prudhoe Bay field, industry and trade associations, the Alaska and National Administrations, and (apparently) most Alaskans. Those favoring the Canadian alternative include conservation organizations, commercial fisherman groups, state officials and Members of Congress from the Midwest, academicians and Canadian interests.

Apart from the right-of-way width limitation contained in Section 28 of the Mineral Leasing Act of 1920, the principal legal issue in the Federal courts has been whether or not the Interior Department, in evaluating the Alyeska right-of-way application, has given sufficient consideration to its environmental, economic and national security effects relative to an overland pipeline through Canada.

During the Committee's examination of right-of-way policy and proposals for transportation of North Slope oil, the main points of controversy regarding the competing transportation systems have been the following:

(1) *Environmental Impact*—Proponents of the Canadian pipeline contended that its environmetnal risks are less serious than those of the Trans-Atlantic route. They emphasize the latter's crossing of an active earthquake belt, the danger of marine pollution stemming from the ocean leg of the oil transportation system, and the possible reduction of environmental damage if oil and gas pipelines from the North Slope were confined to the common corridor rather than two or more routes. Advocates of the Alyeska proposal maintain that there are some aspects in which Trans-Canada oil pipeline would be more damaging or more hazardous to the environment, for example, the very length of the pipeline, the number of miles it would cross the zone of discontinuous permafrost, and the number of major river crossings.

(2) *Markets*—A second point of contention is whether or not the West Coast of the United States (PAD District V) will be able to absorb all the crude oil that would be shipped there upon completion of the Trans-Alaska pipeline. A surplus of crude oil on the West Coast of the United States would have to be marketed east of the Rockies with considerably greater transportation expense or else exported. Advocates of the Alyeska project now acknowledge that the pipeline would have created a crude oil surplus on the West Coast if it had been completed in 1972 or 1973 as originally anticipated. The present throughput schedule, however, is not expected to be sufficient to meet all of the District's petroleum demands unless major new reserves are discovered and developed offshore from California or in the Gulf of Alaska. Accordingly, the likelihood of major new oil discoveries in Southern Alaska or off the California coast and the desirability of exporting Alaska oil to other countries during an era of domestic shortages are both among the critical issues of controversy. (See "2. Exports of Alaskan Oil, below.)

The relative dependency of the two regions (the West Coast and the rest of the United States) upon imports from insecure sources is also a point at issue. The likelihood of additional production from new West Coast areas other than the North Slope is critical to this debate. Since Alaskan oil will at the margin be backing out Middle Eastern oil in either market, however, the principal effect of the choice of routes upon the total level of import dependency would be related to the time at which deliveries of North Slope oil began.

(3) *Economic Benefits*—Supporters of the Canadian pipeline proposal point to the fact that crude oil prices are higher in the upper Midwest than in California, and offer transportation cost calculations indicating that the "netback" value of North Slope oil would be greater if it were delivered to Chicago than to Los Angeles. They conclude, therefore, that the oil companies, the State of Alaska (in terms of the value of its royalties and production taxes) and the national economic welfare would all be served best by the Trans-Canada pipeline. The general assumptions of this argument were accepted by the Interior Department in its *Economic and Security Analysis of the Trans-Alaska Pipeline*. But the Interior Department pointed out, and the independent proponents of this argument acknowledge, that such economic benefits would be more or less wiped out by the discounting of future benefits, if a Trans-Canada pipeline would take two or more years longer to construct than a Trans-Alaska pipeline. Some supporters of the Trans-Alaska pipeline now dispute the earlier estimates both of the relative construction costs for the two pipelines (and thereby crude oil transportation costs) and the expected future price differentials between the Midwest and the West Coast; they assert that the netback value of the oil will actually be higher if it is delivered to western markets.

(4) *Ownership and Control*—Supporters of the Trans-Alaska pipeline point out that a pipeline across Canada would be regulated by the Canadian government, and that statements of Canadian officials indicate that a controlling equity in such a pipeline would have to be held by Canadian citizens. In addition, oil pipelines in Canada must generally be operated as common carriers; this requirement might result in the backing out of Alaskan oil to make room for oil produced in the vicinity of the pipeline in Canada. In addition, Canada's new controls over oil and gas exports raises the possibility that Alaskan oil destined for U.S. markets could in an emergency be diverted to Canadian customers, leaving the United States short of those supplies.

Advocates of the Canadian pipeline reply, however, that there are now no known Canadian reserves in the Arctic whose production could displace Alaskan oil carried by a Trans-Canada pipeline, and that the pipeline's throughput capacity could be increased by "looping" or other means well in advance of the appearance of any excess supply. They argue, moreover, that to the extent that the existence of a pipeline through Canada from Alaska to the Midwest does encourage the exploration and development of Canadian Arctic resources, any oil exported to the United States via that pipeline is a benefit to United States interests because it would displace oil from less secure foreign sources. The notion that Canada might divert oil of United States origin to her own uses is discounted, both because, in that instance, the United States could simply cease shipping the oil, and because the United States holds a comparable Canadian hostage; most of eastern Canada's own crude oil supply enters that country through pipelines across the State of Maine.

(5) *Other Issues*—Other issues raised in the debate have included the economic and scheduling relationship between alternative pipelines to carry Prudhoe Bay crude oil and the pipelines for the natural gas that will be produced in association with it; the problems of financing a longer pipeline; the respective impact of the two pipelines on the U.S. balance of payments; the relative physical security of the two routes; the employment, economic and inflationary effects of construction within Alaska; and the comparative impacts upon competition and market power.

The Committee on Interior and Insular Affairs did not regard any one of the foregoing arguments or any group of them as conclusive in favor of either of the competing pipeline proposals. In some areas of debate the preponderance of evidence or analysis seems to favor one side or another, but no area of controversy, however, is without ambiguous or speculative elements. Even the most expert assessments made today are likely to be modified by new information that will become available or by unforeseen changes in circumstances occurring before either pipeline could be completed. Much information can be obtained only in the course of construction.

Any assessment based solely upon the foregoing considerations regarding the relative merits of the two pipeline routes clearly must depend heavily upon subjective judgment. There is, however, one consideration in favor of the Trans-Alaska pipeline that the Committee found compelling. This consideration was the additional delay and uncertainty associated with the Trans-Canada pipeline. Regardless whether the 1969 decision of the owner companies in favor of an all-Alaska route was the wisest or the most consistent with the national interest at that time, and regardless whether the Administration's early commitment in favor of that route was made on the basis of adequate information and analysis, *the Committee determined that the Trans-Alaska pipeline is now clearly preferable, because it could be on stream two to six years earlier than a comparable overload pipeline across Canada.*

The necessary business organization, financial arrangements, engineering design and logistical preparations for the Alyeska project have been completed, so that construction could begin as soon as a right-of-way is granted, while *none* of these necessary preparations has been accomplished for a Trans-Canada route. These tasks are expected to take about two years, quite apart from the legal, political and administrative hurdles that must be crossed before construction of a Canadian pipeline would be authorized. In addition to the delays that could be normally anticipated at each of these steps, a number of them suggest the possibility of indefinite delays or even the project's ultimate impossibility.

In the absence of a complex treaty enabling construction and operation of an international pipeline as a unitary enterprise, the interested private parties would have to organize a separate consortium or business organization on each side of the border for financing, building and operating the two segments of the pipeline, and resolve the complicated relationships between them. Discussions would have to be conducted with, and applications submitted to, several Canadian agencies and the final plan would have to be submitted to the Federal Cabinet. Before approval could be granted numerous modifications and perhaps corporate reorganizations would be necessary. The project would run gauntlets of domestic Canadian opposition, and of attempts to influence the shape of the project by such interests as

northern Indians and Eskimos, environmentalists, Canadian economic nationalists, and provincial interests. The prospects of ultimate approval by the Cabinet might well be jeopardized by the minority status in Parliament of the Government's party.

A new pipeline route through Canada would, of course, require a new environmental impact statement and public hearings in the United States and involves the possibility of a new round of litigation.

Any assessment today of the time required for approval of a Trans-Canada pipeline project or of the probability of its ultimate approval in any form is purely speculative. *It is, moreover, doubtful whether further study could contribute to the accuracy of such speculations.* The seriousness of the obstacles at each organizational, financial and political step are testable only by an actual attempt to get approval for a specific proposal, and no such proposal exists today.

The listing of difficulties and uncertainties involved in getting approval for construction of a Canadian pipeline should not obscure the remaining difficulties and uncertainties facing the Trans-Alaska project: continuing litigation based upon National Environmental Policy Act requirements; litigation between the owner companies and the State of Alaska over a right-of-way across state-owned land and regarding state taxation and regulation; the possible vulnerability of the project under antitrust laws; and coastal zone legislation and regulation, which might conceivably affect the ability to land Alaska oil at West Coast ports.

Except for uncertainties regarding terminals in Washington and California, however, all the real or potential problems of law or political controversy facing the Trans-Alaska pipeline also face its Trans-Canada counterpart. In assessing the probable completion date of the latter project, the time required to resolve these problems must be added to both the additional time necessary for route selection, design, and logistical preparations, and the time involved in obtaining Canadian government approval. Moreover, to the remaining uncertainty arising from United States and Alaskan law and politics, which affect both pipeline proposals, must be added the uncertainty stemming from Canadian law and politics, and from the complexities of the international relationship.

In light of the existence of significant uncertainties which are unique to each of the two routes, it is arguable that the interested companies and the Federal government should have devoted substantial effort to investigations and preparations leading to development of more than one transportation system. The Committee believes that such a two-option strategy was and is warranted, not only because of uncertainty, but because of the high probability that two or more pipelines will ultimately be required to transport Arctic crude oil.

To a limited degree, the companies operating on the North Slope have in fact seriously explored alternatives to the Trans-Alaska pipeline. Humble Oil and Refining Company (now Exxon) converted the *Manhattan* into an icebreaking tanker for an experimental journey through the Northwest Passage to Prudhoe Bay and return, while the companies with major interests in North Slope reserves joined to conduct the Mackenzie Valley Pipeline Study, which concluded in 1972 that a Trans-Canada oil pipeline would be physically and financially feasible, and environmentally acceptable.

There has, however, been no actual route selection or engineering design leading to a specific Trans-Canada pipeline proposal. The companies have not formed an organization to design or build a pipeline nor have they initiated discussions with Canadian government agencies leading to a right-of-way application. There seem to be several reasons for their failure to move ahead on both alternatives. First, the companies, the Interior Department and the State of Alaska have tended from the beginning to underestimate the engineering, environmental, legal and political difficulties of their preferred route. Also, the advocates of an all-Alaska pipeline seem to have feared that serious consideration of a Canadian route would, by giving it additional credibility as a potential alternative, undermine their effort to get early approval of the Alyeska right-of-way application. Finally, exploration of the Canadian alternative beyond the present feasibility study (which cost about $7 million) requires selection of a specific route, which in turn necessitates even more costly on-the-ground surveys, including extensive core drilling.

Route selection, engineering design, and preparation of an environmental impact statement would involve tens—perhaps hundreds—of million of dollars. In the past these costly activities might have been conducted in stages after, or at worst, simultaneously with, application for and receipt of the necessary governmental permits, but both United States and Canadian policy now require these steps to be substantially completed before applications will even be considered. The companies cannot privately justify the major expense that would be necessary to prepare an application for the permits required to build a Canadian pipeline, if it were only to serve as a hedge against the possibility they would not be permitted to complete the Trans-Alaska pipeline. Hesitation based upon financial prudence has been reinforced by the fear that any such preparation would be used as political ammunition against the pending Alyeska application (as the Mackenzie Valley Study is indeed now being used).

It is likely, however, that Arctic crude oil resources will be much greater than indicated by present proved reserves estimates. Development of these resources will justify and require more than one 48-inch pipeline within a decade, and argues in favor of an early planning and organizational effort to build two pipelines. The probable future reserve additions, however, have so far played no part in corporate planning for transportation of North Slope oil. The 9.6 billion barrels of proved reserves currently estimated for the Prudhoe Bay field barely exceeds the minimum required for the throughput guarantees necessary to finance a single 48-inch pipeline; it certainly cannot be used as security for two such pipelines.

Proved reserves as estimated by the American Petroleum Institute are an exceedingly restricted concept. There is little question that the reserve estimate for the Prudhoe Bay field will grow substantially, as both exploratory and development drilling delineate the field more completely, and as increased crude oil prices and improved methods make more complete recovery of the discovered oil-in-place commercially feasible. Typically, these two kinds of adjustments ("extensions" and "revisions," respectively) increase the proved reserves estimates for a newly discovered oil field by a factor of three to ten over its lifetime. Moreover, North Slope oil production will not be limited to the Prudhoe Bay field; giant oil fields are seldom found alone, and only a tiny proportion of the Arctic Slope's favorable geology has been explored geophysically, much less tested by the drill. It is worth noting that the Committee is currently considering measures to authorize the exploration and development of the 26 million acre Naval Petroleum Reserve, whose boundary is a few miles west of the Prudhoe Bay field.

The excellent prospects for an early expansion of North Slope oil and gas reserves sufficient to justify a second pipeline will not be realized until the industry is reasonably confident that a first pipeline will in fact be built. Throughput guarantees adequate to finance that pipeline are possible on the basis of present reserve figures, so that there is little justification for costly outlays on development drilling beyond the level (already surpassed) that could be accommodated by the Alyeska pipeline's planned initial throughput of 600,000 barrels per day (recently reported to have been increased to 1,200,000 barrels). Exploration on adjacent lands already under lease is also at a low ebb, and it is understandable that the State of Alaska, the Interior Department, and Alaska Native groups would postpone additional lease sales to a time when industry interest—and bonus bids—would be higher. A revival of intensive exploration effort depends above all upon the commencemnet of pipeline construction.

In weighing these manifold considerations, the Committee concluded that it would be a mistake to view the Trans-Alaska pipeline and Trans-Canada pipelines as competitors, except with respect to which of them could actually be completed first. Title II of S. 1081 authorizes the President to undertake negotiations with Canada and other actions leading toward construction of a crude oil pipeline across Canada from Northern Alaska to the Midwest, and it expresses the Committee's judgment that:

1. Federal planning for transportation systems to deliver Arctic crude oil should take account of the likelihood of greatly increased reserves in the Prudhoe Bay field, on other State, Federal, and Native-owned lands in northern Alaska, from Naval Petroleum Reserve No. 4, and from Northwestern Canada.

2. Two or more pipelines for crude oil from Arctic Alaska, or from Alaska and Arctic Canada together, serving different market areas in the United States (and Canada) will be feasible, desirable and necessary in the foreseeable future.

3. Completion of the first crude oil pipeline from Prudhoe Bay is urgently in the national interest, and construction should begin as soon as there is assurance its construction and operation will be environmentally sound.

4. The Trans-Alaska pipeline proposed by the Alyeska group ought to have priority in time, because of the overwhelming probability that it could be completed two to six years sooner than a Trans-Canada pipeline. The Trans-Alaska project is at a far more advanced stage of preparation and avoids the many uncertainties involved in organizing, financing and obtaining approval of an international pipeline.

5. Nevertheless, the very likelihood of extended delays in approval and construction of a Trans-Canada pipeline dictates that concrete efforts leading toward construction of such a pipeline should be started now. This beginning ought to be made notwithstanding the present insufficiency of proved reserves to provide private justification for a second oil pipeline, and without prejudice to the Alyeska proposal.

6. In order to protect both United States and Canadian interests in this multi-billion dollar project, and in order to minimize future international conflict and misunderstanding regarding its operation and regulation, detailed and explicit intergovernmental understandings, and perhaps a treaty, are necessary regarding ownership, financing, regulation and taxation.

7. It is possible, prior to the development of proved reserve figures adequate to support the private financing of two pipelines, that no competent private entity will take responsibility for the preparations prerequisite to submitting necessary applications to Canadian governmental agencies. In such an instance, appropriate agencies of the United States government should accept this responsibility.

CHARLES SAWYER COMMENTS ON WATERGATE

Mr. TAFT. Mr. President, one of the wisest senior statesmen of any political party today is the Honorable Charles Sawyer, who served as Secretary of Commerce under President Truman. While he is a lifelong Democrat, it has been my good fortune to have had his sound comments and good advice over a number of years on many questions of national concern and to have benefited greatly from them.

In a letter to the Cincinnati Enquirer of June 13, Charles Sawyer has offered some worthwhile comments and good advice for all of us, Republican, Democrat, and independent alike. I ask unanimous consent that it be printed in the RECORD.

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

A DEMOCRAT ON WATERGATE

(By Charles Sawyer)

TO THE EDITOR: I am a Democrat, I have participated in and observed politics for a long time. I am a realist, I hope, and perhaps even a cynic with reference to politics. As a Democrat I am happy and relieved that my party is not involved in the so-called Watergate matter. I am, moreover, quite willing to admit that Democrats at various times and places have been guilty of irregularities or even crimes—some of which have been made public.

I am moved to suggest that the persons in both parties who are, to the point of nausea, undertaking to display their self-righteous indignation, should be exposed for what they are—either completely dishonest in their proclamation of virtue, or so ignorant of what goes on in politics that they are not entitled to be heard. I believe many of my fellow Democrats, and probably many Republicans, despise the self-righteous politicians who are trying to capitalize on the misfortunes of Richard Nixon.

In all the years that I have watched politics, I have never seen a campaign as mean and indefensible as the effort headed by the New York Times, the Washington Post and most of the television news media to crucify Richard Nixon.

I have said many times (not always in jest) that Republicans are stupid politically. In no case has my theory been more completely vindicated than in Watergate. The one thing properly chargeable to President Nixon is that, as a seasoned politician, he permitted his campaign for re-election to be run by men who were not politicians, who knew nothing about politics, and not one of whom had ever been elected to public office. One would have thought that such a mistake would not be made by Mr. Nixon. But we all make mistakes, and he is like the rest of us in that regard.

The publicity which this matter has received is completely out of hand. Rarely does anyone undertake to analyze the motives behind this episode. None of the men involved made this burglary attempt in order to benefit himself personally. They did not get in to steal money. They went in apparently impelled by some unexplained motive—at least so far unexplained adequately—which, however mistaken, did not involve any personal benefit. The whole episode is inexplicable. It was wholly unnecessary, and badly conceived.

One question which has occurred to me but has not, so far as I know, ever been answered is: What part was played in this affair by the concern about Castro? Why did the men in the Committee to Re-elect the President think it was of any importance or would be helpful to involve the Cuban nationals in Mr. Nixon's campaign.

This, of course, is merely one of many things which have not as yet been explained. My own feeling is that the episode has been overworked and the Senate committee has contributed to no result of any benefit to the American people. In fact, this monotonous piling up of second-and third-hand hearsay evidence has already dragged on far too long.

I do not agree with many things which President Nixon says and does, but I believe he is not stupid. That is why I believe he had nothing to do with the Wategate effort.

Personally, I am sick of the Watergate publicity. I believe the average American is sick of it, too. It is being exploited by publicity-seekers in both parties and, in particular, by the enemies of the President. In fairness to my own party, I believe that most of our leaders have been restrained and fair. I would include Sen. George McGovern (D-S.D.) in this group. I would not, however, include Sen. William Fulbright (D-Ark.), who suggested that the President and vice president should resign. He knows that this will not happen. President Nixon is not a quitter. He rather welcomes than avoids a fight.

Not only will President Nixon not resign, but why, in Heaven's name, should Mr. Agnew resign? It has never been charged or intimated that he had the slightest connection with Watergate. If Fulbright and others in both parties are so anxious to ditch Mr. Nixon, why don't they do what is called for by the U.S. Constitution—impeach him? That course is open to them. It is not a course which I, as a Democrat, recommend. Jim Farley recently pointed out the folly of any such action, but it can be tried.

I, of course, do not condone for one minute the things which were done by the Nixon committee. Those who have committed crimes should be punished. Let this be our sole objective.

I am moved to make one further comment. As I have watched the developing and mounting volume of attack on and criticism of President Nixon. I have tried to think of what other man there is in public life today, in either party, who could have taken the punishment which he has taken day after day, week after week and month after month, from the news media and television, and still retain, as he has done, his sanity, his ability to function (involving a constructive readjustment of his own staff), and his determination to ride out this storm. In my judgment, most prominent Washington officeholders would have caved in under the pressures to which he has been subjected.

When the lawyer for James McCord, who is trying desperately to save himself, says that his own client is a liar, and McCord's second lawyer states that their objective now is to "go after the President," should not the sensible and bored voters of this country tell them all to close the show, and let those who may have committed wrong be tried by the efforts of the man appointed by the President—a Democrat, Archibald Cox—to punish whatever wrongdoing has been perpetrated?

ALASKAN OIL

Mr. BAYH. Mr. President, one of the unfortunate charges which has been made during the ongoing debate on how we can best bring Alaskan oil to the United States is that those who oppose the Alaskan land-sea delivery route are obstructionists who are delaying use of the oil.

I want to reiterate that while I am opposed to granting wider rights-of-way across Alaskan public lands at this time, I am extremely anxious to expedite delivery of Alaskan oil and gas. The Mondale-Bayh amendment, which my able colleague from Minnesota and I will be offering to S. 1081, need not—contrary to charges—delay delivery of these fuels.

Rather, it will postpone for only 1 year a congressional decision on whether the oil should be transported by the Alaskan land-sea route or an all-land trans-Canadian route. That congressional decision, which can be reached 1 year from now, could permit construction to go ahead sooner than S. 1081 which will lead to further litigation that could take up to 2 years.

I have recently seen an article by Jay S. Hammond, former president of the Alaskan State Senate, which appeared in the April 25 edition of the Anchorage Daily News. Mr. Hammond, unlike some of his fellow Alaskans, understands why there has been a delay in delivery of Alaskan oil and I request unanimous consent to include his candid article in the RECORD.

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

PRESERVATIONISTS AND THE PIPELINE

(By Jay S. Hammond)

Most Alaskans agree that "preservationists" have stymied the pipeline. Question is, which preservationists: those who would preserve the environment at the expense of exploitation or those who would preserve exploitation at the expense of the environment.

To blame environmentalists for all pipeline problems is like blaming pregnancy on the midwife. In each instance the accused simply held up the heels and smacked into squalling public presence the product of others.

It wasn't environmentalists who refused to investigate pipeline alternatives. Rather, they pointed out that such was required by the National Environmental Policy Act. Nor was it environmentalists who ignored statutory right-of-way limitations. On the contrary. They warned of this violation in ample time to attempt remedial action.

But then who wants to listen to a bunch of little old ladies in tennis shoes; crackpots less concerned with the buck than the biota?

Reluctant to acknowledge our own errors, we've made environmental "preservationists" the target of our frustrations. It's time we lifted our sights a notch to level in on those other "preservationists" who first fouled things up: those who would preserve all the exploitive, damn the torpedoes, industrial * * * conduct "business as usual" they tried to break the law of the land. It back-fired.

Let's be honest about it. We handed pipeline opponents a double-barreled shotgun. Cocked and primed. Remarkable how often secret weapons of the Sierra Club come cased in Chamber of Commerce charcoal gray.

While preservationists of each persuasion have compounded pipeline problems, let's not forget that the prime culprits are those exploitive preservationists who failed to heed, much less comprehend, danger signals long evident. Instead they chose to ridicule or berate any who attempted to point them out. By so doing they provided the nutrients serving to metamorphose that little old lady in tennis shoes into Jack the Giant Killer.

Years ago when statutory right-of-way violations were cited by environmentalists they were bemusedly ignored. After all, other pipelines had been built with rights-of-way exceeding legal limits. Who'd notice one more?

Years ago while in the State Senate we urged that comparative economic and environmental analyses of pipeline alternatives including routes through Canada, be undertaken. Any the least familiar with NEPA recognized such analyses were required if for

no other reason than to accumulate data upon which to base grounds for rejecting Canadian routes.

You'd have thought we'd shrieked an obscenity in church! Editorial pages shrilled abuse at any who would support what was obviously "a preservationist plot" designed to prohibit any oil development whatsoever.

One might suppose those who championed the TAPS route as both environmentally and economically superior would be the first to demand factual comparative analyses if they believed their own propaganda. After all, such could but bolster their case. Curiously, despite this motivation plus the obvious legal obligation to analyze alternatives, proponents of the TAPS route vehemently fought efforts to promotive evaluation. On the other hand, TAPS opponents pleaded for its accomplishment.

While some senators acknowledged need for comparison of pipeline alternatives, most were scared clean out of their togas by vitriolic opposition to the suggestion spewing from some editorial pages. In penance for having allowed such an outrage to reach the floor, the legislature hastily drew up a resolution demanding immediate issuance of a permit to build a pipeline from Prudhoe Bay to Valdez. It passed overwhelmingly.

Since the final environmental impact statement had not yet emerged, it is questionable if this action went far to persuade others that Alaskans were as concerned with environment as with short-term economics. But then, so what? In their abysmal ignorance many "outsiders" are unaware that any Alaskan can give an in-depth, comparative analysis of pipeline alternatives without the meddling interference or ridiculous delays inherent in a professional, government study.

As a matter of fact, many professional Alaskans had already not only attested to the complete adequacy of the first environmental impact statement draft but had also made public their own environmental comparisons of pipeline alternatives. All, save one, concluded the TAPS route was clearly preferable. These professionals included the governor, the commissioners of economic development, highways, and public works, the attorney general and some newspaper editors.

The only professional, government official to make rude noises suggesting the draft statement was something less than sacred writ was the commissioner of fish and game, Wally Norenberg (rather, the ex-commissioner of fish and game). Segments of the press and several politicians chastised him for his audacity. This was unfortunate. To the concerned, his testimony alone served to support contentions that we in Alaska intended to "do things right." It seemed unwise to suggest publicly that this might not be true.

Both the right-of-way and pipeline alternative bombshells might have been defused long ago. Had we pulled our heads from the sand we might have detected the ticking. Instead we ignored the two prime threats to early construction despite, incredibly, early pronouncments by TAPs opponents that they intended to use them to block the project.

Failure to make adequate comparative analyses of alternative routes was a major reason why the first environmental impact statement draft was sent back to the drawing board. Alleged failure of the final draft yet to provide such analysis is the basis for lawsuits still pending. Two high court decisions have already supported the environmentalist's charges of rights-of-way violations.

Some have speculated that I, having been abused by the press for suggesting it, might draw some embittered satisfaction from the fact that failure to evaluate adequately pipeline alternatives through Canada proved the key issue upon which the pipeline has high-centered. By no means. A low pain threshold for the insufferable who crow "I told you so" plus a sobering awareness of my own inadequacies force me instead to accept part of the blame.

As a member of the Alaska Legislature during those days when meaningful action might have been taken to assure that all legal obligations be met to clear the way for a pipeline, I was incapable of persuading my collegues, though I perhaps had more inside information than most which demonstrated the need for action.

Had I the eloquence of Joe Josephson, the persuasion of a John Rader, the presence of a John Butrovich, the dedication of a C. R. Lewis, the energies of a Wally Hickel, I might have succeeded; provided, of course, that I could have withstood the editorial onslaught of preservationist extremists who termed "preposterous" the suggestion that pipeline alternatives must be evaluated.

Mr. BAYH. Another article, this one appearing in the Anchorage Daily News on June 4, was addressed to the substantial public relations campaign now being waged by those favoring the Alaskan land-sea delivery system. This article deals with the lack of candor in this public relations campaign and is well worth the attention of the Senate. I request unanimous consent to also include this article in the RECORD.

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

BENDING THE PIPELINE STORY

(By Jim Kowalsky)

The Alaska Pipeline Education Committee has sent its advocates into the lower states. Their mission is to convince those ignorant people about the real pipeline issues, and that the trans-Alaska pipeline is the best method for bringing North Slope oil into market.

One cannot help but notice Lt. Gov. Red Boucher's antics on the podium as he beat the drum to sell Alaska. He told the crowds that Alaska has all kinds of national parks and wilderness areas. If he really cared enough to look, he'd discover Alaska has only one national park—and that it, Mt. McKinley National Park, is only a remnant of a complete biosystem. And the wilderness areas—none exist on mainland Alaska. Only slightly more than 50,000 acres of tiny offshore Alaska islands are currently under statutory protection of the National Wilderness System.

Boucher has not told the truth about Alaska to those ignorant folk below.

And who among the committee, in its travels to tell the unwashed, has presented the urgency of our southeastern fishermen and of the danger to our coastal marine resources presented by the great question mark known as the marine tanker route?

Who told of the state-of-the-art of marine oil spill prevention and cleanup? Who talked about the tanker spill in Cold Bay in March? More than 200,000 gallons of fuel oil from the ruptured tanks of Stanford's grounded Hillyer Brown slopped into the estuary. Pure luck prevailed and the spilled oil evaporated; only luck, chance, not the efforts of those on the scene who tried to implement the National Oil Spill Contingency Plan in 40-knot winds, prevented a major disaster.

Who told how 450 commercial fishermen of Cordova are in court, fighting the marine tanker route because of the great prolonged threat it poses to their livelihood? Who hung their heads in shame when they spent the money from Alaskan pockets to lobby against the very lifeline of Alaska's own commercial fishermen?

Who explained the hazards of northern Gulf of Alaska storms which generate the second roughest seas in the world? And that there isn't even basic base-line data available for Prince William Sound, the fisheries-rich inner oil tanker passage for North Slope crude?

Who even remembered the marine tanker route when he told how safe the pipeline would be? Who showed how any one of the Canadian alternative routes uses a safe pipeline and none of the dangerous marine tankers?

What about the migrating caribou we're told will cross the pipeline? Who pointed out that the simulated pipeline-caribou crossing study sponsored by British Petroleum, Atlantic Richfield, and the Interior Department (but now being withheld from public release in a timely delaying game) demonstrates that the majority of the caribou have chosen not to cross the barrier—and no final engineering solutions are in sight?

When they stressed the "energy crisis", did they talk about Valdez, the shortcut from the North Slope to Tokyo? Or how 19,000 barrels per day of Alaska Cook Inlet petroleum products are already being sold to Japanese interests? Or how the Nixon administration opposes a ban on oil export to Japan?

This is the Watergate era. Mass baloney peddling and the manipulation of public thought through the great repetition of the "operational statements" with appropriate information missing are the names of the game. But the public and the Congress are growing wary.

The Alaska Pipeline Education Committee and other proponents of the production of North Slope crude should openly discuss the many weaknesses as well as the strengths, of the project. They have not.

SENATORIAL VALOR—SENATOR BROCK

Mr. PERCY. Mr. President, each of us has had the opportunity to observe examples of individual courage in our public and private lives. It is a characteristic we treasure most highly, and one deserving of special note when it is demonstrated in our daily lives.

I rise today to pay tribute to a Member of this body, the distinguished junior Senator from Tennessee (Mr. BROCK), who yesterday gave a demonstration of true grit that would make John Wayne envious.

During the Percy-Brock softball game last evening, our colleague was on second base and one of his teammates was on first. A ground ball was hit in the direction of shortstop and the third baseman for the "Percy Kewshuns" moved to his left to cut it off.

En route, he collided with the distinguished Senator from Tennessee, who flipped in the air and landed on his right arm. In obvious pain, Senator BROCK returned to the bench, and provided moral support for his team for one more inning before departing for the hospital to have a cast put on his broken elbow. Rallying behind their fallen leader, the Brock forces went on to a stunning 9 to 7 victory.

Senator BROCK, seemingly undaunted, went directly from the hospital to the postgame party, where he displayed the grace under pressure that has come to be understood as a definition of courage. But I am told that Senator BROCK's letter-signing and handshaking will be reduced to an absolute minimum for the next 2 months, an almost unimaginable burden for a politician who is chairman of the Republican Senatorial Campaign

Committee. There is, I am told, subliminal glee among the ranks of the Democratic Senatorial Campaign Committee.

Mr. President, it is the sheerest coincidence that the member of my team who collided with Senator BROCK is in training to be an orthopedic surgeon. I reject the suggestion that he was trying to drum up business.

I sincerely regret that I was unable to attend the game myself. But Shakespeare has written that "the better part of valor is discretion," and my wife had arranged a dinner party at my home.

I hope that by the time of the 1974 rematch, the Brock softball team will again have the services of its star pitcher. And in the meantime, I wish to offer my best wishes for a speedy recovery to BILL BROCK. The Senator from Tennessee is a great Senator and a good sport.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period for the transaction of routine morning business is closed.

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

The PRESIDING OFFICER (Mr. NUNN). Under the previous order the Senate will resume the consideration of the pending business, S. 1248, which the clerk will report.

The bill was read by title as follows:

A bill (S. 1248) to authorize appropriations for the Department of State, and for other purposes.

The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Wisconsin (Mr. PROXMIRE), on which the yeas and nays have been ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, I am ready to vote on this amendment right now, at the present moment 12:22 p.m. I am ready to enter into a unanimous-consent agreement to vote on it at 1 p.m., 2 p.m., or at any time today. I think we have had adequate debate on this measure, not only yesterday, but we have had debate on an almost identical proposal in the month of April. The country is prepared for action now to stop inflation, decisive action. I cannot understand why there is opposition to coming to a vote right now on this measure. I do hope we can agree to some kind of unanimous-consent agreement. There are going to be rollcalls this afternoon that have been scheduled. We have a vote scheduled for 3 p.m. At that time there will be at least one vote and it may be followed by another vote. We have a vote scheduled for 4:30 p.m. That will be a yea-and-nay vote. I would be delighted to have a vote on this proposal of mine any time during the day.

As far as I am concerned, I have spoken enough, and I think those who have supported my amendment think they have spoken enough. We have heard no opposition to the amendment. A similar resolution was passed by the Democratic caucus unanimously. The Republicans had a similar vote the other day, I think yesterday; not on my proposal, certainly not on mine, but whether or not we should have decisive action to stop inflation with some kind of control better than phase III. I understand that passed by a vote of better than 2-to-1 in the Republican caucus. I hope we can come to a vote shortly or permit the matter to be voted on now.

Mr. President, I yield the floor.

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. 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 OF INTERNATIONAL TRAVEL ACT OF 1961

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1747.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read the bill (S. 1747) by title, as follows:

A bill (S. 1747) to amend the International Travel Act of 1961 with respect to fees and charges for travel exhibits and publications and authorizations of appropriations.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. PROXMIRE. Mr. President, reserving the right to object, I understand this bill will take only a couple of minutes, because it is noncontroversial and has been cleared by the leadership on both sides. Is that correct?

Mr. INOUYE. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I ask unanimous consent that time for consideration of this measure be limited to 3 minutes.

Mr. GRIFFIN. Will the Senator make that request 5 minutes?

Mr. ROBERT C. BYRD. Five minutes.

The PRESIDING OFFICER. Is there objection? There must be a unanimous consent to waive rule XII.

Mr. INOUYE. Mr. President, I so request.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That the first sentence of section 6 of the International Travel Act of 1961 (22 U.S.C. 2126) is amended to read as follows: "For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $30,000,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976."

Mr. PROXMIRE. Mr. President, I understand this proposal would increase the authorization for the U.S. Travel Office. Is that correct?

Mr. INOUYE. Travel services.

Mr. PROXMIRE. And last year the amount authorized was $15 million. The committee originally proposed that the amount be increased, when it came out of the committee, to $30 million. The amount has been modified—we discussed this matter yesterday with the Senator from Hawaii and the Senator from Washington—so that the increase would be to $22.5 million, an increase of $7.5 million.

Mr. INOUYE. The Senator is correct.

Mr. PROXMIRE. I think that is a substantial improvement. Although I am inclined to object to large percentage increases of this kind, the Senator from Hawaii properly pointed out that this is an authorization, not an appropriation, and there will be an opportunity for the Appropriations Committee to consider it and perhaps reduce it further if that seems wise. Under those circumstances I do not object, but I do feel it is a mistake for us to pass large increases in expenditures for any projects, no matter how attractive, at a time when we are concerned with inflation and the increase in our balance of payments. Under those circumstances, however, I will not object to it.

Mr. INOUYE. I thank the Senator.

Mr. President, I call up my amendment to the committee amendment, which is at the desk.

The PRESIDING OFFICER. The amendment of the Senator from Hawaii will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 2, line 23, and page 3, line 1, strike out "$30,000,000" and insert in lieu thereof "$22,500,000".

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

Mr. INOUYE. I yield.

Mr. GRIFFIN. It sounds to me as if this is a reduction in the authorization proposed by this amendment, rather than an increase. Is that correct?

Mr. INOUYE. Last year the authorization was for $15 million. After the hearings which were held a few weeks ago, the subcommittee recommended $30 million. This has been reduced to $22.5 million.

Mr. GRIFFIN. Am I correct that the principal or primary purpose of this legislation is to help our balance-of-payments situation?

Mr. INOUYE. The Senator is correct. The Senator is well aware that last year the people of the United States spent slightly over $6 billion abroad for visiting and travel. In return, foreign visi-

tors spent approximately $3 billion in the United States, a difference of about $3 billion. We are hoping that with this small authorization and appropriation we can increase the amount of spending by foreigners in the United States, to lessen the weight of the dollar imbalance.

Mr. GRIFFIN. Mr. President, I want to say, as one who recently visited some of the European countries in connection with the visit of seven members of the Commerce Committee made to the Soviet Union, that I came back with the strong impression that the United States should be doing a great deal more than we have in the past to take advantage of the opportunities that we have to attract foreign visitors to the United States. Compared with what many other countries are doing, our promotional efforts are very meager.

I think the Senator from Hawaii is performing an outstanding service in providing leadership in this particular area, and I certainly wholeheartedly agree with the action that is being taken here to increase the investment that we are making over the expenditures made last year. This is an investment which will pay rich dividends in terms of the balance-of-payments situation.

Mr. INOUYE. I would believe the repayment would be at least a hundredfold.

Mr. GRIFFIN. I thank the Senator. I am very glad to support the amendment.

Mr. PROXMIRE. Mr. President, before the bill passes, let me just say there is much to be said for action that will help our balance of payments, but I think we recognize that this is something that will probably take effect over a period of time. Second, economists differ on the question of the balance of payments. Balance of trade is important, they say. But many people feel that the balance of payments is a reason for proceeding with action that has a long term effect. That just is not justified. For example, not too long ago, the Chancellor of the Exchequer of the British Government was in this country, and he was asked why Britain had no serious balance-of-payments problem in the 19th century. His answer was, "Because we did not have balance-of-payments statistics in the 19th century." This balance-of-payments chestnut is one of the confused, arcane, exotic reasons given by people when they do not have good reason for it. Nevertheless, I shall not object to the passage of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Hawaii to the committee amendment.

The amendment to the amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The amendment, as amended, was agreed to.

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

The bill (S. 1747) was passed, as follows:

S. 1747

An act to amend the International Travel Act of 1961 with respect to authorizations of appropriations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of section 6 of the International Travel Act of 1961 (22 U.S.C. 2126) is amended to read as follows: "For the purpose of carrying out the provisions of this Act, there are authorized to be appropriated $22,500,000 for each of the fiscal years ending June 30, 1974, June 30, 1975, and June 30, 1976."

The title was amended so as to read: "A bill to amend the International Travel Act of 1961 with respect to authorizations of appropriations."

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

The Senate resumed the consideration of the bill (S. 1248) to authorize appropriations for the Department of State, and for other purposes.

Mr. ROBERT C. BYRD. Mr. President, the request I am about to make has been cleared with the assistant Republican leader, the majority leader, and the distinguished Senator from Wisconsin (Mr. PROXMIRE), the author of the pending amendment.

I ask unanimous consent that at 1:30 p.m. today the pending amendment by Mr. PROXMIRE be temporarily laid aside, for the purpose only of following the distinguished Senator from Massaschusetts (Mr. BROOKE) to propose an amendment, on which there be a time limitation of 30 minutes, to be divided as follows: 20 minutes under the control of the offerer of the amendment (Mr. BROOKE) and 10 minutes under the control of the majority leader (Mr. MANSFIELD), the vote thereon to occur at 2 o'clock, with the further understanding that the Senate then go into executive session upon the disposition of the Brooke amendment, rather than at 2 p.m., as previously ordered.

Mr. GOLDWATER. Mr. President, reserving the right to object——

Mr. PROXMIRE. Mr. President, will the Senator yield at that point?

Mr. ROBERT C. BYRD. I yield.

Mr. PROXMIRE. Normally, I would object to this with some vigor and vehemence, but I do want to accommodate the leadership, No. 1; and, No. 2, I am convinced that this amendment of mine would be delayed, and there would be no way that I could get to a vote before 2 o'clock, if I did not agree. So as far as I am concerned, I shall not object.

Mr. GOLDWATER. Mr. President, reserving the right to object, and I shall not object, can the Senator inform us what the nature of the amendment is, what it pertains to?

Mr. ROBERT C. BYRD. Perhaps the distinguished assistant Republican leader can do that. I am not aware of its nature.

Mr. GRIFFIN. Mr. President, the Brooke amendment is amendment No. 219, which is printed and on the table.

Mr. GOLDWATER. I thank the Senator. I did not know it was printed.

Mr. GRIFFIN. Yes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, as I understand it, the pending business before the Senate is the amendment I offered on wage and price stabilization.

The PRESIDING OFFICER. The Senator is correct.

Mr. PROXMIRE. Mr. President, this is a very peculiar situation. I have finished talking on the amendment. I am now ready to vote. The opposition does not seem to want to dispute the amendment.

As I understand it, there seems to be very strong support in the Democratic and Republican caucuses for this amendment or some similar action. I cannot see why we cannot come to a vote or why someone cannot tell me what is wrong with my proposal.

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

Mr. PROXMIRE. At last, yes.

Mr. GOLDWATER. Mr. President, I did not intend to speak on this. However, as long as the Senator has invited me to make some remarks about what I think is wrong with his proposal, I shall be very happy to do so.

Mr. President, I have opposed not only legislative action, but I have also opposed Presidential action, because in the whole history of economics—and this goes back to the laws of Babylon—I think under the laws of Hammurabi—this was tried. We have never been able to make it work.

The major reason why phase I seemed to work was that it had a phychological effect on the American people who felt that we had a President who was willing to take a step that many people disagreed with—including, I believe, the President himself. For quite a few months thereafter it even succeeded.

I would be enthusiastically in favor of this proposal if I thought it could work. However, a large segment of the American public, those in the field of labor and also a certain segment in the business community, are opposed to it.

My apprehension about this is not merely because of what it will not do in controlling wages and prices, because recent history will tell us that when we begin to show failure, we have a tendency to say that maybe we are not controlling enough. We tend to say, "Let us apply it to rents." When that does not work, we will say, "Let's include profits and interest rates, and so forth."

My feeling, basically, is that once we impose wage, price, and rent controls, or any control, over the so-called free economy—which I must admit is not as free

as people think—we will ultimately wind up with the complete domination of the market system by the Government, even to the point of telling a man, "You can't manufacture your product in this city because we need to have it manufactured in a city that is hundreds of miles away." Or a manufacturer might be told, "You are not going to be allowed to make this particular item because it will upset the whole balance we have created, or have tried to create, through legislative and executive fiat."

So my opposition, I might say to my friend, the Senator from Wisconsin—and he might say it is an academic opposition—I think is borne out by history. The greatest productivity mankind has ever achieved has been in the days since the industrial revolution in America up to the time that the Government started to meddle in the whole structure of what is a quasi-free economy.

We had the greatest growth and the greatest productivity. We came closer to solving the problems of the poor. We have contributed more money in the form of taxes to distribute the wealth and take care of people who were sick, and we have provided for education.

I am afraid that if we take this step, either by the adoption of this amendment or by any proclamation the President might make if he talks on the subject tonight, we will just add more trouble to what we already have.

I am rather enthralled in listening to some Senators who feel that the military budget is causing inflation. I know that the Senator from Wisconsin does not do that. However, I do hear some of our colleagues blame the high military budget for inflation.

Inflation in this country can come from several sources. However, inflation, particularly the inflation we have had for many, many years, has been caused by overspending at the Federal level, whether it is military, health, education, and welfare, or our own salaries and costs in operating any part of a program. This is the reason why we have inflation.

If this body does not show some signs of responsibility and being willing to make reductions where reductions can be made, so that we will come closer to spending within our limits, we are not going to stop inflation. There is no way in which we can do it.

We have another problem that I might address myself to in this respect, because it is often overlooked. We have now had two devaluations of the dollar, one of them formal. As to the American dollar overseas, I think there are now about $95 billion American dollars in the hands of governments, banks, corporations, and individuals around the world. Those dollars from abroad are now buying 10 percent more in our own country than they would have brought before the evaluation. By the same token, our dollar will buy 10 percent less when we travel overseas.

We find in our food marketplaces that we have the ability to overproduce, which I think is a blessing. We now find that foreign countries are coming in and buying up our beef and pork and buying things that our housewives would normally go to the marketplace to buy. They are willing to pay 10 percent above the market price. This will be a continuing problem for Americans until we can get all of that $95 billion in American dollars back.

So again due to actions of the Congress, we have gotten ourselves in a position where the Senator from Wisconsin—who is a knowledgeable man in economics, and I respect him—or the President with his advisors—for whom I also have great respect—feels that we must now take a rather dangerous and frightening step towards control.

I have explained the problem as well as I can. If the Senator from Wisconsin has any questions, I would be happy to answer them.

Mr. PROXMIRE. Mr. President, I greatly respect the views of the Senator from Arizona. He is not only sincere, but he is extraordinarily able in this field as he is in many others.

I think he is absolutely right that one of the big elements in causing inflation is overspending by the Federal Government. There is no question that we have had a huge deficit at the end of the current calendar year coming June 30 about 2 weeks from now. This was at a time when we already had a surging economy. That was an alarming thing. We also had a mammoth increase in the Federal money supply. The Federal Reserve increased the money supply—the biggest dollar increase in our history by far.

Those two elements together were important in inflating prices. Then the Senator mentioned another one: We have had two devaluations, which have had a direct effect on prices. Chairman Arthur Burns estimated the inflationary effect of devaluation as several billion dollars in added prices for the American people. Because of devaluation everything we buy from abroad costs more, competition from abroad is less effective and, therefore, automobile prices, steel prices, and so on, go up. So these are also elements in increasing prices.

Moreover, the timing of the move from phase II to phase III was a tragic blunder. One could argue that it is the control system itself that causes a surge in prices whenever it is eased or dropped. But I submit the timing of phase III was very bad. It came within a few days after the wholesale price index was released which showed that in December we had the biggest increase in wholesale prices in 20 years. It was then when we moved to phase III that prices began to go up so sharply, the dollar began to drop precipitously abroad, and the conviction grew on the part of people abroad and in this country that we just did not mean business about inflation. And the stock market reflected that.

Mr. GOLDWATER. Mr. President, will the Senator yield at that point?

Mr. PROXMIRE. Just one more point. I would just like to say that I would agree that permanent controls are a mistake. I would like to get rid of controls; they are an interference with the mobility of resources; they are an interference with efficiency. They are wrong; but I think there is a time and a place for these things, and we are now in a situation where we need decisive, effective, dramatic action by the Government of the United States.

I think is it clear that the overwhleming majority of the people, whether the labor leaders agree with this or not, the overwhelming majority of all the people, whether they are on fixed incomes or otherwise, business people, working people, and others, want the Government to act. This is one kind of action that can be understood, and it is a kind of action that can have an effect.

It is vital that during the period of the freeze and thereafter, the Government take advantage of the time the freeze gives to provide a more competitive system than we have now, and to reduce the kind of interference that we have with the free flow of goods from abroad. There are also a number of things that can be done in the way of increasing the skills and training of people during this period. That is the reason why I think we have to have a temporary, brief, abbreviated period of freeze, followed by a control system, and I would agree with the Senator from Arizona, let us get rid of all controls as fast as we can consistent with stopping inflation.

Mr. GOLDWATER. Mr. President, I wish it were possible for me to agree, but it is like saying you can be a little bit prejudiced, if the Senator knows what I mean. I am afraid that once we have a freeze of 90 days, and let us say it works—and it well can work—it will be almost impossible to get the Government out of the control business; and I know that basically the Senator from Wisconsin feels as I do.

I might comment about this overseas attitude. I was at the Paris air show a few days ago—in fact, I just put into the RECORD a report which I submitted to the President.

One of the things that I heard most from my business and military friends in Europe was, "When are you going to get going? When are you going to start acting like world leaders again?"

I knew that they were reflecting on the possibility that we might take some action in the economic field. They were also very much opposed to the import tax that we now impose on foreign made airplanes, and I have recommended to the President that we abolish that 5-percent tax. I believe in competition.

I had hoped that when the President stopped phase II the labor leaders and business leaders of this country would recognize their great responsibility. But I am sorry to say that neither did. We not only had instant demand for wage increases, we also had instant price increases. I do not know what has happened to the leadership of labor and business in this country. Frankly, I think they probably share the responsibility for the cause as much as we do, although not to the same extent or by the same avenue.

I would hope that the leaders of labor and business could say, "Now, even though it is going to be a hardship, we are not going to ask for any wage increases unless they can be tied to productivity increases."

Mr. PROXMIRE. Mr. President, will the Senator yield on that point?

Mr. GOLDWATER. Yes.

Mr. PROXMIRE. It seems to me that this is why decisive action of a presidential nature is called for now. We have a situation in which, for the last 5 months, we have had the sharpest increase in wholesale industrial prices, as well as foods, that we have had in many years, perhaps ever in peacetime—an enormous increase. That increase in wholesale prices foreshadows an increase in consumer prices, probably, for the next 6 months or so.

Under these circumstances, labor feels it has already had its wage increases eroded to the point where its real income, corrected for inflation, is less now than it was in December; and under such circumstances, I think that the opposition that organized labor has to my amendment—and it is very virulent and very strong and deeply felt—is the best indication that I know of that organized labor is determined now to make up for the fact that it has lost ground in the last few months. The unions are going to ask for settlements, I think, in the area of 10, 12, or 15 percent, and this can lead to nothing but very serious inflation for a long time, because of the fact that they are asking for long pacts that call for not 1 year, but 2 or 3 years.

That is why I think this is of the greatest importance. It is unfortunate; I, too, wish we could adopt the Goldwater approach, or the Friedman approach of no controls. That makes all the sense in the world to me: Over the long pull, the abolition of controls. But in view of the prospects for the next few months, this amendment is called for.

Mr. GOLDWATER. Mr. President, just to conclude the colloquy, as the Senator may know, I attended college only 1 year, but I shall never forget it, because it was the year 1928–29. I had a professor of psychology who was of Austrian ancestry, and I remember his getting away from psychology to discuss the woes of Austria at that time, in 1928, when the Austrian mark was one of the leading currencies of the world, and Austria itself was a great leader in economics and politics in the world.

Austria was at that time engaged in precisely the same kind of action that we are engaged in today—deficit spending and a welfare state that had outgrown its bounds.

I can remember the professor saying that, if Austria did not change its ways, it would collapse. By golly, along about the last of 1928, the Credit Anstalt collapsed, and that started the world depression. We did not get out of that depression until World War II came along.

I can sense the same thing occurring in the United States today that this professor could sense in Austria a way back in 1928.

I am not prophesying any depression, but I can foresee a great deal of trouble. It may be that I am wrong. It may be that what the Senator is proposing, or what the President may propose tonight, is precisely what the country needs to get us out of the economic doldrums that we are in.

The matter of price increases is bothersome. I went out to buy a head of lettuce last night, and it cost me 72 cents to buy it. My wife is coming home tonight, and I am not going to tell her about it; otherwise, she might faint. But these are the things caused by inflation. It gets back to precisely what the Senator is trying to get at. The men in the labor union might be making 50 percent or 80 percent more than they were making 5 or 10 years ago, yet they are not able to live as well as they were living then, because they are paying a lot more for what they are buying.

As I say, I wish that I could support the Senator. If I had even a hunch that his proposal would work in the long run, I would. But my hunches run the other way.

I appreciate very much the Senator's allowing me to explain my position.

I said yesterday that if he were to ask unanimous consent for a vote, I would oppose it. I shall not oppose it now. I will be here to vote.

Mr. PROXMIRE. Very good. I hope that the other 98 Members of the Senate will agree with the distinguished Senator from Arizona and myself that this would be a good time to vote on the question of my amendment, that we can come to a vote, as I am ready to vote and hope that we can vote. Thus, I hope that the Chair will put the question and that we can proceed.

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

The PRESIDING OFFICER (Mr. NUNN). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. PROXMIRE). Without objection, it is so ordered.

Mr. COOK. Mr. President, the distinguished Senator from Wisconsin has proposed the imposition of a freeze on wages and prices for a period of 90 days. I acknowledge the Senator's great expertise in this area and his sincere desire to find a resolution to this Nation's economic problems. I think every Member of this body shares his concern. However, the emotion that often evolves in regard to a crisis situation often leads to a knee-jerk reaction that can aggravate rather than correct any certain problem. As the distinguished Senator realizes, the economy of a nation as large as the United States is a vast and complex mechanism. Any attempt to combat an adverse economic trend must be thoroughly and critically examined for its long-range as well as short-range implications.

The American economy has fought a serious inflationary trend for over 2 years. We have now exhausted three varying programs, and have succeeded in only magnifying the existing problem, while worsening the financial burdens of America's citizens. As you know, mine was one of only two votes cast in opposition to the extension of phase III. I felt then, as I do now, that we must commit ourselves to a comprehensive long-range program which will not only ease the intensity of inflationary pressures, but will also be geared to allowing market forces to achieve ultimate economic balance. No matter how long we freeze wages and prices, market forces continue to play a predominant role. Unless we devise a program which will utilize market forces to combat inflation, instead of suppressing the laws of supply and demand, no action by the Congress or the executive branch can possibly provide the long-term solution to our problems.

I, therefore, must oppose the Proxmire amendment, not because I am opposed to halting inflation, but rather because a 90-day freeze is ill timed, ill advised, and would only serve to delay the need for a more comprehensive approach. This I believe is the only rational and effective approach to solving our national economic problems.

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Texas (Mr. TOWER), I ask unanimous consent that a member of the staff of the Committee on Banking, Housing and Urban Affairs, Mr. Michael Burns, have the privilege of the floor during the debate on the Proxmire amendment.

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

Mr. GRIFFIN. Mr. President, I send to the desk an amendment to the Proxmire amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 2, after line 18, insert the following new subsection (d) and renumber the subsequent subparagraphs accordingly:

"(d) The ceiling on wages required under subsection (a) shall not be applicable to any wage increase which percentage wise is equal to or less than the percentage increase in the cost of living during the twelve month period immediately preceding the effective date of such wage increase.

Mr. GRIFFIN. Mr. President, yesterday, the distinguished Senator from South Dakota (Mr. MCGOVERN) called attention to an amendment which he intends to offer to the Proxmire amendment. The amendment I offer now is a modification of the language suggested by the Senator from South Dakota.

The language of the amendment of the Senator from South Dakota refers to the increase in the cost of living since January 11, 1973. The language of the amendment I have offered refers to the percentage increase in the cost of living during the last 12 months. The only purpose of the change is to have an average percentage which would reflect the trend over a little longer period of time, taking into account the fact that the May cost of living increase figure is not yet available.

I do think there is considerable justification, however, in the general argument made by the Senator from South Dakota that workers should not be expected to be held to a ceiling which would be less than the increase in the cost of living. I think that if wage increases negotiated or otherwise granted could be held to the percentage which reflected the increase in the cost of living, that would certainly be as much of the burden as we could expect the workingman to bear.

While I do not generally support the amendment of the Senator from Wisconsin, because I believe the 90-day across-the-board freeze he suggests is too inflexible, I would prefer at this time controls which would be more selective.

I do not know whether the Senator from South Dakota is aware of the amendment I have proposed. He might wish to have something to say about it and pending that possibility, and to give us a chance to call his office, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PROXMIRE. Mr. President, the modified amendment suggested by the Senator from Michigan (Mr. GRIFFIN) does have a great deal of merit. As I said to the Senator from South Dakota (Mr. MCGOVERN) when we discussed his amendment, I agree wholeheartedly that what has been happening has been the erosion of real wage income.

I think a couple of points should be made. The Griffin or McGovern amendment would only take effect during the 90-days period. Certainly, that is negotiable, so far as I am concerned I am willing to consider reduction of the period of the freeze; and therefore, reduce the period of wage restraint to only a few days.

Second, as I understand the amendment now offered by the Senator from Michigan, it would result in annual guidelines being put into effect during the 90-day period of a 5.1-percent increase during the year. That would mean an increase during the 3-month period of less than 1.3 percent.

One of the objections that occurs to me particularly is that the overwhelming majority of the people will not have a wage increase during any one 3-month period. Usually, wages are negotiated not for a year, but for 3 years. So only a small fraction of people would be affected. This is one of the reasons why there might be a shorter freeze, recognizing that in the control period following the price freeze there could be flexible action by the President and Congress.

We should recognize that because of inflation there has been an erosion of real wages in the last 3 months, and that we cannot have an effective price control system without having a wage-freeze system too. It is just not only unfair; it is unworkable, uneconomical, and completely unsound.

But I do think that the Senator from Michigan has suggested something that I would be happy to consider. His proposal is more moderate than the proposal offered by the Senator from South Dakota, which would put into effect a 10-percent annual guideline. The Senator from Michigan proposes less than a 5.5-percent guideline. So I think the proposal of the Senator from Michigan is something well worth considering.

I would hope that we could come to a vote on that amendment and on my amendment. So I ask the majority leader if he would propose a unanimous-consent agreement on my amendment.

As I say, I will be delighted to accept any kind of limitation on time, with a vote at 2 o'clock today, 3 o'clock, 4:30, or following the Morris nomination. I think the country wants action now. I think Members of the Senate have heard enough about this matter and that they are ready to vote on the proposal, either yes or no.

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

Mr. PROXMIRE. I yield.

Mr. MANSFIELD. I agree with all the distinguished Senator from Wisconsin has just said. I noted with interest the result of an informal poll taken among Republican Senators yesterday which indicates the feeling that something should be done is rather widespread. It is my further understanding that the President intends to deliver a message to the American people tonight at 8:30 on radio and television relative to what he proposes should be done.

However, there will be a vote at 2 o'clock on the Brooke amendment; there will be a vote at 3 o'clock on the motion to reconsider, carried over from yesterday; there will be a vote at not later than 4:30 p.m. on the nomination of Mr. Morris.

Mr. President, I ask unanimous consent at this time that immediately following the vote on the Morris nomination there be a vote on the pending amendment.

Mr. COTTON. Mr. President, reserving the right to object, will the distinguished majority leader yield for a question?

Mr. MANSFIELD. Yes, indeed.

Mr. COTTON. I heard the colloquy last night concerning the various unanimous-consent agreements that were made. It seems to me that the opportunity for debate on the Morris nomination is being squeezed gradually until we may be pressed for time.

I would like to ask the majority leader a question. Under his request, which I do not intend to object to, exactly how much time would that leave us to discuss the Morris nomination?

Mr. MANSFIELD. It would depend on a number of factors, which I am unable to define at the present time.

Fifteen minutes on the Brooke amendment at 2 o'clock, for which unanimous consent already has been granted. It will take 15 minutes to vote on the motion to reconsider. If that carries, we will dispose of the question. If it does not, there probably will be another vote right away. The Morris nomination will take 15 minutes. So that would knock it down to a maximum of 45 minutes, if everything went according to plan. There will be another 45 minutes, an hour and a half, 2 hours.

But I wish to assure the distinguished senior Senator from New Hampshire that if it were a question of time the joint leadership would be willing to grant additional time.

Mr. COTTON. This Senator, and I know several other Senators, want time to speak on the Morris nomination. Would it be possible if we were getting pressed for time, to defer that 4:30 vote until 4:45 or 5 p.m.?

Mr. MANSFIELD. Yes, indeed. As far as the Senator from Montana is concerned, and I am sure I can speak for the distinguished minority leader, that could be possible and it should be possible.

Mr. GRIFFIN. Mr. President, reserving the right to object to the unanimous-consent request propounded by the distinguished majority leader, I will be frank about it. I do not believe we should vote on the Proxmire amendment today. I say this in view of the fact that the President is expected this evening to make an announcement, and then on tomorrow and ensuing days we would have the benefit of knowing what the administration intends to do in this area.

Beyond that I think the pending amendment would be of considerable interest to the Senate. In effect, it carves out an exception to the Proxmire amendment, so far as wages are concerned.

I know it is not without some controversy, and not too many Senators are aware that this particular amendment is pending. I think it would be unfair and unjust to the rest of the Senate if I were to agree to the unanimous-consent agreement. So for those reasons and also frankly to indicate I do not think we should vote on the Proxmire amendment today, I respectfully object.

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

The PRESIDING OFFICER (Mr. NUNN). The clerk will call the roll.

The 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.

AMENDMENT NO. 219

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate amendment No. 219, by the Senator from Massachusetts.

The legislative clerk read the amendments (No. 219) as follows:

On page 8, line 10, immediately after "available" insert "for any period or periods exceeding a total of ninety days in any fiscal year".

On page 8, line 10, immediately after "However," insert "no reimbursement shall be required to be made under this section (1) if the Secretary of State finds and promptly reports to the Congress that the best interests of the Department of State would be served thereby, or (2)".

On page 8, beginning in line 16, immediately after "available" strike out the comma and all that follows through and including line 18 and insert in lieu thereof a period.

Mr. BROOKE. Mr. President, I yield myself such time as I may need.

I offer this amendment to section 10 of S. 1248 in order to provide the Secretary of State with sufficient flexibility to assign Foreign Service personnel to other agencies of Government, on a nonreimbursable basis if necessary, when it is in the overall interest of the State Department and the United States to do so. I have sought, at the same time, to fulfill the general intent of the Foreign Relations Committee of requiring intelligent adherence to proper accounting procedures for the detailing of personnel between the State Department and other agencies.

Normally when an employee of one Government agency is assigned to an-

other, the receiving agency should bear the cost. This principle is a sound one. However, rigid application of it in all situations would tend to foreclose the proper discretionary exercise of managerial prerogatives. In the case of the State Department it could actually have a harmful effect on the formulation and conduct of our foreign policy.

It is not difficult to visualize that the assigning of a State Department officer to another agency for a tour of a year or two would give that officer, and hence our Foreign Service as a whole, an extra dimension of knowledge and experience which would be an important asset in future years. If such assignments can be arranged on a reimbursable or reciprocal basis, such should be done. But, if the so-called nonreimbursable detail is the only way it can be done and it is in our basic interest to do so, we should not foreclose this option for the Secretary of State by enacting overly restrictive provisions.

There is another aspect of this issue that concerns many individuals. In this Chamber we hear repeated complaints about the erosion of the influence of the Secretary of State over the conduct of our foreign affairs. One important factor that has caused this is the often dilatory recognition that today's problems, be they military or commercial, problems of energy or problems of environment, increasingly cut across agency boundaries. No Federal Government agency is today an island. The policies of one must be formulated and executed with an adequate understanding of those of the others. This is crucially important in regards to the State Department meeting its overall obligation to promote the coordination of the efforts of all agencies in the foreign affairs area.

In addition, it is natural that agencies other than the State Department will seek to influence our foreign policy in pursuit of their legislative mandates. Using the "detailed" Foreign Service officer as a conduit of information back to the State Department, they can exert their influence in a more intelligent and perceptive manner than would otherwise be the case.

It is also essential that the Secretary of State has a means to bring the influence and views of the Department of State to bear on the activities of other agencies. I know of no way that this can be more effectively achieved than by the placement of Department of State officers from time to time in these agencies. Our activities abroad will be more sensible and more effective as a result.

Mr. President, to insure that these positive effects continue to accrue to the benefit of the United States, I urge the Senate to adopt the amendment to section 10 of S. 1248 that I have placed before this body.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, I am filling in for the distinguished chairman of the Foreign Relations Committee. I have 10 minutes on this side. The distinguished Senator from Massachusetts has 20 minutes.

I suggest the absence of a quorum with the time to be taken out of my time, not to exceed 3 minutes.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I yield myself such time as I have within the remaining 6 minutes.

Mr. President, I think it should be brought out that this is the kind of an amendment on which there are differences which really could have and should have been settled in conference rather than brought up in the form of an amendment on the floor. And I think if the present amendment is defeated that it will still be settled in conference in a way which I hope would be mutually satisfactory. There is no great to-do about this. No foreign policy is being shaken. No foundations are being cracked.

There is a way to get on with the Senate and the Congress which, I would hope, some of these departments downtown would begin to comprehend a little better and a little more fully in a spirit of comity and understanding and cooperation.

I would point out that the State Department is a very busy and a most important department in the Government. It also operates on the smallest budget. But it has the greatest responsibility. It has no pipeline to fall back on, as the foreign aid program has. It has no pipeline to fall back on as is the case in the Defense Department and all of its many ramifications. It gets by on what is allocated to it by the Congress. And, in my opinion, the Congress has been most parsimonious insofar as the funding of the State Department's activities are concerned. I want to reiterate that it is the most important department of the Government. And the Government is fortunate to have heading that department as Secretary of State, a man of the caliber, integrity, patriotism, and dedication as we have in the person of William Rogers, a man who, in my opinion, has been underrated throughout the past 3 or 4 years, overshadowed perhaps from time to time, but basically one of the best Secretaries of State this Republic has ever had.

Mr. President, the committee adopted a provision without objection, unanimously, which would require reimbursement for salaries paid to State Department personnel detailed to other agencies, except in the case of personnel involved in specific exchange arrangements with other agencies, such as the USIA or AID.

In my opinion these are agencies which we could well do without or trim down considerably. However, one of them gets many, many times what the State Department gets in the way of appropriations and the other is gradually trying to creep up to the State Department level.

This was prompted by the current situation where the State Department has employees on loan to such agencies as the Council on Environmental Quality, the Commission on White House Fellows, the Office of Emergency Preparedness—and so on. The committee does not object to other agencies using the talents of State Department personnel on a temporary basis. All the provision approved by the committee requires is that their services be paid for by the borrowing agency.

What could be fairer than that. And remember, this is the most important Department in the Government, getting by far the least amount of money.

The letter sent to Members of the Senate by the Senator from Massachusetts (Mr. BROOKE) concerning his amendment made the point that approval of the committee's position might jeopardize the training of State Department personnel in agencies "such as Commerce, Labor, and Treasury, for which State Department officers perform support activities overseas." The agency might be unwilling to pay for the salary of the detailed State employee, he argued.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BROOKE. Mr. President, I yield 2 additional minutes to the Senator from Montana.

Mr. MANSFIELD. Mr. President, the Commerce Department gets lots more in the way of appropriations than does the State Department. The Labor Department gets lots more in the way of appropriations than does the State Department. The Treasury Department gets much more in the way of appropriations than does the State Department.

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

Mr. MANSFIELD. Yes, indeed.

Mr. BROOKE. Mr. President, everything the distinguished majority leader is saying is correct with the exception of the fact that the Department of Agriculture or the Commerce Department may not be interested in having State Department personnel come into their departments and work with them on a reimbursable basis. In many instances the benefit is solely to the State Department, not to the Department of Agriculture. Sometimes there is mutual benefit. But sometimes the benefit is only to be derived by the State Department itself.

In that instance, the Secretary of State—and I certainly share the distinguished majority leader's high esteem for Secretary of State Rogers—should have the flexibility to send personnel to the Commerce Department, the Department of Agriculture, or other agencies on a nonreimbursable basis.

There is no evidence that this practice of nonreimbursable detailing has been abused by the State Department.

I think that the committee has, unfortunately, put restrictions upon the State Department which the State Department cannot bear and still perform its functions properly.

Mr. MANSFIELD. Mr. President, may I say to the distinguished Senator from Massachusetts that he has a point. How-

ever, I must disagree with him, because according to the latest list of State Department personnel detailed on a non-reimbursable basis, all of those detailed are working in offices attached to the White House, except one person who is detailed to the Vice President's office. The list of 18 assigned on this basis is on page 37 in the report on this bill.

But, as of December 31 of last year—the latest list available to us—many State employees were on reimbursed detail to the regular departments and agencies—26 to Commerce, 4 to HEW, 4 to Justice, 1 to Labor, 3 to Treasury, and so on—189 in all.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROOKE. Mr. President, I yield 2 additional minutes to the Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the entire list be printed in the RECORD.

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

State personnel on detail to other agencies as of Dec. 31, 1972

Reimbursable details	189
AID	28
Army	1
Commerce	26
Export-Import Bank	1
HEW	4
Interior	1
Justice	4
Labor	1
Peace Corps	1
Treasury	3
ACDA	36
USIA	15
NSC	5
HUD	1
American Revolution Bicentennial Commision	3
White House	1
OMB	4
Office of Economic Opportunity	17
Office of Emergency Planning	2
Council on Environmental Quality	2
Environmental Protection Agency	2
CENTO	3
IBWC	1
NATO	16
OECD	7
SEATO	3
Inter-American Foundation	1
Non-reimbursable details	32
Total details	221

State personnel on reimbursable detail to other agencies as of December 31, 1972

Agency, Name, Position title, and Grade:

AID

Adams, E. Avery, Jr., Admin. Officer, 0–2.
Bird, H. Reid, Consular Officer, 0–3.
Chang, Walter F., Comm/Records, Supr., RU–6.
Cook, Philip R., Jr., Int'l Relations Officer, 0–3.
Fimbres, Rudy V., Political Officer, 0–3.
Finney, John D., Jr., Political Officer, 0–5.
Folger, John D., Political Officer, 0–5.
Graham, Hilton L., Int'l Relations Officer, 0–6.
Goeser, James R., Political Officer, 0–6.
Graham, Hilton L., Int'l Relations Officer, 0–6.
Kilday, Lowell C., Political Officer, 0–3.
Krug, Wm. A., Jr., Politcal Officer, 0–7.
Landeau, Elizabeth N., Int'l Relations Officer, 0–3.
Manhard, Philip W., Political Officer, 0–2.
Martin, Edwin M., Program Director, R–1.
Matthews, Gary L., Political Officer, 0–4.
McLean, Joseph G., Consular Officer, 0–6.
North, Jerrold M., Political Officer, 0–5.
Ohmans, John L., Lab/Pol. Officer, 0–2.
Quinn, Kenneth M., Political Officer, 0–5.
Ramsey, Douglas K., Political Officer, 0–5.
Stanley, Clifton C., Jr., Int'l Relations Officer, 0–6.
Swett, Herbert D., Int'l Relations Officer, 0–3.
Train, Marilyn Ann, Political Officer, 0–7.
Walkenshaw, Robert L., Lab/Pol. Officer, 0–2.
Watson, Douglas K., Admin. Officer, 0–5.
Wolfe, Geoffrey E., Political Officer, 0–6.
Wollam, Park F., Program Director, 0–2.
Wygant, Michael G., Political Officer, 0–5.

ARMY

Whiting, John D., Pol. Officer, 0–4.

COMMERCE

Allen, Morris, Trade Prom. Off., 0–2.
Alvarez, Raymond J., Econ/Comm. Off., 0–4.
Birch, John A., Program Director, O–1.
Cahell, Harry A., Econ/Comm. Off., 0–3.
Cecchini, Leo F., Jr., Econ/Comm. Off., 0–5.
Christensen, David P. N., Econ/Comm. Off., 0–4.
Christiano, Jos. F., Econ/Comm. Off., 0–3.
Crafts, Donald E., Econ/Comm. Off., 0–5.
Dawson, William, Trade Prom. Off., 0–4.
Dornheim, Arthur R., Econ/Comm. Off., 0–3.
Ferchak, John R., Econ/Comm. Off., 0–4.
Garrett, Johnson, Econ/Comm. Off., R–1.
Gwynn, Robert P., Econ/Comm. Off., 0–4.
Lombardi, Raymond B., Econ/Comm. Off., 0–5.
Maikin, Bruce, Econ/Comm. Off. 0–6.
Nehmer, Stanley, Econ/Comm. Off., R–1.
O'Connor, Patrick T., Econ/Comm. Off., 0–4.
Prinderille, Chas T., Jr., Econ/Comm. Off., 0–4.
Rankin, Edward J., Econ/Comm. Off., 0–4.
Riley, Wilson A., Jr., Econ/Comm. Off., 0–5.
Robb, James L., Econ/Comm. Off., 0–6.
Smith, Richard J., Int'l Econ., 0–4.
Stahlman, John W., Econ/Comm. Off., 0–5.
Sullivan, John J., Econ/Comm. Off., 0–4.
Wisgerhof, Paul R., Econ/Comm. Off., 0–6.
Yaukey, Raymond S., Econ/Comm. Off., 0–4.

EXPORT-IMPORT BANK

Dietz, George J., Program Director, R–1.

HEW

D'Angelo, Luciano, Consular Off., R–4.
Kaplan, George R., Pol. Officer, 0–3.
Metzner, Clifton F., Jr., Physical Sci. Off., R–3.
Wiesender, Margaret, Consular Off., S–1.

INTERIOR

Carpenter, Stanley S., Program Director, O–1.

JUSTICE

Howe, Bruce T., Protocol Specialist, S–1.
McClintic, Stephen H., Political Officer, O–3.
Rosenthal, Edward B., Political Officer, O–4.
Slutz, Robert F., Jr., Political Officer, O–3.

LABOR

Seip, Peter A., Int'l Relations Officer, O–2.

PEACE CORPS

DeJarnette, Edmund T., Admin. Officer, O–4.

TREASURY

Barnard, Robert J., Political Officer, O–3.
Bowen, A. Dane, Jr., Int'l Relations Officer, O–3.
Hanna, Ian M., Science Linguist, GS–13.

ACDA

Anderson, Sidney D., Admin. Officer, R–3.
Brown, Charles F., Int'l Relations Officer, O–4.
Brunner, Margret, Secretary, S–6.
Christopher, Albert M., Special Assistant, R–1.
Cooper, Martin W., Political Officer, O–6.
Creecy, Richard B. L., Political Officer, R–3.
Durham, Richard L., Phy. Sci. Officer, R–2.
Farley, Philip J., Dep. Dir.-ACDA, O–1.
Givan, Walker, Political Officer, O–2.
Gookin, Richard J., Political Officer, GS–13.
Gralnek, Maurice N., Political Officer, O–5.
Grobel, Olaf, Political Officer, O–4.
Jaeger, George W., Political Officer, O–3.
Jones, Clyde L., Comm. & Records Asst., S–7.
Kalicki, Jan H., Pol./Mil. Aff. Officer, O–7.
Kirk, Roger, Political Officer, O–2.
Klebenov, Eugene, Political Officer, O–4.
Leach, Jas. A. S., Political Officer, O–6.
Leonard, Jas. F., Asst. Director, O–1.
Lindstrom, Ralph E., Int. Rel. Officer, O–2.
Linebaugh, J. David, Pol. Officer, O–1.
Long, Paul J., Phy. Sci. Officer, R–2.
Martin, Joseph, Jr., Pol. Officer, R–1.
Mayhew, Philip R., Pol. Officer, O–4.
Mendelsohn, Jack W., Pol. Officer, O–4.
Menter, Sanford, Program Director, O–2.
Moen, Harlan G., Pol. Officer, O–4.
Molander, Roger C., Phy. Sci. Officer, R–3.
Neidle, Alan F., Pol. Officer, R–2.
Richards, Ira B., Jr., Pol. Officer, R–1.
Salisbury, Wm. R., Pol. Officer, O–5.
Semler, Peter, Pol. Officer, O–3.
Shinn, Wm. T., Jr., Pol. Officer, O–4.
Straus, Ulrich A., Pol. Officer, O–3.
Veale, Wm. C., Pol. Officer, O–7.
Weir, William D., Oper. Research Off. ACDA, R–3.

USIA

Anderegg, John A., Pol. Officer, O–4.
Armacost, Michael H., For. Aff. Analyst, R–3.
Brement, Marshall, Pol. Officer, O–3.
Brown, Richard G., Pol. Officer, O–4.
Capp, Jean T., Edu. & Cul. Off., R–6.
Gray, Victor, S., Jr., Pol. Officer, O–5.
Grey, Robt. T., Jr., Pol. Officer, O–4.
Heck Ernestine S., Pol. Officer, O–6.
Jenkins, Kempton B., Program Director, O–2.
Kelly, Bernice M., Personnel Off., O–4.
Murphy, Edward G., Pol. Officer, O–4.
Ramsay, Walter G., Pol. Officer, O–4.
St. Denis, John H., Security Off., S–3.
Turpin, William N., Int'l. Rel. Off., O–2.
Westmoreland, James O., Pol. Officer, O–4.

NSC

Hackett, James T., Political Officer, 0–4.
Hershberger, Eileen M., Secretary, GS–8.
Marshall, Mildred M., Secretary, GS–9.
Rodgers, Jeanne R., Secretary, S–7.
Rondon, Fernando E., Political Officer, 0–4.

HUD

Jones, Ellis O. III, Int'l Relations Officer, 0–4.

ARBC

Blue, Wm. L., Program Director, 0–1.
Kirby, Elizabeth J., Secretary, S–5.
Scribner, Edith, Secretary, S–5.

WHITE HOUSE

Weiss, Walter F., Political Officer, 0–4.

OMB

Bentley, Robert B., Political Officer, 0–5.
Breidenbach, Wm. E., Int'l Relations Officer, 0–4.
Carlueci, Frank C., Program Director, 0–1.
Weniger, Earl D., Econ/Comm Officer, 0–7.

OEO

Barfield, John D., Consular Officer, 0–3.
Boudreau, Wm. J., Admin. Officer, 0–4.
Courtenaye, Richard H., Principal Off. Prog., 0–3.
Falzone, James R., Admin. Officer, 0–4.
Hawkins, Genta A., Political Officer, 0–6.
Heflin, Martin G., Econ/Comm Officer, 0–4.
Herr, Donald F., Pol. Officer, 0–5.
Hoffman, Herbert A., Pol. Officer, 0–5.
Keller, Kenneth C., Consular Officer, 0–4.
Lawton, Frederick H., Pol. Officer, 0–4.
Pardon, Raymond J., Pol. Officer, 0–6.
Peck, Robert A., Pol. Officer, 0–4.
Schell, Barbara, Consular Officer, 0–5.

Simmons, John F. Jr., Econ/Comm. Off., O–5.
Snow, Denman T. II, Admin. Officer, O–5.
Warner, Norman E., Pol. Officer, O–3.
Whilden, Stephen H., Pol. Officer, O–5.

OEP

Morin, Laurent E., Econ/Comm. Off., O–2.
Toner, Albert P., For. Aff. Analyst, R–2.

CEQ

Hayne, William A., Econ/Comm. Off., O–2.
Perry, Jack R., Pol. Officer, O–3.

EPA

Mansfield, Wm. H. III, Pol. Officer, O–3.
Walker, Wm. G., Pol. Officer, O–4.

CENTO

Burgess, Harrison W., Pol. Officer, O–3.
Farrior, John M., Pol. Officer, O–2.
McCormick, Francis P., Admin. Officer, O–3.

IBWC

Sacksteder, Frederick H. Jr., Pol. Officer, O–3.

NATO

Abidian, John V., Security Officer, S–1.
Andrews, Geo. R., Pol. Officer, O–3.
Blinn, Leslie F., Audio-Vis. Off., S–2.
Bragdon, Merritt C., Jr., Int'l. Economist, O–4.
Feidt, Wm. E., Gen., Engineer, R–2.
Hoofnagle, James G., Admin. Officer, R–1.
Kelly, Giles M., Info. Officer, S–1.
Korach, Eugene G., Office Director, R–1.
Kunzig, Louis A., Jr., Admin. Officer, R–2.
MacCracken, John G., Pol. Officer, O–3.
Maresca, John J., Pol. Officer, O–5.
O'Donnell, John F., Jr., Admin. Officer, O–3.
Port, Arthur T., Program Director, R–1.
Seim, Harvey B., Phy. Sci. Officer, R–1.
Spielman, Herbert, Pol. Officer, O–3.
Stark, George W., Auditor, R–3.

OECD

Christian, David E., Lab/Pol. Officer, R–1.
Hayward, Beresford L., Econ/Comm. Off., R–3.
Mallett, Guy C., Jr., Econ./Comm. Off., O–2.
Orski, C. Kenneth, Phy. Sci. Off., R–2.
Roderick, Hilliard,, Phy. Sci. Off., R–1.
Timmons, Benson E. L., III, Program Director, R–1.
West, James, Info. Officer, R–2.

SEATO

DeBald, LeRoy E., Jr., Pol. Officer, O–4.
Langhaug, David B., Admin. Officer, O–5.
Midthun, Kermit G., Pol. Officer, O–3.

IAF

Tragen, Irving G., Country Director, O–1.

State personnel on non-reimbursable detail to other agencies as of December 31, 1972

Agency, name, position title, and grade:

COMMERCE (1)

Bell, James P., Jr., O–7.

DEFENSE (1)

Cook, Eiler R., Political, O–3.

Executive Office of the President:

WHITE HOUSE OFFICE (3)

Jenkins, Karen, Administrative, O–4.
Melencamp, Noble M., Consular, O–2.
Smith, Michael B., Consular, O–3.

NATIONAL SECURITY COUNCIL (8)

Adams, Alvin P., Jr., O–5.
Bushnell, John A., Economic, O–3.
Davis, Florence Jeanne, GS–16.
Froebe, John A., Jr., Pol/Econ., O–4.
Holdridge, John H., O–1.
Linton, E. Mark, O–6.
Negroponte, John D., O–4.
Sonnefeldt, Helmut, O–1.

OFFICE OF EMERGENCY PREPAREDNESS (1)

Meyers, Howard, O–1.

OFFICE OF SCIENCE AND TECHNOLOGY (1)

Neuriter, Norman P., Sci. Attache, R–2.

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS (1)

Propps, Herbert F., O–1.

COUNCIL ON ENVIRONMENTAL QUALITY (2)

Hadsoll, Francis, O–4.
Janin, Henry, Consular, O–5.

COUNCIL ON INT'L ECONOMIC POLICY (5)

Bider, Lorice M., O–5.
Hinton, Deane R., Economic, O–1.
Keating, Dwight N., R–2.
Morris, Robert J., Econ/Comm., O–3.
Weiss, Gus W., Jr., R–1.

PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD (1)

Zayac, Mildred, M., Secretary, S–4.

INTERIOR (1)

Crawford, Franklin J., Administrative, O–3.

LABOR (1)

Reichard, Hugh, Labor, O–2.

USIA (1)

Riley, Dominick J., Admin/Security, R–4.

OFFICE OF THE VICE-PRESIDENT (1)

Reynders, Thomas R., O–5.

BOARDS, COMMITTEES AND COMMISSIONS

CABINET COMMITTEE FOR SPANISH SPEAKING PEOPLE (1)

Rodriguez, Antonio F., R–1.

PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS (1)

Gidley, Carol, GS–9.

CONFERENCE ON INDUSTRIAL WORLD AHEAD (1)

Krason, William S., Econ/Comm., O–2.

NAT'L FOUNDATION OF ARTS & HUMANITIES (1)

Perlmutter, Jerone H., R–2.

Other agencies' personnel on reimbursable detail to State as of December 31, 1972

Agency, name, and grade:

USIA (31)

Aggrey, O. Rudolph, FSIO–1.
Arndt, Richard Tallmadge, FSIO–3.
Banks, Dolly Virginia, FSS–5.
Bell, Brian, FSIO–2.
Brown, Daniel, FSR–2.
Brown, Michael D., FSIO–3.
Curran, Robert Theodore, FSIO–2.
Fordney, Ben Fuller, FSIO–3.
Hartry, Theodore G., FSIO–3.
Inman, Jerry L., FSIO–3.
Jacoby, Peter H., FSIO–3.
Kramer, Wilford, FSIO–2.
Lewis, Mark B., FSIO–1.
Logan, Frenise A., FSIO–4.
MacDonald, Robert W., FSR–4.
Madison, Herbert C., FSIO–4.
Mason, Frederick G., FSR–4.
McDonald, John F., FSIO–4.
Meyers, Robert S., FSIO–4.
Morad, James L., FSIO–3.
Mowindel, John W., FSIO–1.
Phillips, J. Paul, FSIO–2.
Pope, James M., GS–14.
Porter, George W., FSIO–3.
Powell, W. Clinton, FSIO–3.
Richmond, Yale W., FSIO–2.
Savage, Edward J., FSIO–2.
Smith, Glenn Lee, FSIO–1.
Tenny, Francis B., FSIO–2.
Turner, W. Fitzhugh, FSIO–3.
Vogelgesang, Sandra L., FSIO–5.

AID (9)

Fullmer, Robert G., FSR–3.
Kitchen, Robert W., FSR–1.
Lindahl, Emil G., FSR–2.
Long, Edna E., FSS–4.
O'Brien, B. Audra, FSS–5.
Poulin, Roger J., FSR–4.
Smith, Robert S., FSR–1.
St. Lawrence, Joseph Leo, FSR–1.
Wilhelm, John K., FSR–3.

Other agencies' personnel on nonreimbursable detail to State as of December 31, 1972

Agency, name, and grade:

USIA (4)

Dowling, Brian, FSLR–5.
Karch, John J., FSIO–2.
Muir, Hugh, FSIO–4.
Zirkin, Abraham, FSIO–2.

AID (2)

Burk, Monroe, FSR–2.
Stein, Theodore, GS–13.

Mr. MANSFIELD. Mr. President, I find it difficult to believe that the White House offices are the only areas in the Government which cannot afford to pay the State Department for the services of personnel they borrow.

The proposed amendment would, in effect, gut the committee amendment by allowing the Secretary of State general waiver authority. Perhaps a case can be made for giving the Department a bit more flexibility—that is something which could be discussed in conference and I think worked out favorably—and, if so, the problem can be worked out on that basis when the conference meets. But I cannot support giving the Secretary complete discretion in whether or not to require reimbursement, because his department is being treated parsimoniously enough, as I have tried to indicate.

Do Senators think he would really say "no" to a White House request for the loan of some State personnel without having to pay for them—when he had complete waiver authority that allowed him to say "yes"? In effect, this makes the committee's action null and void; and I think what the committee did unanimously and what this amendment would negate is to uphold the hand of the Secretary of State, to give him flexibility and authority, and to indicate the Senate's confidence in this man who has conducted himself so well and with such integrity and dedication.

I thank the distinguished Senator for yielding me this part of his time.

Mr. BROOKE. Mr. President, I think it is well to point out at this time that we are not, under this amendment, giving the Secretary of State unlimited authority in this area. We are saying that if the Secretary finds and promptly reports to Congress that the best interests of the Department of State would be served thereby, then no reimbursement shall be required to be made under this section.

The Secretary of State must report to Congress any instance in which he finds that the best interests of the Department of State would be served by nonreimbursable detailing. In addition—and I think this ought to be included in the RECORD—the nonreimbursed detailing of State Department personnel in 1971, the number of individuals detailed per year on the average was only 32. In 1972 the total was only 30. In 1973 there were an estimated 23. For a total of 3 years, we are talking about only 85 persons detailed on a nonreimbursable basis.

This does not indicate that the State Department has abused its flexibility at all. This indicates the discrepancy latitude that the State Department needs in the proper functioning of the exercise of its duties. The Department derives the benefit. And I think it also is clear that while the distinguished majority leader has mentioned one detail to the White House, there have also been other details to the President's Foreign Intelligence Advisory Board, the Commission on White House Fellowships, the National

Security Council, the Office of Emergency Preparedness, the Office of Science and Technology, the Office of the Special Representative of Trade Negotiations, the Office of Environmental Quality, and one in the Office of the Vice President.

Again I want to make the point, Mr. President, that many of these agencies are also working on tight budgets, and if it was in their best interests to have State Department personnel assigned to them for a particular period of time on a nonreimbursible basis, then, of course, they might do so.

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

Mr. BROOKE. I yield.

Mr. MANSFIELD. I do not think there would be any difficulty in reaching an agreement in conference on a certain period of time by which transfers could be accomplished on a reasonable basis. I am quite certain that it was the intent of the committee that that particular aspect of these words be taken into consideration, and I am sure that something will be done if the committee is upheld to bring about a meeting of the minds in conference which will be satisfactory.

Mr. BROOKE. Mr. President, I am certainly pleased to hear that from the distinguished majority leader, because actually this amendment provides any period or periods exceeding a total of 90 days in any fiscal year, which is certainly a reasonable period of time will come under the reimbursable clause. If it goes beyond that, then of course the Secretary would have to make his case by reporting to Congress that in his opinion that nonreimbursable detail is in the best interests of the State Department and the United States, and therefore it should be upon a nonreimbursable basis.

I do not see anything in this amendment which would be harmful, certainly, not only to the State Department but to any other department or agency in the Federal Government.

I believe that we ought not to shackle the Secretary of State with restrictions that do not allow him any flexibility at all to assign personnel on a nonreimbursable basis when he believes that it is in the best interests of the State Department and the United States, and when the head of the receiving agency or department believes that it is not solely in the interests of that particular department or agency of the Federal Government.

I do not think that we have something here, as the distinguished majority leader has said, that is of great magnitude, but I do think it is important that the Secretary of State have this flexibility.

Mr. COTTON. Mr. President, will the Senator yield me half a minute of his time?

Mr. BROOKE. I yield.

Mr. COTTON. I would like to suggest to the distinguished Senator from Massachusetts that there is one way in which the State Department can relieve itself of some of its financial obligations so as to have more latitude.

The distinguished Senator from Washington (Mr. MAGNUSON) and I, jointly, have labored, in bill after bill over a period of years, to bring back into the Department of Commerce the commercial attachés who were taken over by the State Department some years ago. My own brother-in-law was a commercial attaché and spent his whole life in that service.

Frankly, I think the trade relations of our country; the promotion of its foreign trade; and our balance of payments would be much benefited if our trade representatives were under the Department of Commerce, and not simply adjuncts to the State Department.

I would hope we will have a chance to bring this about. I think the amendment of the Senator from Massachusetts is a first step which might lead to that. I suggest he consider it.

Mr. BROOKE. Mr. President, I shall certainly do so. I am very grateful to the distinguished Senator from New Hampshire for his contribution.

Mr. President, I ask unanimous consent that the statement of the Senator from Hawaii (Mr. FONG) in support of this amendment be printed in the RECORD at this point.

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

STATEMENT BY SENATOR FONG

I support the amendment of the distinguished Senator from Massachusetts (Mr. BROOKE) because I believe that the Committee's amendment as prescribed by Section 10 of the bill would substantially curtail the opportunities that are most useful to the broader development of the Foreign Service Officer Corps and to the close cooperation and smooth functioning of interdepartmental activities in foreign affairs.

The Committee's amendment would make it very difficult for the Secretary of State to exercise flexibility in detailing Foreign Service Officers to non-reimbursable assignments with other departments and agencies—even in cases where the benefit to the Service in training and experience might far outweigh the cost.

The Foreign Service Act of 1946 gives the Secretary of State the authority to detail Foreign Service Officers to other departments, at his discretion, when it serves the broader interest of the U.S. Government. It provides the Secretary with the option of sharing experienced foreign affairs personnel with other departments that have a legitimate but specialized interest in a particular aspect of our relations with foreign countries.

In addition, such practices provide the Secretary with the opportunity to train his personnel through such assignments in the specialized functions of other departments. To limit the mobility of Foreign Service Officers in this respect would not only be shortsighted, but also would constitute a failure on our part to recognize the interdependence of a growing number of federal agencies in foreign affairs.

Foreign Service Officers have served with distinction in such agencies as the Department of Interior on matters related to the Micronesian Treaty negotiations, at the Council on Environmental Quality on international environmental affairs, at the Office of the Special Representative for Trade Negotiations, and in other governmental agencies. Their expertise in foreign affairs have allowed them to make positive contributions to the various agencies' efforts to promote the best interests of our country.

Although I accept the general principle that details to other departments should be reimbursed, I believe that a little flexibility in this matter would be in the best interest of the Foreign Service. Senator Brooke's amendment to the Committee's amendment is, in my opinion, a reasonable and sound compromise. It will permit non-reimbursable details of up to 90 days. In addition, it will give the Secretary of State discretionary authority to permit longer non-reimbursable details in cases where he finds that the training and experience involved would be of sufficient benefit to the Service to merit the cost involved.

I believe that the Secretary of State should continue to have reasonable discretion and flexibility in these departmental determinations and therefore urge my colleagues to support the Brooke amendment.

Mr. BROOKE. Mr. President, I think I have said all that I need say on this subject. I appreciate the opportunity to have discussed it with the distinguished majority leader. I do not think we are too far apart. We both agree that there should be some flexibility given to the Secretary of State.

My only purpose in offering the amendment is to enable the Secretary of State to assign personnel to various agencies and departments of the Government when, in his opinion, to do so would be beneficial to the State Department and to the United States.

In those cases, by his having to report to Congress, I think we have congressional control, and I think we will be performing a service to our foreign policy if we grant him this flexibility.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. NUNN). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Massachusetts (Mr. BROOKE). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BARTLETT) is necessarily absent to attend the funeral of a friend.

The Senator from Oklahoma (Mr. BELLMON), the Senator from New Jersey (Mr. CASE), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The result was announced—yeas 44, nays 51, as follows:

[No. 194 Leg.]

YEAS—44

Aiken	Dominick	McIntyre
Allen	Fannin	Packwood
Baker	Fong	Percy
Beall	Goldwater	Proxmire
Bennett	Griffin	Roth
Brock	Gurney	Schweiker
Brooke	Hansen	Scott, Pa.
Buckley	Hatfield	Scott, Va.
Byrd, Harry F., Jr.	Helms	Stafford
Cook	Hruska	Stevens
Cotton	Humphrey	Taft
Curtis	Jackson	Thurmond
Dole	Javits	Tower
Domenici	Mathias	Weicker
	McClure	Young

NAYS—51

Abourezk	Eagleton	Inouye
Bayh	Eastland	Johnston
Bentsen	Ervin	Kennedy
Bible	Fulbright	Long
Biden	Gravel	Magnuson
Burdick	Hart	Mansfield
Byrd, Robert C.	Hartke	McClellan
Cannon	Haskell	McGee
Chiles	Hathaway	McGovern
Church	Hollings	Metcalf
Clark	Huddleston	Mondale
Cranston	Hughes	Montoya

Moss	Pearson	Stevenson
Muskie	Pell	Symington
Nelson	Randolph	Talmadge
Nunn	Ribicoff	Tunney
Pastore	Sparkman	Williams

NOT VOTING—5

Bartlett	Case	Stennis
Bellmon	Saxbe	

So Mr. BROOKE's amendment (No. 219) was rejected.

Mr. FULBRIGHT. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

EXECUTIVE SESSION—FEDERAL POWER COMMISSION

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to resume debate on the nomination of Mr. Robert H. Morris to be a member of the Federal Power Commission.

Mr. MAGNUSON. Mr. President, as I understand it, the matter before the Senate is the nomination of Robert H. Morris to be a member of the Federal Power Commission for a term which expires on June 22.

The PRESIDING OFFICER. That is correct.

Mr. MAGNUSON. We are going to vote on this matter about 4:30 or earlier, if we can. In the meantime, there will be a vote on last night's matter on a motion to reconsider.

I will proceed at this time with a statement I have on the nomination, and I want to tell the Members of the Senate that it is my intention after the vote to make a motion to recommit the nomination to the Committee on Commerce. I hope I can give effective reasons why. I hope the Senate will vote for the motion.

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

Mr. MAGNUSON. I yield.

Mr. COTTON. May I ask who has control of the time?

Mr. MAGNUSON. I presume that the Senator from New Hampshire and I will have control.

The PRESIDING OFFICER. That is correct. The Senator from Washington and the Senator from New Hampshire control the time.

Mr. COTTON. Earlier, I had a colloquy with the distinguished majority leader, pointing out that we may be squeezed a little for time. I hope, therefore, that we may get an extension of time, if we need it. As a result, the vote might not come promptly at 4:30. For example, I want 10 minutes—possibly 15—and I know others want time. The majority leader assured us that if we found ourselves pressed, he would give us a little leeway.

Mr. MAGNUSON. I am sure that can be done. I do not think we need to take too much time on either side of this question.

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

Mr. MAGNUSON. I yield.

Mr. STEVENS. Is there controlled time at this point?

The PRESIDING OFFICER. Under the previous order the time for voting on the nomination is 4:30, and the time for a vote upon a motion to reconsider has been set for 3 p.m. The time is under the control of the two Senators previously mentioned, the Senator from Washington and the Senator from New Hampshire.

Mr. STEVENS. I thank the Chair.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the following staff members of the Committee on Commerce be permitted the privilege of the floor during the consideration of the nomination: Michael Pertschuk, Art Pankopf, Mal Sterrett, Ed Merlis, and Henry Lippek.

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

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

Mr. MAGNUSON. I yield.

Mr. TUNNEY. Mr. President, I ask unanimous consent that a member of my staff, Mr. Dan Jaffe, may have the privilege of the floor during the consideration of the nomination.

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

Mr. COTTON. Mr. President, I should like to designate the Senator from Alaska, who has been present at all the hearings and has done most of the work on this nomination to control the time on this side.

Mr. MAGNUSON. Mr. President, I have stated previously that I would oppose the nomination of Robert H. Morris, not because of any doubts—and I want this clearly understood—regarding his integrity or the purpose with which he might approach the service on the Federal Power Commission. In the hearings, of course, he assured us that he would try to be fair about all these matters, and that is natural for most nominees.

I have had long experience in this matter with nominees to the independent agencies. I say there is a certain philosophy that is imbedded in many nominees as a result of their backgrounds that is pretty hard to shake when real tough decisions have to be made.

The opposition to Mr. Morris stems from the fact that the Senate is again asked to accept, for an independent regulatory agency with vast powers over an industry which affects vital national interests, yet one more nominee whose professional career has been dedicated to the furtherance of the private interests of that industry.

For 15 years, Mr. Morris has represented Standard Oil Co. of California. From 1956 to 1964 he spent about one-third of his time on Standard oil matters. For the 7 years from 1964 to 1971 he devoted approximately two-thirds of his time to the Standard Oil Co., focusing on natural gas matters involving the Federal Power Commission as well as nonregulatory gas problems. He played an active role in judicial appeals by Standard Oil of Federal Power Commission decisions. The views of the client should not be ascribed to a lawyer in all cases, but here the relationship between Mr. Morris and Standard Oil was not a casual or isolated one—instead it spanned nearly the entire professional career of Mr. Morris.

Has Mr. Morris shed his industry views which he argued so long and so ably? If this were an appointment to a Commission peopled with members of demonstrated commitment to the public interest, it might be appropriate to afford Mr. Morris the benefit of the doubt.

This is not a case of suggesting that industry should not be represented or that there should not be industry-oriented people on the Federal Power Commission; rather, it is one of whether all five of them should be industry oriented. I think any Senator here would say that four members now are industry oriented. That is no secret and everybody knows that.

But, in this case, no single member of the Federal Power Commission now serving has a previous record which demonstrated active concern for consumers affected by the impact of Federal Power Commission decisions.

The public is legitimately skeptical toward regulatory agencies whose important positions are assumed from the industries to be regulated. If public confidence is to be restored in the fair dealing and integrity of government during these troubled times, there would seem to be no better way to begin than with conflict-of-interest-free appointments to Federal offices.

The Senate should serve notice on the President that it expects revision of his criteria for the selection of nominees to all regulatory agencies. Now, more than ever, the Senate should not be asked to confirm appointments to regulatory agencies which appear to have been designed as rewards for politically supportive industries or other special interest groups. Instead the Senate should be asked to confirm nominees who have demonstrated competence and commitment to the public interest.

I am sure the President could find at least one such person for the Federal Power Commission who could meet that criteria.

But in addition to these factors a number of events have occurred since the Commerce Committee held hearings on Mr. Morris' nomination. It is important that any nominee to the FPC be closely questioned on the following matters:

The President, in his energy message proposed to deregulate the wellhead price of new natural gas, gas newly dedicated to interstate markets and the continuing production of natural gas from expired contracts. Because of the enormous impact that such legislation would have on consumers and the economy, it is important that the committee closely question FPC nominees regarding this proposal.

On May 30 the FPC approved in the Belco case a 73-percent increase in the wellhead price of natural gas. This price was "negotiated" between two subsidiaries of the same corporate parent. Authoritative and uncontroverted evidence showed that no competitive market forces were operative, that no obligation was imposed to reinvest additional revenues on further exploration and development, and that profits to the applicant

would be as high as 50 percent. Yet the FPC approved the rate requested by the producer without any benefits or safeguards to protect the consumer.

This case is also highly significant because the Commission majority angrily rebuked FPC staff witnesses for expressing views on the competitive structure of the natural gas industry, thereby raising serious questions about the future independence of the staff.

The FPC has been granting enormous price increases to natural gas producers on the basis of claimed shortages of reserves. Yet on June 6 the Justice Department filed suit to enforce subpenas for company records issued by the Federal Trade Commission. The evidence suggests the possibility that gas producers are underreporting reserves in an effort to increase prices in possible violations of the antitrust laws. This is where the Federal Trade Commission comes in.

A further cloud was placed on the validity of the FPC's rush to increase natural gas prices by reports in Sunday's Washington Post that confidential papers purporting to document the size of natural gas reserves were ordered to be destroyed. That seems to be par for the course around here. This information supported the FPC's national gas survey which indicated reserves to be almost 10 percent lower than the industry itself had estimated.

The lower the reserves the more consumers must pay for natural gas. This attempted document destruction intensifies growing skepticism about the claimed gas shortage.

All of these major developments occurred after the Commerce Committee considered the Morris nomination. In fact, we had no idea, when we got through with the hearings, that the Federal Power Commission would rush to increase rates by 73 percent. We knew they had conducted hearings, but we never thought they would approve the producer's proposal. I guess they had some difficulty, because they attempted to scrap some of the backup papers, but they did not succeed.

They also highlight the imperative need to have on the Commission a member to represent consumers, who have a multibillion dollar stake in FPC decisions. In light of his industry background, Mr. Morris should be closely questioned regarding these events to determine his views.

Therefore, I shall move that the nomination of Robert H. Morris be recommitted to the Commerce Committee for further consideration.

Another factor is involved which should be called to the attention of the Senate. It is a matter of procedure. This is why I think the Senate should consider the nomination carefully. Mr. Morris' name was sent up here at the end of January. Some 4 or 5 months of the unexpired term remained.

The term expires on June 22, which is 9 days from now, so that we will be voting to confirm the nomination of the man for 9 days. The oil and gas industry may like someone there for 9 days, but the nomination of Mr. Morris, or whichever nomination the President sends up, will have to come up again in 9 days.

In view of all these factors, it seems to me we ought to recommit the nomination to the Commerce Committee, wait the 9 days, and then see whose nomination is sent to the Senate. If it is that of Mr. Morris, we will have a chance to examine into all the matters that have transpired since the hearings and since the nomination.

So there is a practical question involved. I do not think the Senate wants to go through this procedure again in 9 days. I think we ought to recommit the nomination. This is no reflection on Mr. Morris. He did not participate in these matters, but he is going to have to give his views if his name is submitted again and the nomination is confirmed. This is something the committee is going to have to take a look at with respect to the nominee for the fifth place on the Federal Power Commission. I also want to examine another matter. I might want to bring some of the members of the Federal Power Commission up before the committee.

Here is a practice I do not quite understand. The Federal Power Commission asked the gas producers involved to send them a confidential information backing up their case on the whole matter of the gas shortage or the gas crisis. This is the first time I have ever heard of taking a survey on confidential information. That should have been made public. If the companies did not want to send anything, that is all right. They do not have to, unless they have a case.

Can anyone here imagine a commission downtown, an arm of Congress, working on the theory that it is going to decide cases on confidential information that is available only to themselves? If this is a public agency working in the public interest, all this information should have been made public.

A question that should be asked is whether or not a new commission is going to stop that kind of practice. When one goes before the other commissions, he has to stand up and present his case publicly, and all the briefs are presented publicly. Here they have confidential information. I do not know what it contained. Maybe it had something to do with the shredding. I do not know.

I do not know how many people in this country realize that when we talk about gas rates, or the adjustment of power rates up or down, if it amounts to 1 cent in a given case, that involves hundreds of millions of dollars. It is that sensitive.

So this is a pretty serious matter, and I think, for the sake of 9 days, the Senate ought to sustain those of us who want to recommit the nomination to the Commerce Committee.

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

Mr. MAGNUSON. Yes. I yield the floor.

Mr. MOSS. Mr. President, I support——

The PRESIDING OFFICER. Who yields time?

Mr. MOSS. Will the Senator from Washington yield me some time? I am told that we are operating under controlled time.

Mr. MAGNUSON. Mr. President, I yield the Senator some time.

If we should get to the point where we need more time on either side, we can ask unanimous consent to do that.

Mr. COTTON. Mr. President, I hope that is so, because a statement has been made that I want to comment on a bit. I hope we are not going to be pressed for time on this matter.

Mr. MAGNUSON. I will join the Senator, but I hope that by 5 o'clock we will have a vote.

The PRESIDING OFFICER. Does the Senator from Washington yield time to the Senator from Utah?

Mr. MAGNUSON. Yes, I yield such time to the Senator from Utah as he may need.

Mr. MOSS. Mr. President, I rise to support the announced intention of the chairman of the Commerce Committee to recommit the nomination of Robert Morris to the Commerce Committee to permit further examination of the applicant, if his name is, indeed, submitted back after the 9-day interval that the chairman has mentioned, or if we have the nomination of any other person that is sent up as a nominee for the Federal Power Commission.

I would like to stress what the chairman has said about the very sensitive nature of this matter. We are, indeed, having some problems in energy production, sometimes called the energy crisis. Of that there is not much doubt. But even more pointed, it seems to me, we are going through an inflationary cycle that is likely to take off like a rocket, the way prices are going up, and one of the most sensitive spots in that escalation of prices is in the cost of fuel, gas, and electricity, which are matters under the jurisdiction of the Federal Power Commission.

The chairman of the committee cited instances in which there have been increases of 73 percent. In my own area, the distributing gas company that sells gas at retail just had an application for a price granted to a supplier in an adjoining State, one from which they were drawing gas that was simply running out of the wellhead into the lines and to the consumer, which amounted to an increase of 264 percent in one jump, and which was approved by the Federal Power Commission. This is the sort of thing that gives me great concern.

Mr. Morris, it has been said, is a very competent man. He is an able lawyer and he is a man who has worked a great deal in the field of oil and gas matters. Standard Oil of California has retained his services for some 15 years. And that is exactly the problem. If the nomination of Mr. Morris is confirmed, he would be asked to decide on issues for which he was an advocate over those 15 years. There is nothing wrong with representing these policies, but there should be members on the Federal Power Commission who bring to the Commission the balance it needs to judge these matters in an objective manner. Mr. Morris would be the fifth member of the Federal Power Commission to expound the producers' point of view.

I think it has been traditional, and if it has not been traditional, certainly it ought to be traditional, that on a regulatory Commission like the Federal Power Commission we should have what could be called a consumer representative, somebody whose interests have lain in the field of protecting the consumers who are concerned about the end price, and not concerned solely with the problems of the companies being regulated. They have their problems. They are entitled to be represented by people who represent their point of view.

It is my view, after looking at the Federal Power Commission, that we would have, if the nomination of Mr. Morris were confirmed for 9 days, five members on the Commission whose background and interest lay with those who are producing the gas and electricity that are being regulated by the Federal Power Commission, rather than with the consumer.

Mr. COTTON. Mr. President, will the Senator yield for a question?

Mr. MOSS. Yes, I am glad to yield for a question.

Mr. COTTON. Mr. President, right at that point when the Senator from Utah (Mr. Moss) implies that all of the present members on the Federal Power Commission are "anticonsumer," I would like to ask him if he by any chance has read the dissenting opinion of Chairman Nassikas in the Belco Petroleum Co. case?

Mr. MOSS. I did read that.

Mr. COTTON. Has the Senator from Utah (Mr. Moss) read the dissenting opinion of Chairman Nassikas in the matter George Mitchell, an opinion handed down in February, 1973?

Mr. MOSS. I am not sure that I read that.

Mr. COTTON. Has the Senator from Utah (Mr. Moss) read the dissenting opinion of Chairman Nassikas in the Panhandle decision?

Mr. MOSS. Yes.

Mr. COTTON. Has the Senator from Utah (Mr. Moss) read the dissenting opinion of the Chairman of the Federal Power Commission and, I believe, Commissioner Moody, in the Tennessee Pipeline Co. rate case?

Mr. MOSS. I am not sure on that.

Mr. COTTON. Has the Senator from Utah (Mr. Moss) read the dissenting opinion of Chairman Nassikas in the Distrigas case? In each of those rate cases the Chairman of the FPC wrote a vigorous dissenting opinion against increases approved by the majority. And, I can say this because the Chairman of the FPC comes from my home State. In a sense he has been a political opponent because he is a liberal Republican and I am supposed to be a conservative one. But, when the Senator from Utah (Mr. Moss) says to me that on this particular Commission, if we confirm the present nominee, we will have five members all lined up for the companies and all, against the consumers, I must take vigorous exception. I do not want to suggest that the Senator is talking without full knowledge. However, an examination of the last several decisions of the Federal Power Commission would not do him a bit of harm.

Mr. MOSS. I thank my friend for his comments on that. I am perfectly well aware that the Chairman of the Federal Power Commission. Mr. Nassikas, was counsel for a gas company before he came on the Commission.

Mr. COTTON. On the contrary, Mr. Nassikas, represented the State of New Hampshire against the utilities.

Mr. MOSS. Prior to that he was a representative of a utility company. I commend him because his sense of justice was shocked to the point that even he had to dissent from the other Commissioners on some of the rate cases they had before them. It was not a matter of political orientation.

I point out that one of the Democratic Commissioners represented the Pennzoil United before he came on the Commission. This was a case in which former Commissioner Carver, whose place Mr. Morris is nominated to fill, benefited Pennzoil United by his decision when Carver was on the Federal Power Commission. However, without getting into the specific cases, I think it is perfectly fair and obvious to say that members of the Commission who sit now are oriented in experience and background and do not generally depart from the ranks of the producers of energy regulated by the Power Commission.

Mr. Morris, the man whom we are talking about, represented Standard Oil of California. And, undoubtedly, if he is confirmed and completes his term, he will go back to representing Standard Oil of California. And Standard Oil of California has been pegged as one of the villains in this situation.

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

Mr. MOSS. Mr. President, I yield for a question.

Mr. STEVENS. Mr. President, I will make a speech later. However, I would like to ask a question at this time. It seems to me that the Senator from Utah (Mr. Moss) referred to Mr. Morris as being a representative of Standard Oil of California. Does the Senator draw any conclusion from the fact that Mr. Morris was an employee of Pillsbury, Madison & Sutro, a very distinguished law firm of California? The Senator stated that he was counsel for Standard Oil of California. It is my understanding of what I heard that he was an employee. He was not part of management. He was not a partner. He was an attorney for a very large law firm.

Mr. Morris handled matters assigned to him by the law firm, and some of those matters involved oil companies.

Mr. MOSS. The Senator is not entirely incorrect. He was assigned to be counsel for Standard Oil of California. He represented them for years and his staff was their staff during that period of time.

I recognize very perfectly well the representation feature of a lawyer and know where the particular emphasis lies.

I am trying to say that his orientation has always been on the side of the producer that he has been paid to defend. It is perfectly honorable that that be so. Nevertheless, that is a fact.

Mr. MAGNUSON. Mr. President, we have a little time problem here.

I ask unanimous consent that this time not be taken out of our time. If they are going to ask questions back and forth, I want the time attributed to the other side so that we will not use all our time.

Mr. STEVENS. Mr. President, I believe we earlier had the assurance of the distinguished majority leader that if we ran out of time, we would get a little extra time. I think that my good friend, the Senator from California (Mr. TUNNEY) wants to enter into this debate also.

I appreciate what the chairman has to say. And I would not have any objection to the time for questions being charged against our side.

The Senator from Utah will recall that he asked Mr. Morris the question, "Do you think you could respect the consumer's point of view since your association has been with industry?"

Mr. Morris said, "I think I do."

The Senator from Utah did not follow up that question. What is the consumer's point of view? Is it the point of view which favors the production of Algerian natural gas and regulates the price of gas from Alaska? Is it the point of view of a person who tells us, "You can get gas cheaply today, but you will pay a lot for it tomorrow"? Maybe it is a point of view urging delivery to the consumer for the longest time possible the cheapest gas available. That is not the consumer's point of view that the Senator is describing.

Mr. MAGNUSON. Mr. President, does the Standard Oil of California ever have that point of view?

Mr. STEVENS. That is the point of view of Mr. Morris.

Mr. MOSS. Mr. President, the consumer's point of view is not represented by the high price of flowing gas at the wellhead going up all the time on which a profit is being made and suddenly dumping that on the consumer.

That is the kind of opinion that does represent the anticonsumer bias in the power cases.

That is what I am worried about.

All we request is that the consumer be furnished with a product to use at the cheapest possible price that gives an adequate return to the producer and assures that he can continue.

I know, because I have sat through weeks and months and years of hearings that they say that if we put the price up high enough, they will punch holes in the ground all over the country and we will have a lot of gas. I do not see that happening. I do see the prices jumping. However, I do not see them punching any more holes in the ground.

I know that there has to be enough return so that the companies will continue to produce oil and gas.

But it does not have to flow into the point where millions and billions of dollars are being taken from little householders to fatten the purses and pockets of the great corporations in this field.

Mr. STEVENS. Mr. President, I say to my friend from Utah that when we see the day that we make a deal with Siberia to bring gas over here, there will not be any regulation of wellhead prices in Siberia.

I will tell you what happened in Algeria. After America went in and de-

veloped the industry there, the industry was nationalized. We pay more than the price of natural gas if the Algerian gas industry had not been developed by American companies.

We are begging producers in Canada to let us import natural gas at a price of a dollar per thousand cubic feet—a price set 100 years ago, and that is less than the price in Algeria, Siberia, and Russia for natural gas.

Are we going to continue to export jobs in this country in order to get natural gas, or are we going to have farsighted people talking about the consumer interest and complaining because today the price is going up?

This man has impressed me as being capable of doing that. This man is a Democrat. He is endorsed by the Sierra Club. He was employed by a law firm in San Francisco until he went into his own law practice, and he has had no relationship with any oil company that I know of. To my knowledge, he has never been on the payroll of an oil company.

He answered the questions in the Senate Commerce Committee very frankly. I say to other Senators again that when they say this man does not represent the consumer interests, they beg the question, because I think those who do not want to confirm his nomination have to say exactly what is the consumer interest and what represents the lowest price which would make certain the availability of gas.

Mr. MOSS. Mr. President, for tomorrow and into the future, it is the price today: tomorrow, next month, and down the line. I assure my friend from Alaska that if Siberian gas comes in here at $2 a thousand cubic feet, or whatever price, it is not going to sell, because heating gas, cooking gas, and pipeline gas will not be that price, hopefully, into the foreseeable future. There is a reserve that can keep it there, and besides, we are now on the threshold, I hope, of developing other sources of supply, such as gasification of coal, gasification of oil shale or tar sands, increased nuclear energy sources, and so on. All of these things are going to relieve so much of the pressure being on gas alone. But in the meantime, if we are going to strangle our people with the excessive inflation that is coming on now, under these rulings, there will not be much sense in going into that extra research. We will be up to the point where we will have to buy Siberian gas and Algerian gas.

I simply say that we have to have somebody who sits there with his eye on the welfare of the little guy who has to buy the gas, the person that has to pay for it out on the end of the line.

If gas doubles in price, as it has in some places now, and goes up again, those people suffer from that loss of a very necessary element in the cost of living in this country, and from the fact that this man Morris, whom we now are talking about confirming for 9 days, does not represent the consumer point of view.

So I think what we should do is have his nomination recommitted, have him be reexamined, and at the end of the 9 days, if his name is resubmitted, reexamine it then and make a judgment on it. As the Chairman pointed out, many things have occurred since Mr. Morris' name was sent up. We ought to be able to ask some questions about some of these things that are going on, some of the decisions mentioned by the Senator from New Hampshire, and some of the dissent. We ought to see what his point of view is in those matters. I would like to know it, and I do not believe at this time that I could vote to confirm his nomination of an up-or-down basis if that were the question. But certainly I am convinced that on a motion to recommit, I shall vote to recommit, so we can go back and have that opportunity to examine him.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. STEVENS. Mr. President, I yield to the distinguished ranking minority member of the committee, the Senator from New Hampshire (Mr. COTTON), so much time as he may desire. But before yielding, I hope he will not object if I ask unanimous consent to have printed in the RECORD at this point title 16, section 792, which creates the Federal Power Commission.

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

CHAPTER 12.—FEDERAL REGULATION AND DEVELOPMENT OF POWER

§ 792. Federal Power Commission; creation; number; appointment; term; qualifications; vacancies; quorum; chairman; salary; place of holding sessions

A commission is created and established, to be known as the Federal Power Commission (hereinafter referred to as the "commission") which shall be composed of five commissioners who shall be appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman and shall be the principal executive officer of the commission. Each chairman, when so designated, shall act as such until the expiration of his term of office.

The commissioners first appointed under this section, as amended, shall continue in office for terms of one, two, three, four, and five years, respectively, from June 23, 1930, the term of each to be designated by the President at the time of nomination. Their successors shall be appointed each for a term of five years from the date of the expiration of the term for which his predecessor was appointed and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term. Not more than three of the commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any licensee or to any person, firm, association, or corporation engaged in the generation, transmission, distribution, or sale of power, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold the office of commissioner. Said commissioners shall not engage in any other business, vocation, or employment. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. Three members of the commission shall constitute a quorum for the transaction of business, and the commission shall have an official seal of which judicial notice shall be taken. The commission shall annually elect a vice chairman to act in case of the absence or disability of the chairman or in case of a vacancy in the office of chairman.

Each commissioner shall receive basic compensation at the rate of $15,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from the seat of government upon official business.

The principal office of the commission shall be in the District of Columbia, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevent thereby, the commission may hold special sessions in any part of the United States. As amended July 12, 1960, Pub.L. 86-619, § 1, 74 Stat. 407.

Mr. STEVENS. That section points out, Mr. President, that each Commissioner is appointed for a term of 5 years from the date of the expiration of the term for which his predecessor was appointed, and until his successor is appointed and has qualified, except that he shall not continue to serve beyond the expiration of the next session of the Congress subsequent to the expiration of the fixed term of office.

So we are not talking about 9 days. This man, if confirmed, will be able to serve until the end of the next session of Congress. The President has that long to send someone's name up here, and I am informed reliably that if the Senate confirms the nomination of Mr. Morris, his name will, in due course, be sent up as the nominee for the full term. But we are not talking about 9 days, and I think it is misleading to say that we are. We are talking about at least until the next session of Congress.

Mr. MAGNUSON. Does the Senator mean that the President of the United States has told him, or the people down there, that they are going to leave this office vacant until then?

Mr. STEVENS. No, I do not mean that.

Mr. MAGNUSON. On the 22d his term is up.

Mr. STEVENS. If we do not confirm him, that is another matter.

Mr. MAGNUSON. Does the Senator mean they are going to hold it up and keep him there? That is a new one on me.

Mr. STEVENS. No. Mr. President, I find myself in the strange situation of supporting a Democrat for a non-Democrat vacancy, a man who is endorsed and supported by people I do not support. But I think he is qualified, and I am saying that if his nomination is confirmed, he will not serve for just 9 days, as the Senator from Utah implies.

Mr. MAGNUSON. How long will he serve?

Mr. STEVENS. He will serve until the end of the next session of Congress, whether we confirm his nomination for the full term of 5 years or not.

Mr. MAGNUSON. That means the job is vacant.

Mr. STEVENS. Oh, no. He can serve until the end of the next session of Congress.

Mr. MAGNUSON. Is it not the duty of the President of the United States, when a term expires, to send up the name of

a nominee, so that he will not sit there for a year and a half? Are they going to keep him under cover down there?

Mr. STEVENS. The Senator assumes there will be a vacancy. I do not.

Mr. MAGNUSON. Of course, it could go on forever, with no one ever sent up.

Mr. STEVENS. Mr. President, I yield to the Senator from New Hampshire.

Mr. COTTON. Mr. President, I would like to inquire, how much time has been used by the opponents of this nominee and how much time has been used by the Senator from Alaska (Mr. STEVENS) in favor of it?

The PRESIDING OFFICER. Thirty-five minutes by the opponents, and about 6 minutes by the proponents.

Mr. COTTON. And, we are, at 3 o'clock, to vote on another matter?

The PRESIDING OFFICER. The Senator is correct.

Mr. COTTON. Mr. President, I would like to be recognized after we have voted, and then go on from there.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that that request be granted.

The PRESIDING OFFICER. Without objection, the Senator from New Hampshire will be recognized after the vote.

Mr. HART. Mr. President, if that is the case, I would like to suggest one aspect which should be considered and this can be done before the vote at 3 o'clock.

The PRESIDING OFFICER. Who yields time?

Mr. HART. Will the Senator from Washington yield me 2 minutes?

Mr. MAGNUSON. I yield 2 minutes to the Senator from Michigan.

Mr. HART. So that Senators will understand, I voted against advising and consenting to this nomination in the committee, and filed separate views, along with the Senator from Utah. But before we get fogged up further about how long this term will last and what is a consumer point of view, let us not lose sight of something which, if we have not learned it now, we never will, Watergate being the most recent reminder. This Federal Power Commission is going to have to render decisions in highly sensitive areas that will please no one.

The PRESIDING OFFICER (Mr. MCCLURE). The hour of 3 p.m. has arrived, and under the previous order——

LEGISLATIVE SESSION—DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

The Senate resumed the consideration of the bill (S. 1248) to authorize appropriations for the Department of State, and for other purposes.

Mr. PELL. Mr. President, I have a profound affection and regard for the people of Portugal, having spent some of the happiest months of my life in that country. My respect for Portugal and her glorious history and for the quality and caliber of her people is of the highest order. Should the Senate decide that this agreement with Portugal must be submitted to the Senate for its approval, that action should under no circumstances be interpreted as an affront to the Portuguese people. Nor, in my view, should such an action be considered as casting doubt on the desirability of the agreement with Portugal.

The question before the Senate is simply whether the Senate should insist on its right to review and act on significant international agreements with any nation. And it is for that reason alone, and without judging the merits of the agreement with Portugal, that I will vote to require submission of the agreement to the Senate.

In voting to require submission of the agreement to the Senate, I am voting to support the authority and the responsibility given the Senate by the Constitution to give its advise and consent to agreements between the United States and other nations. If the Senate is to fulfill that constitutional responsibility, I believe we must insist on the right of the Senate to review such significant agreements as the agreement with Portugal.

I would emphasize, however, that in supporting the right of the Senate to review this agreement, I am in no way opposing the substance of the agreement with Portugal. The agreement may indeed be a good agreement, in the best interests of our country and of Portugal. It is, however, an agreement involving the commitment of substantial funds by the United States, and it involves the stationing of U.S. forces outside of the United States. Both of these are important decisions that cannot and should not be made by the executive branch of the Government without the concurrence of the Senate.

The PRESIDING OFFICER (Mr. MCCLURE). Under the previous order, the hour of 3 p.m. having arrived, the Senate will resume the consideration of legislative business and proceed to vote on the motion to reconsider the vote by which the Sparkman amendment, to strike the section that would require the Azores Base agreement to be submitted to the Senate as a treaty for its advice and consent, was rejected.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Georgia (Mr. TALMADGE) is necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BARTLETT) is necessarily absent to attend the funeral of a friend.

The Senator from Oklahoma (Mr. BELLMON), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

If present and voting, the Senator from Oklahoma (Mr. BARTLETT) would vote "yea."

The result was announced—yeas 45, nays 50, as follows:

[No. 195 Leg.]

YEAS—45

Aiken	Eastland	Montoya
Allen	Fannin	Nunn
Baker	Fong	Percy
Beall	Goldwater	Schweiker
Bennett	Griffin	Scott, Pa.
Brock	Gurney	Scott, Va.
Buckley	Hansen	Sparkman
Byrd, Harry F., Jr.	Helms	Stafford
Cannon	Hruska	Stevens
Cook	Jackson	Taft
Cotton	Johnston	Thurmond
Curtis	Long	Tower
Dole	McClellan	Weicker
Domenici	McClure	Young
Dominick	McGee	
	McIntyre	

NAYS—50

Abourezk	Hart	Mondale
Bayh	Hartke	Moss
Bentsen	Haskell	Muskie
Bible	Hatfield	Nelson
Biden	Hathaway	Packwood
Brooke	Hollings	Pastore
Burdick	Huddleston	Pearson
Byrd, Robert C.	Hughes	Pell
Case	Humphrey	Proxmire
Chiles	Inouye	Randolph
Church	Javits	Ribicoff
Clark	Kennedy	Roth
Cranston	Magnuson	Stevenson
Eagleton	Mansfield	Symington
Ervin	Mathias	Tunney
Fulbright	McGovern	Williams
Gravel	Metcalf	

NOT VOTING—5

Bartlett	Saxbe	Talmadge
Bellmon	Stennis	

So the motion to reconsider was rejected.

EXECUTIVE SESSION—FEDERAL POWER COMMISSION

The VICE PRESIDENT. Under the previous order, the Senate will now return to executive session, to resume consideration of the nomination of Robert H. Morris to be a member of the Federal Power Commission. The vote on the Morris nomination is to occur no later than 4:30 p.m.

Who yields time?

Mr. STEVENS. Mr. President, I yield to the Senator from New Hampshire (Mr. COTTON) such time as he may need in connection with the Morris nomination.

Mr. MANSFIELD. Mr. President, may we have order?

The PRESIDING OFFICER (Mr. HELMS). The Senate will be in order.

The Senator from New Hampshire is recognized.

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

Mr. COTTON. I yield.

Mr. MAGNUSON. I was hoping that the Senator from Michigan could finish his statement first. He was in the middle of it.

Mr. STEVENS. If the Senator from Michigan wishes to continue, it is perfectly all right.

Mr. COTTON. Mr. President, I should like to inquire, before the Senator from Michigan (Mr. HART) continues, how much time remians on each side.

Mr. MAGNUSON. The Senator from Michigan would like 2 more minutes.

Mr. COTTON. I am perfectly willing for him to have his 2 more minutes.

Mr. PASTORE. Mr. President, there is

a lot of conversation going on, and we cannot hear the speakers. All we get is a murmur.

Mr. COTTON. I will yield to the Senator from Michigan (Mr. HART).

Mr. HART. I am grateful. I can complete my point in only 1 more minute.

Surely, we have learned that one item that government, public business, is short on is credibility. I am suggesting that this nominee could be the wisest, most resourceful public utility lawyer in America. And when he goes on the Power Commission, he might be the most objective and discerning propublic voice. But that Commission is going to have to come up with decisions that will displease enormous segments of the community in this country, and we hope the public will believe that such decisions are compelled because of overriding public necessity. We are going to have an extremely tough job selling it if the voice we put on now has been the voice of Standard of California for the last 10 or 15 years.

Maybe the White House does not understand credibility yet, but we should, and that is really why we should reject this nominee up and down, not just send his nomination back to committee.

I ask unanimous consent to have printed in the RECORD a statement on the nomination, an article published in the Washington Post, and a copy of my letter to John N. Nassikas, Chairman of FPC, requesting cooperation with the subcommittee's investigation.

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

STATEMENT BY SENATOR HART

In discussing the nomination of Mr. Robert H. Morris to the Federal Power Commission, it might be well to outline what we are *not* and what we are debating.

We are not discussing Mr. Morris' integrity or ability.

We are debating the importance of having persons with varied backgrounds on the Commission.

We are *not* debating the President's right to nominate a commissioner.

We are discussing the proper role of Congress in determining the make-up of a regulatory commission.

We are *not* arguing that industry-oriented nominees be banned from the Commission.

We are contending that the addition of a nominee with a background of concern for consumer interests would increase the credibility of the Commission as it tackles complex and important problems in the years ahead.

Let me deal with each set of "are nots" and "ares," mindful that much of what I will say was discussed May 21, when the Senate considered the nomination of William Springer to the same Commission.

From 1956 to 1971, Mr. Morris, by his own estimate, devoted between one-third and two-thirds of his professional career to the Standard Oil Company of California. His practice included considerable work on natural gas problems, involving Federal Power Commission decisions as well as non-regulatory questions.

The fact that the oil company retained Mr. Morris for so many years testifiies to his competence as an attorney.

However, in light of the fact that the other four members, or most of the Commission can be described as "industry oriented," the question becomes not one of judging Mr. Morris' ability, but one of attempting to bring some balance of orientations to the Commission.

Few would argue, I trust, that the issues before the Federal Power Commission are the sole concern of energy-producing companies. Certainly environmentalists and consumers have strong interests in the decisions the Commission reaches.

The question of balance then transcends the question of ability and suggests a vote against confirmation of Mr. Morris.

Under our present system, no one denies the right of the President to nominate individuals to regulatory agencies, but we should not forget that regulatory agencies were established by Congress to do the tasks Congress was ill-equipped to do itself.

That fact makes it possible to differentiate between a President's nomination to a cabinet post and his nomination to a regulatory post.

While in general I believe a President should have his choices in the cabinet, that freedom should not extend to an agency which is, at least in part, an extension of Congress. The make-up of such commissions should reflect to some degree the various views represented in Congress.

To argue that for too long Congress has ignored this fact does not persuade me we should continue to forfeit this responsibility.

To the contrary, a reasoned vote against Mr. Morris' confirmation is affirmation of accepting our proper responsibility.

And finally, while industry interests should have a full airing before any regulatory agency, can anyone really blame the public for being skeptical about such agencies manned by representatives drawn from the industries they are supposed to control? Or their lawyers? I think not, and increased credibility is a quality all branches of government could use these days.

Looking ahead, the Federal Power Commission will be considering complex problems. It will be making decisions which will have wide effect, which will have no chance of pleasing everyone.

I can think of no better way to help increase the degree of public acceptance which will greet these decisions than to name a consumer-oriented person to the Commission. Certainly we ought not name one who has served as lawyer to the industry.

Perhaps if there had been better balance on the present Commission, if there had been a consumer's clear voice among its members, the recent decision to increase the well head price of gas by 70 percent (a 29 cent boost) might have been modified or, at least, received with less skepticism.

Again, the reason for skepticism is clear, as pointed out in a recent article in the *Washington Post*:

"A 30 cent increase in the interstate price of natural gas would hand over to the major producers $6.6 billion in annual gas billings. This would pay nearly the full cost of all exploration for both oil and gas that the industry estimated in a national petroleum council study is needed to expand production to 1985. Another way of looking at it is a 30 cent boost in gas prices would increase the value of potential domestic reserves conservatively estimated at 1,000 trillon cubic feet by $300 billion."

In considering the points I have made, it might be well to reprint what President Franklin Roosevelt stated in 1932:

"The regulating commission, my friends, must be a tribune of the people, putting its engineering, its accounting and its legal resources into the breach for the purpose of getting the facts and doing justice to both the consumers and investers in public utilities. This means, when the duty is properly exercised, positive and active protection of the people against private greed."

It is my position, then, that the public will have greater confidence in the Commission's ability to meet that charge if the Senate approves a nominee more oriented toward consumer interests than the background of the present nominee suggests he has been.

The Senate should reject the nomination of Mr. Morris.

Mr. President, the question of credibility and the need for a consumer-oriented member of the Commission were reemphasized this weekend with the report in Sunday's Washington Post of attempts by Commission personnel to destroy "papers purporting to document the shortage of natural gas."

Once again, this incident, if reported accurately, in no way reflects upon the integrity of Mr. Morris.

However, the material in question relates to the increase in the price of gas at the wellhead that the Commission recently approved.

Reports of efforts to destroy such material can only create widespread doubt as to the validity of that decision.

For that reason, I have instructed the staff of the Senate Antitrust Subcommittee to conduct a full investigation of the report and of the use and disposition of material relating to the question of a shortage of natural gas.

Perhaps, the investigation will prove the story inaccurate or the attempted destruction justified—and perhaps not.

Whatever the result, the fact an investigation was warranted supports the position of those who say the vacant seat on the Commission should go to a recognized representative of consumer interests.

Such a person might be more sensitive to the importance of making such material public rather than "inoperative."

Or, such a member might have given credibility to the decision to destroy the material if that decision were indeed justified.

Again, I urge the Senate to vote against the confirmation of Mr. Morris.

[From the Washington Post, June 10, 1973]

FPC OFFICIAL ORDERED GAS DATA BURNED

(By Morton Mintz)

A Federal Power Commission official ordered the FPC's security officer to destroy confidential papers purporting to document the shortage of natural gas, it was learned yesterday.

The destruction aborted because the commission lacked an incinerator in its new quarters and because an incinerator at a military installation was out of order, the agency's executive director, Webster P. Maxson, told a reporter.

FPC Chairman John N. Nassikas condemned the attempted destruction as "a direct violation" of commission regulations.

Nassikas and Maxson said the papers, most of which had been torn in half, now have been reassembled with Scotch tape.

Nassikas said he discovered the destruction as a result of a letter from Sen. Phillip A. Hart (D-Mich.) on May 18. Hart, chairman of the Senate Antitrust subcommittee, said he wanted not only the detailed information in the papers, but all commission records regarding their "disposition."

The FPC aide principally involved in the attempted destruction was identified by the FPC as Lawrence R. Mangen, an assistant to Thomas R. Joyce, chief of the agency's Bureau of Natural Gas.

Nassikas said he strongly doubted that Joyce had instructed Mangen to burn the papers but had ordered an investigation by Joyce and Maxson that is not yet complete.

Mangen himself, in a phone interview, said that Joyce had directed him "not to answer

any questions about this, and I just follow orders." Joyce refused to comment.

Mangen was in charge of validating estimates of gas reserves for a controversial FPC study completed last month. The study indicated reserves to be lower, by 9 per cent, than the industry itself had estimated. The lower the reserves, the higher the prices consumers will pay.

Federal Trade Commission investigators, who are making an independent survey, doubt the accuracy of the FPC report.

The attempted document destruction is expected to intensify growing skepticism on Capitol Hill about the claimed gas shortage and about the claimed shortages of gasoline and fuel oil, as well.

The episode may also have an adverse effect on the plea President Nixon made, in his energy message April 18, for legislation to deregulate the price of new natural gas at the wellhead. His argument is that exploration and development will be stimulated by abolishing regulation, which relates prices to production costs.

More immediately, the episode could affect Mr. Nixon's sharply contested nomination of Robert H. Morris of San Francisco for the only vacant seat on the FPC.

The Senate is scheduled to take up the nomination Monday, with the outcome in doubt. Morris, during most of his career as a lawyer, represented Standard Oil of California in FPC natural gas proceedings. Critics of the nomination protest that if the Senate confirms him none of the five members of the commission would represent consumers, who have multibillion-dollar stakes in FPC decisions.

The papers involved in the attempted destruction were the replies of 79 gas producers to an FPC questionnaire about uncommitted reserves available for sale.

The agency announced last Feb. 22 that a compilation of the replies showed a 26 per cent decline in the reserves between the end of 1969 and mid-1972.

Sen. Hart, in an initial letter a few days later, asked Nassikas to provide the Antitrust Subcommittee specific information on what the 79 producers had reported to the FPC. The data "could represent a significant breakthrough in the quest for reliable and verifiable natural gas reserve estimates," Hart said.

The reply came not from Nassikas but from Joyce. He said he could not supply the information as requested—"in its dis-aggregated form"—under the Natural Gas Act.

However, FPC executive director Maxson said yesterday that "I wouldn't think" the gas law could be used to deny the information to Congress. A former commission chairman, Lee C. White, said flatly that Joyce was wrong. Any congressional committee denied such information "ought to subpoena it," White said.

Joyce also claimed to Hart that the information had to be kept confidential under the Freedom of Information Act. But his boss, Maxson, who helped draft that law, said it "doesn't apply to Congress." Joyce refused to say how he had come to conclude either law applied.

The FPC's Office of Economics was also concerned by the agency's February announcement of a drop in reserves, because it was preparing to fight an effort by three producers—Belco Petroleum, Texaco and Tenneco—to win FPC approval for a 73 per cent increase in the wellhead price of natural gas.

The effort succeeded by a 2-to-1 vote on May 30. The majority commissioners were Albert B. Brooke Jr. and Rush Moody Jr. Chairman Nassikas dissented.

The economists were accumulating evidence that the industry was noncompetitive and, consequently, that its prices would not be entrusted to market forces. This view was formally adopted by the agency staff two days after Mr. Nixon's energy message, although it was contrary to the President's position that the industry is competitively structured.

Reliable sources said that the Office of Economics asked the Bureau of Natural Gas for data on the reserves held by the top four and top eight producers but was turned down by its sister unit.

The bureau said the information had been supplied by the producers under an order promising to preserve it as confidential. But the bureau also claimed that the data had been destroyed, the sources said.

Surprised, Haskell P. Wald, director of the Office of Economics, checked with bureau chief Joyce, who said an error had been made—the data had not been burned. Wald, like Joyce, refused to comment.

Joyce, however, agreed to supply the requested data without naming the companies, a task that took from the end of February to the end of March, the sources said. The data showed that four firms accounted for more than 60 per cent of the reserves in the continental United States.

However, the economists found what the sources called "significant and obvious" discrepancies, some of them internal, in the data supplied by the bureau.

The economists requested clarification from the bureau in early April, only to be told by Mangen, Joyce's assistant, that the materials supplied by producers had been destroyed after the four- and eight-firm concentration ratios had been extracted from them.

Actually, Mangen, who was the legal custodian of the documents, did not take them to the FPC security officer, George Brent Vivian, until April 24 or 25, the sources said. Mangen questioned about this, said he thought the date was "earlier." Vivian refused to comment.

Mangen asked Vivian to burn the documents, but he balked because his assignment was to destroy only those papers relating to national security, the sources said. However, they said, Mangen persuaded or directed Vivian with the argument that the papers were highly sensitive and coveted by numerous persons.

Vivian was reported to have held the documents for about a week, until early in May, and then put them in burn bags after tearing each page.

According to the sources, Vivian, in the second week of May—about the time the FPC was moving to its new quarters—went to the military installation, where he found the incinerator broken. He returned the burn bags to his safe.

On May 18, Sen. Hart, in a second letter to Nassikas, requested the FPC chairman to appear before the subcommittee, which is investigating the origins of the energy crisis, and to bring along the detailed information from the 79 producers requested originally in March.

"Unfortunately," Hart noted, his original request had been rejected by Thomas Joyce. The senator implied that he rejected as fallacious Joyce's invocation of the Natural Gas and Freedom of Information acts.

Yesterday, Nassikas said the Hart letter led him immediately to order Joyce and Maxson to investigate if the papers had been destroyed.

Nassikas said commission rules require that such papers be "maintained in a confidential status." Former Chairman White said he had never heard of a precedent for destruction of such documents, an act he termed "bizarre."

Maxson said Nassikas told him, "You run as fast as you can to Brent Vivian to find out what happened." He also spoke of "a staff bungle," saying Mangen claimed to have understood that the producers had been given an option either to have the papers returned or destroyed.

Late last month, Mangen, checking with Vivian, learned that the torn papers were still in the safe. Mangen and Joyce then retrieved them from the burn bags, where they reportedly were kept with national security materials, and taped them back together on desks and the floor of Joyce's office, the sources said.

Will Nassikas turn over all of the requested data to the Hart subcommittee when he appears to testify in about two weeks.

Nassikas declined to give a clear answer, telling a reporter only that he intends to provide "a full analytical study," and will be "responsive" to the senator's request.

JUNE 11, 1973.

Hon. JOHN N. NASSIKAS,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: The Sunday edition of the Washington Post reported the attempted destruction apparently by high ranking Commission personnel of company-by-company data provided by 79 large natural gas producers respecting total uncommitted natural gas reserves available for sale in mid-1972.

You will recall that on March 7, 1973, you were requested to provide a substantial amount of such data to the Subcommittee in connection with its investigation of the nature and extent of competition and concentration of control of natural gas reserves within the natural gas producing industry. That letter also requested you to make such material available to the Federal Trade Commission in connection with its investigation of the accuracy and reliability of aggregated natural gas reserves as reported by the American Gas Association.

Mr. Thomas Joyce of your staff responded, declining to provide the requested information and citing for support the Freedom of Information Act and the confidentiality section of the Natural Gas Act. You were then requested by the Subcommittee to appear with such material at hearings scheduled for June 6 and 7, later postponed to June 26.

If the newspaper report is correct, the attempted destruction of such material alone raises serious questions respecting propriety, motivation, as well as efficacy of FPC regulation. The on-again-off-again nature of the attempted destruction which apparently prevented use of such data by the Commission's Office of Economics in testimony opposing a 73 percent increase in natural gas prices at the wellhead (which the Commission approved last week), raises even more serious questions. The report of the attempted incineration in light of two requests outstanding by this Subcommittee for the material dictates the need for a full exploration and explanation of all events relating to the use and disposition of this data and a full public accounting by all responsible.

Therefore, I have instructed the staff of the Subcommittee to commence an immediate investigation, to interview privately all FPC personnel and members, and to examine all documents and files necessary or appropriate to ascertain all facts bearing on this question.

Your cooperation and your full assistance to the staff will be greatly appreciated.

Sincerely,

PHILIP A. HART, *Chairman.*

Mr. COTTON. Mr. President, I now would like to renew my inquiry. We have conducted the debate on this nomination in installments. We had various unanimous consent agreements last night. This is a very important matter. There have been some statements made on the floor of the Senate that need to be analyzed most carefully.

I would like to know how much time each side has used and how much time each side has remaining.

The PRESIDING OFFICER. The Senator is advised that the vote is to be at

4:30 p.m. The proponents have used 10 minutes and the opponents 36 minutes. We will compute the time of each side if the Senator will suspend for just a moment.

The proponents have 48 minutes remaining and the opponents have 22 minutes remaining.

Mr. COTTON. Mr. President, I hope the Senator will yield to me 10 minutes, and if necessary, maybe 15.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. COTTON. Mr. President, there are two points that should be made in the Senate on the question of this nomination. In fact, a third point has been added. There has been talk about, if confirmed, whether he will serve 9 days until June 22; or whether, if confirmed by the Senate today, it would be until the end of the next session. I took it upon myself to communicate with certain people while we were voting on this other matter.

Mr. LONG. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. COTTON. Mr. President, I think I can honestly report to the Senate that the White House shares the concern of Members of the Senate, and all others, who are deeply interested in one of the most complex problems confronting our country today—the matter of energy.

Thus, concerning this nomination, there is a natural desire to know how, if confirmed, this nominee new to the Commission will perform and in what spirit he will approach our energy problem.

It is my understanding that, after a reasonable time, the name of this nominee, if confirmed, or the name of someone else, will be submitted for a full 5-year term. There is no intention whatsoever on the part of the administration to get him confirmed today, then, hang on; and wait to the end of the session. I think I can give that assurance. And, I agree thoroughly with my chairman, the distinguished Senator from Washington (Mr. MAGNUSON), that that is as it should be.

There are two points here that I want to mention as rapidly and as forcefully as I know how. The first point is that it has thus far been assumed by those who oppose the nomination of Mr. Robert Morris to be a member of the Federal Power Commission that we already have on that Power Commission four prejudiced men—four men who have no idea of the consumer's interest. And, that if we add Mr. Morris, since the law firm he was employed by represented an oil company, we are going to have a fifth prejudiced man.

Now, first, I have something to say about the present Commission. I have been waiting for some time to say this. Men of good faith and good will with expert background are required as regulators today to establish policies and programs to avert a deepening and pervasive energy crisis, particularly in natural gas supply.

The Federal Power Commission was created by Congress, and under the terms of its creation, its first duty was and now is to represent consumer interests. But, its duty to protect the consumer had a two-fold aspect. First, it is to try to obtain power—gas, oil, energy for the consumer—at as low a rate as possible; but, second, and no less important, to try to see to it that the supply of these sources of energy will be available to the consumer.

The courts have repeatedly reaffirmed this intent of the Congress. I will not take time to quote excerpts from such opinions, but I ask unanimous consent that they may be printed in the RECORD at this point.

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

OPINIONS

In *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591 (1943), the Supreme Court expressly held that the provisions of the Natural Gas Act "were plainly designed to protect the consumer interests against exploitation at the hands of private natural gas companies." (320 U.S. at 612) In order to carry out this mandate, the Commission "was given broad powers of regulation." (*Id.* at 611.

In *Atlantic Refining Company* v. *P.S.C. of New York* (*Catco*), 360 U.S. 378 (1959), the court stated that "The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas . . . The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Id.* at 388. Furthermore, as the District of Columbia Circuit has stated "the Commission must always relate factors to the pirmary aim of the [Natural Gas] Act to guard the consumer against excessive rates." *City of Detroit* v. *F.P.C.*, 230 F. 2d 810, 817 (CADC, 1955).

Almost twenty-five years after the *Hope Natural Gas* decision, the Supreme Court reiterated the scope of the FPC's jurisdictional mandate and the weight of its exercise of that responsibility:

. . . Congress has entrusted the regulation of the natural gas industry to the informed judgment of the Commission, and not to the preference of reivewing court. A presumption of validity therefore attaches to each exercise of the Commission's expertise, and those who would overturn the Commission's judgment undertake "the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." *F.P.C.* v *Hope Natural Gas Co., supra,* at 602 . . . [the Commisison] must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests. *Permian Basin Area Rate Cases,* 390 U.S. 747, 767 (1968).

Mr. COTTON. Thus, Mr. President on two occasions the U.S. Supreme Court has in no uncertain terms defined the powers and the duties of the Federal Power Commission. They are there to protect the consumer.

The Chairman of the Federal Power Commission comes from the State of New Hampshire. I have known him rather intimately for at least a quarter of a century. As a matter of fact, wishing for some Washington experience, he took leave of absence from his firm and came down and served for a time as minority counsel on the Committee on Commerce.

Now, John Nassikas has been represented again and again in the press and has been represented, I am sure with sincerity, again and again in this Chamber as a man who is not consumer minded. Let me give Senators a bit of history. He has always been liberal, so much so that in earlier years he certainly belonged to a different wing of the Republican Party in New Hampshire than that of which I have always been a member.

The Senator from Utah (Mr. Moss) talked about his representing a utility. I believe on one occasion, his law firm, which is one of the largest in our State, did represent a utility. But, John Nassikas also has assisted the attorney general of the State of New Hampshire. He was assigned the job of going before the Public Utility Commission in New Hampshire and opposing the electric utilities from increasing rates. And, as a matter of fact, representing the State, he prevented such utilities from getting the full increase they were asking. Then, later, because of that experience the Governor of New Hampshire named him, after he had ceased to be connected with the attorney general, as counsel to represent the consumers in the State of New Hampshire. Again, it was to oppose petitions of the public utilities for advancing rates.

Now, Senators have heard of FPC's decision in the Belco Petroleum Corp. case. I believe it was referred to by the Senator from Wisconsin (Mr. PROXMIRE) on June 11 in this body. At that time, the Senator from Wisconsin commented that "the Commission permitted a 73-percent increase in wellhead rates to go into effect which resulted in a 48-percent return on equity for the producer."

But, what the Senator from Wisconsin neglected to mention, and what the Senator from Utah (Mr. Moss) neglected to mention a few moments ago in this Chamber is that the Chairman of the FPC, John Nassikas, dissented vigorously from the decision of the majority of the Commission, Commissioners Brooke and Moody. And, it was from Chairman Nassikas' dissenting opinion that the Senator from Wisconsin drew the citation of a 73-percent increase. In that dissent Chairman Nassikas said:

The majority asserts that cost evidence through 1971 supports a 73 percent increase in the price to 45¢.

Mr. Nassikas further stated:

Based upon the evidence in this record, we cannot reconcile a 45¢ per Mcf price in 1973 with a 26¢ price in 1971, which latter rate was affirmed on the basis of cost evidence in 1969.

Therefore, Mr. Nassikas insisted in his dissenting opinion that the rate should be 35 cents, not 45 cents.

Mr. President, I shall not take the time of the Senate, but I want to make the record clear in justice to the Chairman of the Federal Power Commission.

He also dissented, in the so-called George Mitchell case, from the majority against a rate increase of 67 percent to a single producer, noting the following:

The majority decision casts this Commission adrift from its regulatory moorings under the guise of special relief to Mitchell to improve Natural Gas Pipeline's gas supply. The majority decision is tantamount to deregulation of flowing gas prices in violation of the Natural Gas Act. Only Congress—not this Commission—has this power.

It also is interesting that in the rehearing applications filed in that opinion the American Public Gas Association, Congressman TORBERT H. MACDONALD, and Congressman SIDNEY R. YATES, two of the most able men with whom I served in the other body—both liberals and men who can be found always fighting for the consumer—adopted virtually all of the arguments advanced by the Chairman of the Federal Power Commission in his dissent.

I shall not go into further detail, Mr. President, but I ask unanimous consent to put a list of several cases in the RECORD as a part of my speech at this point.

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

SPEECH BY MR. COTTON

Chairman Nassikas has, on numerous occasions, dissented to the majority's wishes at the Federal Power Commission, in order to protect the consumer, and I will only mention a few here:

1. In the so-called *Belco* proceedings,[1] Chairman Nassikas wrote a vigorous dissent to the majority's approval of a 73 percent increase in rates to three gas producers in the offshore South Louisiana area.

2. In the matter of *George Mitchell*,[2] Chairman Nassikas strongly dissented to the majority's approval of a rate increase of 67 percent to a single producer. There, Chairman Nassikas stated:

"The majority decision casts this Commission adrift from its regulatory moorings under the guise of special relief to Mitchell to improve Natural Gas Pipeline's gas supply. The majority decision is tantamount to deregulation of flowing gas prices in violation of the Natural Gas Act. Only Congress—not this Commission—has this power."

It is interesting that in the rehearing applications filed of that opinion, the American Public Gas Association, Congressman Torbert H. Macdonald and Congressman Sidney R. Yates adopted virtually all the arguments posed by the Chairman in his dissent.

3. In the *Panhandle* decision,[3] Chairman Nassikas, while concurring in a decision which would generate additional capital to a pipeline subsidiary for sorely needed exploration and development, sought additional protective conditions so that the pipeline's customers would not be required to pay anything more than the lowest reasonable cost for additional gas supplies.

4. In a rate case involving *Tennessee Gas Pipeline Company*,[4] Chairman Nassikas and Commissioner Rush Moody, Jr. vigorously dissented to the approval of a $94 million rate increase. As a matter of fact, the senior Senator from Michigan (Mr. HART) applauded the Chairman's willingness to dissent in this case (see letter of June 2, 1972, attached).

5. In the first major importation of liquefied natural gas, the *Distrigas* decision,[5] Chairman Nassikas dissented to the majority's failure to assert comprehensive jurisdiction and argued that the consumer would not be protected by the failure to regulate the price for that import.

JUNE 2, 1972.

Hon. JOHN N. NASSIKAS,
Chairman,
Federal Power Commission,
Washington, D.C.

DEAR MR. CHAIRMAN: The staff has recently brought to my attention the dissent of Commissioner Moody and yourself in *Tennessee Gas Pipeline Company*, Dockets RP71–6, RP 71–57 and RP72–1, May 19, 1972. Your dissent underscores why millions of Americans have a basic mistrust of government regulation. I wholeheartedly agree with you that the administrative process displayed in that decision is not what was envisioned when the Congress created the FPC.

In the past, I have written to express my deep concern over actions taken by the FPC. My concern in whose instances was no different than the concern expressed in your dissent. I applaud your willingness to so forcefully speak out, and I urge that the very proof you seek in this case be sought in every proceeding.

If you have any specific legislative suggestions in mind to implement the desire expressed in footnote 4, that the staff and the dissenting commissioners be granted a right to seek rehearing and appellate review, I would be happy to consider them.

Sincerely,

PHILIP A. HART,
Chairman.

Mr. COTTON. Mr. President, in all of these decisions we find the Chairman of the Commission, and in one case another present member of the Commission, arrayed vigorously, firmly, and definitely on the side of the consumer.

Attached to material already inserted in the RECORD is a letter from my distinguished friend, who is always so fair, the Senator from Michigan (Mr. HART) commending Mr. Nassikas. I also have a letter to Chairman Nassikas from the Senator from Wisconsin (Mr. PROXMIRE), dated June 30, 1972, commending Chairman Nassikas for the "FPC's proconsumer decision in the El Paso case."

The full text of the letter from the Senator from Wisconsin (Mr. PROXMIRE) follows:

JUNE 30, 1972.

Hon. JOHN N. NASSIKAS,
Chairman, Federal Power Commission,
Washington, D.C.

DEAR JOHN: I'd like to extend my congratulations for the FPC's proconsumer decision in the El Paso case.

By prohibiting high priced imported liquified natural gas from being averaged into everyone's gas prices you have saved the average consumers literally millions of dollars. Requiring the consumers of this high priced LNG to pay its full incremental cost makes far more sense to me in both economic and social terms than requiring the average consumer to subsidize the users of LNG.

Again, congratulations on making the right decision.

Sincerely,

WILLIAM PROXMIRE,
U.S. Senator.

In the light of these facts, I simply want to make as a first point that it is a lot of poppycock to stand up here and make the broad assertion that we have on the Federal Power Commission a bunch of corporation lawyers who are predominantly looking out for oil and gas companies, and who are not for the consumer. Nothing could be more contrary to the facts.

Mr. President, if one is to appoint a man to handle the very difficult and complex job of fixing rates at a time when we are in the worst situation in our history on the matter of producing energy, such as gas and oil, he ordinarily appoints a successful man.

That successful man, if he has practiced law, very likely has represented, on one side or the other, clients involving every subject upon which he is going to serve.

The PRESIDING OFFICER. The time of the Senator from New Hampshire has expired.

Mr. COTTON. Mr. President, I ask for 5 minutes more.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the Senator is granted 5 minutes more.

Mr. COTTON. Mr. President, do we want an ignoramus? Do we want to have appointed some lawyer who never had a client? Of course not. We should appoint men who know their jobs and who know their profession. We should appoint men who know what the Federal Power Commission was created for.

Now, as for Mr. Morris, it is said that he is a corporation lawyer. Well, he undoubtedly is, was, or has been a corporation lawyer. One of the clients of the law firm which employed him was an oil company. Undoubtedly, he represented that oil company, a part of the time at least, as an employee of the law firm.

But, he also has represented—and I checked this—he also has represented indigent criminal clients. Over the course of the past year and one-half he has represented individual clients in resolving property tax problems in California. From 1968 to 1970 this terrible Mr. Morris worked in a citizens' advisory committee to a joint legislative committee to the California Legislature, devising laws for open-space conservation of agricultural lands.

Mr. Morris and his family have been members of the Sierra Club for about 10 years, and members of the Audubon Society for about 5 years.

He has contributed to and has been active in various organizations interested in preserving the environment.

What is so horrible about this man? I listened to his evidence before the committee, and I thought he was open. He met every question frankly. I was favorably impressed with him. I would trust him.

If Senators want to turn Mr. Morris down and appoint some jackleg lawyer who never had a client, let them go ahead and reject the nomination. If they want a commission composed of that kind of lawyer, if they want the administration of some of the most difficult problems that have ever come before a commission handled by such lawyers, let them do so. Let them go ahead and turn Mr. Morris down and bring in somebody right out of law school. Or, someone who never went to law school, some innocent, fresh intellect who has to start from the beginning; who does not know much about the matter; who does not know how to deal fairly with consumers, or with the supply of energy in this country; and someone who knows as much as a hen knows about God.

If Senators want to have ignorance on the Commission, let them go ahead and have it.

I shall add just this thought. So long as I have felt that a nominee of the President of the United States was competent, honest, and possessed of integrity and sincerity, I have voted for the confirmation of his nomination. I have done

---

[1] Opinion No. 659, May 30, 1973.
[2] Opinion No. 649, February 21, 1973.
[3] Opinion No. 626, September 20, 1972.
[4] Opinion No. 619, May 19, 1972.
[5] Opinion No. 613, March 9, 1972.

so regardless of whether I thought he might be of the same political philosophy as I. In this case, Mr. Morris is a Democrat. I further understand he is a liberal Democrat.

Mr. President, I voted seven times to confirm nominations of Supreme Ccurt Justices made by the President of the United States. In each instance, their political philosophy was completely different from mine. But in all seven cases I was satisfied that they were men of competence, ability, sincerity, and integrity. One of them, Justice White, has happily surprised me. I think he has become one of the fairest and best balanced justices we have had on the bench. In other words, Mr. President, one can never tell when he is going to find someone, for example, who has been a corporation lawyer but who shows himself to be keenly sensitive to the such matters as the consumer's interest like Mr. Morris.

Mr. President, we have here a nominee who was questioned at length by our committee. As far as I could ascertain, he faced up to the questions he was asked in a manner that was full, frank, and fair. He is a man of established success in his profession. He is a man who interested himself in the protection and conservation of our environment. He is a man who is not only a Democrat, but is also said to be a liberal Democrat. He is nominated to fill a Democratic seat on the Federal Power Commission.

In all fairness, I can see no reason why the Senate should refuse to confirm his nomination.

Mr. STEVENS. Mr. President, how much time remains?

The PRESIDING OFFICER. Twenty-two minutes, and 27 minutes to the proponents.

Mr. STEVENS. Mr. President, I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mr. TUNNEY. Mr. President, the nomination of Robert H. Morris to the Federal Power Commission has come under intense scrutiny, but probably few groups have examined his qualifications as closely as the Sierra Club. In a letter from its Washington representative, the Sierra Club stressed:

> Mr. Morris seems to have a good knowledge of the inequities of our present energy pricing system and a strong commitment to rectify it, in order to achieve better resource allocation, better energy conservation, and more protection for the environment.

The endorsement of the Sierra Club concludes that—

> Mr. Morris would seem to be a fair-minded member of the Federal Power Commission, an agency which we feel unfortunately has all too often in the past served mainly industrial interests.

I, too, have had an opportunity to examine Mr. Morris, privately in my office, to discuss with him his attitude regarding the prices of petroleum products, natural gas, and other matters relating to the activities of the FPC; and I also questioned him in open hearings in the committee.

I, too, support his nomination to the Federal Power Commission.

I am supporting him because I am convinced he is abundantly qualified to serve with distinction on this important body. I have carefully questioned Mr. Morris in several lengthy meetings in my office, and I am convinced of his candor and his integrity. He is knowledgeable and experienced on matters that come before the FPC. Finally, he is a man of independence and impartiality.

Hearings on his nomination before the Commerce Committee and my own extensive conversations with him brought out his opposition to the President's policy on deregulation of natural gas, a position supported by many consumer groups. I have extensively checked his background with members of the bar and concerned Californians, and I am convinced Mr. Morris, as a Federal Power Commissioner, would place sound public policy above any special interests.

He would not submerge the public interest to the interests of industry. Nor would be blindly and automatically decide every issue in favor of consumers in the event such decisions would work unfair hardship on power producers.

I believe that Mr. Morris is a man who is knowledgeable and experienced on matters that come before the Federal Power Commission. He is a man of great integrity. And I think he is going to be extremely important. I think that if one will look at the record of Mr. Morris prior to the time he was nominated to this position, one will find a person who has a great deal of innate intelligence.

Mr. Morris is a graduate of Yale University and Columbia University, where he received his law degree in 1956.

For the next 15 years, he was employed by the prestigious San Francisco law firm, Pillsbury, Madison, and Sutro, handling a variety of matters for a cross-section of the firm's clients and establishing an outstanding reputation in legal circles.

Part of his time with the firm was devoted to the legal affairs of Standard Oil Co. of California, including some of the company's FPC matters.

I think it is very likely that should Mr. Morris be rejected for this position, he will not get the Standard Oil Co. of California business, as suggested by the Senator from Utah, because his former law firm is the firm that represents Standard Oil of California.

Mr. Morris in both his professional and personal life has been a supporter of consumer-conservation interests. His association with Standard Oil has been cited frequently by opponents of his nomination as an indication that he would side with industry as an FPC member.

I point out that he handled many problems for his law firm.

Advocacy of a client's interests is more than the right of members of the legal profession; it is their duty. I believe the Senate would be establishing a highly dangerous precedent if it were to disqualify lawyers from public service on the basis of professional advocacy.

I do not know how many lawyers there are in the Senate. I dare say it is more than one-third. If any of us are not responsive to the interests of our clients, we do not deserve to be here. I think that to use that argument against Mr. Morris is something that does not really deserve to be credited by fair-minded people, not only lawyers but nonlawyers as well.

Mr. Morris has an excellent conservation record.

Were I convinced that Mr. Morris personally places industry interests above those of consumers, I could not support his nomination. Nor could I support him were it not for one fact that he has the endorsement of important environmental and conservation groups.

The Sierra Club, whose battles on behalf of environmental protectiion and conservation have been effective and highly respected, was quite emphatic about its support, and I read the club's letter at this point in the RECORD:

> DEAR SENATOR TUNNEY: Thank you for your inquiry to us regarding the Sierra Club's views on the nomination of Mr. Robert Morris to the Federal Power Commission. We join with many other environmental groups in feeling that the membership of the Federal Power Commission is extremely important to those who are concerned about the protection of our environment. And we share the feelings of others who have expressed the critical need to have members of the Commission who are receptive to environmental-consumer interests.
>
> Since receiving your inquiry, we have had a chance to examine Mr. Morris' views on a subject of critical importance, the future of energy use and demand and the need for a sound energy conservation policy. Based upon statements which he has made since he was nominated to the Commission, it seems to us that Mr. Morris is in a position to render fair and balanced judgments on issues which are before the Commission. (We have not at this time had the opportunity to examine statements made by him prior to such nomination.)
>
> Mr. Morris seems to have a good knowledge of the inequities of our present energy pricing system, and a strong commitment to rectify it, in order to achieve better resource allocation, better energy conservation, and more protection for the environment. His statements speak out strongly against the lack of efficiency of present energy consumption systems, and eloquently in favor of strong attention to relatively non-polluting sources of energy, such as solar power.
>
> Based upon all the foregoing, it is our conclusion that Mr. Morris would seem to be a fair-mined member of the Federal Power Commission, an agency which we feel unfortunately has all too often in the past served mainly industrial interests.
>
> Very truly yours,
>
> BROCK EVANS,
> *Washington Representative.*

Mr. TOWER. Mr. President, will the Senator yield for a question?

Mr. TUNNEY. I yield.

Mr. TOWER. Mr. President, I believe that Mr. Morris is in opposition to the administration proposition on deregulation of natural gas.

Mr. TUNNEY. The Senator from Texas is correct in that. He made the statement before the committee that he did not believe in deregulating it. And when the President announced his decision to formulate such a policy, Mr. Morris spoke out and was quoted in the press as being opposed to it.

I spoke to him personally about his remarks quoted in the press. He affirmed that he was opposed to the President's policy of deregulation of natural gas.

Mr. MAGNUSON. Mr. President, will

the Senator yield for a question on my time?

Mr. TUNNEY. On the Senator's time?

Mr. MAGNUSON. Yes.

Mr. TUNNEY. I yield.

Mr. MAGNUSON. Mr. President, it does not mean anything to say that no lawyer necessarily reflects the views of his clients. I have defended murder cases. And I do not think that I have reflected the views of the persons involved.

I point out that in this case it was only one client involved, Standard Oil. He did not have many other clients. He represented them for years. That is perfectly legitimate. He was probably one of the best they have ever had.

I do not know if he has been active in the Sierra Club. He has been like I have been. However, I am a little more active than when I am around the Senate. We send in $3 a year, or I believe it is $10 a year now. I do not know if he goes to Sierra Club meetings, but he told me that he gets their pamphlets.

I have belonged to the Sierra Club. That is beside the point. He was an attorney for Standard Oil all these years.

I do not see how he could be active in the Sierra Club; he was too busy representing them. They had too many gas interests, and he had too much to do. And he was a good attorney.

I do not know; if Mr. Morris comes back and I can ask him more questions after all these happenings, I do not know how I would vote. I have an open mind about it.

We are not asking to turn him down; we are merely asking for 9 days to recommit his nomination to the committee. On the 22d the term is up anyway.

I do not see anything wrong with that. It is no reflection on him at all. He is a good corporate gas and oil lawyer; that is all there is to it. He is one of the best.

Someone has said he is a Democrat. I do not know about that. The Senator would know better than I. He has probably voted for him.

Mr. TUNNEY. I do not know whether he did or not.

Mr. MAGNUSON. All right. But that is no reflection on him. The question here is whether we want to have this nomination recommitted and go over it. In 9 days the term is up.

Mr. TUNNEY. But, as my distinguished chairman knows, if we vote to recommit Mr. Morris' nomination, we are in effect putting a nail into his coffin. I think we have to assume that a rejection of him now would mean he would never be a Commissioner of the FPC.

I would just like to make one correction on the record. Mr. Morris said in open hearings that for the first 7 years he spent with his law firm, only one-third of his time was spent on Standard Oil business, and that the last third of his career he spent two-thirds of his time. But he was doing a lot of other things as well.

I know how it is. I worked for a large firm at one time, too, a 100-man firm, and I performed the duties assigned by the senior partners.

Maybe one reason Mr. Morris did not become a partner in that firm was that he was uncomfortable representing Standard Oil. He was pretty well known. I have talked with judges in California who have had the opportunity to see him before a court, and they say he has outstanding talent and is a man of unquestioned integrity.

Mr. MAGNUSON. Oh, there is no question about that. But if he was uncomfortable, then he was uncomfortable for a long, long time.

Mr. TUNNEY. But he was making his living as a lawyer, and I feel that no lawyer ought to have the views of his clients visited upon his own head.

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

Mr. TUNNEY. I yield.

Mr. PASTORE. The Senator has remarked that if we recommit this nomination, that would be hammering a nail in his coffin.

I hope we can be a little bit pragmatic about this. As has already been pointed out, this nomination will run out within several days. I dare say a lot of favorable things have come to light about Mr. Morris since his nomination was reported out of the committee, that were not known by the members of the committee during the time that the nomination was being considered by them. I am sure that many of the doubts could be resolved if this nomination for the full term were again to come before the committee, where we could go into the matter more thoroughly.

Of course, if it is true that all he was was a clerk in the office——

Mr. TUNNEY. He was not a clerk. He is a lawyer.

Mr. PASTORE. Yes; he was a lawyer who ended up with a net worth of $3 million. He is no little clerk.

Mr. TUNNEY. He has a rich wife?

Mr. PASTORE. He has a rich wife?

Mr. TUNNEY. Yes.

Mr. PASTORE. Well, then, maybe he is a good man. He can pick out a wife as well as he can pick out a law firm and pick out an appointment to the FPC.

Mr. TUNNEY. Mr. President, we had hearings on this nomination on March 19. Here we are in June. I think the man deserves a decision one way or the other, up or down. He has indicated to me and to others that he has made a great personal financial sacrifice by being kept on the boiler waiting to see if his nomination is going to be approved or not approved, and I do not think that is fair to the man. I think we ought to give him a chance now.

Mr. PASTORE. I only want to state to my esteemed colleague from California that as to this idea of up or down, I suggest he does not want an up-or-down vote if he is going to lose it today. He really does not want that; he is not on the floor here to lose, he is here to win. The question is, if the nomination goes back to the committee, whether the process will be ameliorated. If the Senator feels he has it anyway, he ought to insist upon a vote; but, on the other hand, if confirmation is in doubt at the present moment, I would like to hear a little more about him. A lot of things have taken place in the last few weeks; we have been talking about the price of gasoline, and how it is going to skyrocket; we have been talking about certain investigations being made under the antitrust laws with reference to some of the big oil companies. A lot of things have happened in the last several weeks, and I think, myself, we would be better off to let the nomination go back to the committee, and let us take a look at it, not for the purpose of killing it but to take another look at it.

Mr. TUNNEY. Mr. President, if the Senator had made that speech a couple of weeks ago when we considered the nomination of Mr. Springer, who has a record of over 20 years in the House of Representatives that was anticonsumer in the extreme, according to the consumer groups that rate such voting records, I think it would have been a fairer proposition.

Mr. Morris has, as I have indicated, a record which is supported by the Sierra Club insofar as conservation is concerned; he has been opposed to the President's decision as far as deregulation of the price of gas at the wellhead is concerned; he is a person who, in the hearings, came through as a man of integrity who wants to represent consumer interests. From my conversations with him, I have been convinced he wants to represent consumer interests, and I can assure you I would not be up here arguing for his nomination if I did not think he did want to represent consumer interests, but I can only say that Mr. Springer's nomination was passed through the Senate in record time, apparently because he was a Member of the House of Representatives in the past; but he had a terrible consumer record.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. STEVENS. *I yield* myself 10 minutes.

Mr. President, I find myself in the strange position of supporting the nomination of Mr. Morris. I do not know him personally; I only met him at the hearings. I did attend the hearings, and as a matter of fact we continued those hearings for additional questions from some of the members to be directed to Mr. Morris. I thought he conducted himself in a most admirable fashion, even though I disagreed with him on many things.

For instance, I am a coauthor of a bill to deregulate the wellhead price of gas. I firmly believe that deregulation is one of the answers to the gas shortage. Mr. Morris was categorical about that. The Senator from Utah (Mr. Moss) asked him:

> Are you advocating deregulation of the wellhead price of natural gas?

Mr. Morris said:

> No. No, I am saying that one of the problems that the commission has today is the fact the unregulated market exists side by side with the regulated market, and I would say that if we are able to revise the pricing standard under the Natural Gas Act as it exists today so that we have got a more stable and farseeing pricing standard than we now have, then we could and should have effective regulation for both inter- and intrastate gas. We should expand jurisdiction in that case.

He certainly does not agree with me there. On the other hand, I found that he was a very able man, and one who had been associated with a very distin-

guished law firm in the West. I want to comment a little bit about that, too.

Mr. Morris was asked:

Could you describe to the Committee the nature of the work that you performed for Standard Oil of California?

Mr. President, could we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. STEVENS. Mr. Morris said:

Yes. So far as it is pertinent to natural gas, my work for Standard on natural gas matters was really exclusively—it took place in the last seven years of my practice with Pillsbury, Madison and Sutro. It consisted of two things, natural gas problems in general which did not have to do with regulatory problems, and then regulatory matters before the Federal Power Commission.

My role in the regulatory matters was indirect or vicarious. Standard had on retainer, an expert Washington firm that did all of the filings with the Commission, the prosecution of cases before the Commission, and the prosecution of appeals, from Commission orders.

In other words, here was a man who was a member of a very large law firm. He was with the firm some 14 years, and in the last 7 years took cases on assignment from partners who directed the assignments, I assume, that involved Standard Oil. He was not Standard Oil's attorney. He was an employee of Pillsbury, Madison & Sutro.

I find it difficult to envision an action of the Senate rejecting this man. That is what the Senate will be doing, let us not kid ourselves. If we recommit this nomination to the committee, Mr. Morris is rejected. I think any Senator would be kidding himself to think that the nomination will be sent back to committee for additional study and then after the President sends up Mr. Morris' nomination for another 5-year term, he will be rubberstamped and sent back to the Senate without debate.

As a practical matter, in case the Senator from California (Mr. TUNNEY) does not understand it, he should understand that the answer he has given to the Senator from Texas concerning Mr. Morris' point of view will get him the opposition of the Senator from Texas, because Mr. Morris is suggesting that if he were a member of the Commission he would advocate intrastate regulation of gas in Texas, and anyone should know what that means to a Texan.

As a practical matter, this nomination is now before us. If Mr. Morris is recommitted, his nomination will not come back to the Senate. There is no question about that. I assume that the Senator from California agrees.

We are defending this nomination now. Certainly, if it gets back to the committee, the attacks that will be made will be redundant, but he will be attacked.

Mr. TUNNEY. I could not agree more with the Senator, but I would like to point out two reasons why I gave the answers that I did, and the way I did. One is, it was a truthful answer, and the second is, we should dispel some of the notions developed apparently on this side of the aisle, that Mr. Morris is a captive of the oil industry. He is not a captive of the oil industry in any way, shape, or form.

I think that the remark the Senator from Alaska made is most pertinent and is an indication of the Senator's fairmindedness.

Mr. STEVENS. I have no fear about this man in terms of his being a member of the Federal Power Commission. He has demonstrated his ability. He resigned from Pillsbury, Madison & Sutro in September of 1971 without any thought of being appointed to the Federal Power Commission and went into practice for himself.

I have represented many people. I have been a district attorney and was in the active practice of law for 20 years. As my good friend from South Carolina (Mr. HOLLINGS) says, perhaps I am a country lawyer in comparison with other Senators in this Chamber, but I do not want anyone here to assume that the viewpoints I represented on behalf of the people who came to me for advice and sought legal representation by me are my personal points of view. That would be the most unfair thing to come out of the assertions made against Mr. Morris—the fact that because he was a good advocate and did a good job when he was in the practice of law, that he is responsible for the positions that he advocated on behalf of his clients in defense of their positions.

Mr. President, all of us on the Commerce Committee, opponents and supporters alike, agree that Mr. Morris has an excellent academic record, a record of success as a lawyer and a knowledge of Federal Power Commission regulation. Since those are agreed facts, I would not belabor them.

Suffice it to say that Mr. Morris graduated with honors from Taft School, Yale University, and Columbia University Law School. He was then hired by one of the most prestigious law firms on the west coast, Pillsbury, Madison & Sutro, where he practiced law for 15 years. In September 1971 he established his own private law practice which also is a success.

In short, he is able, successful, and uniquely qualified by background and experience to be a Federal Power Commissioner. I believe I can safely say that the entire Commerce Committee agrees that he possesses all of the necessary intellectual and moral qualifications, experience, and expertise.

The sole area of opposition to this nomination arises from the fact that while with Pillsbury, Madison & Sutro, Mr. Morris performed legal work for that firm's principal client, Standard Oil Co. of California. I do not view that as a disqualifying fact, but as a plus. First, it is a measure of his success that the law firm entrusted to him the natural gas work of its major client, both regulatory and nonregulatory. Second, it supports the fact that this nominee comes before us with an exceptionally thorough understanding of energy problems and Federal Power Commission regulation. There is no denying the fact that his experience in representing Standard did equip him with precisely the expertise which we should look for in a Federal Power Commissioner.

Mr. Morris realized that some would jump to the conclusion that because he had represented an oil company he was a proindustry man, invested with a set of industry biases. In conversation with staff counsel to the committee, he expressed the hope that the committee would cross-examine him thoroughly about his views on any and all energy issues of interest to its members. He did his best to give us his views so that we could reasonably decide on the facts whether or not he was a proindustry man. His answers to lengthy questioning of him at the hearing make it clear that he is not. He is an independent person who forms his personal opinions rationally from the facts and without an advocate's leanings toward either the industry or the consumer.

Mr. Morris got the trial of his views which he desired. For nearly an entire afternoon he was questioned by members of the Commerce Committee. Mr. Morris' candid, reasonable answers proved that the nominee is not to be considered a proindustry advocate.

On the issue of whether Mr. Morris could represent a consumer's point of view on the Commission, the following testimony appears in the hearing record:

Senator Moss. Do you think that the interests of the consumer should be represented within the FPC?

Mr. MORRIS. Yes, definitely.

Senator Moss. Would you think that you could represent the consumer's point of view, since your position has been with the industry?

Mr. MORRIS. I think I do, but I don't think it is easy to say today what is the consumer point of view.

Senator Moss. Would you favor the establishment of a consumer protection agency with a consumer's council that could become a party to FPC proceedings?

Mr. MORRIS. Yes, certainly. If the staff of the Commission and the consumer groups that are organized are considered ineffective, I would say yes, some sort of supplement.

Senator Moss. That is one of the proposals before this Congress, to have a consumer protection agency, and that function would be to go into proceedings and represent the consumer, and as far as you are concerned, that seems all right?

Mr. MORRIS. That is all right.

Senator TUNNEY. How do you answer the argument that is made that at least one member of the FPC should be consumer oriented, and with your appointment, Mr. Springer's appointment, there will not be such a man on the Commission, and therefore, you ought not to be confirmed?

Mr. MORRIS. I have no answer to that. I really have no answer to that question. As I say, I do think that the old labels of pro-consumer and pro-industry are probably outmoded because there is a complete reshifting of the forces and groups that are for and against increases in energy prices, and I really do not—in terms of today's world, I think the old labels are really kind of outmoded.

It simply does not follow because a lawyer has represented an oil company he is a biased proindustry man. This is precisely the question which was examined at the confirmation hearing and which was, I believe, decided in the nominee's favor—whether Mr. Morris had adopted his former client's views or had maintained his own independent views.

As a matter of fact, on this very point during the course of the committee's hearing held last March, I made the following observation:

I feel constrained to remember people like Brandeis and Frankfurter and Black and Warren, people who said that if their previous careers would have been an indication of what they would have done when they got to the Supreme Court, they never would have gotten there.

I find no problem with the fact that a man has spent his legal career in representing a portion of the industry. It seems to me that that would be a qualification to be on the Federal Power Commission at this time when we are trying to find out what has gone wrong with 20 to 30 years of overprotectionism which has left us in the situation where we have a short supply of energy, the shortest in the history of the United States.

The case for the nominee is clear. There are four qualifications for this position; the nominee is to be:

First, a Democrat;

Second, an expert in energy matters;

Third, a west coast citizen; and

Fourth, a lawyer.

Mr. Morris meets all of those qualifications with flying colors. He is a genuine, liberal, San Francisco Democrat, not a token Democrat. His expertise on energy questions is exceptional. One thing the hearing clearly proved is that he is most knowledgeable about the industries and issues before the Federal Power Commission. He is from California and he is a lawyer, not just any lawyer, but a successful one who possesses the necessary legal knowledge of the regulating process to be an effective and responsible commissioner.

There is agreement that Mr. Morris is highly qualified. Opposition thus is based solely upon insistence that a known "consumer advocate" must be selected to fill this position in order to give the Commission a so-called balance.

I attended most of his hearing. I know that he is nobody's advocate, neither industry nor consumer.

Let me sum up why I support Mr. Morris. His nomination was reported favorably by the full 18-member Senate Commerce Committee on April 16, with only 3 members filing an express dissent. The vote of the committee is entitled to heavy weight. Mr. Morris was supported by an overwhelming majority. From the standpoint of personal qualities and relevant expertise, he is—as the committee agrees without dissent—well qualified. He is supported by the distinguished junior Senator from his State (Mr. TUNNEY), the Senator in the best position to check into his background, independence, fairness, and support by the liberal Democratic circles to which he belongs. By all reasonable standards previously known and now emerging in this body for confirmation of nominees, Robert Morris is a very qualified nominee who deserves your "aye" vote.

Mr. PASTORE. Mr. President, will the Senator from Alaska yield at that point?

Mr. STEVENS. I yield.

Mr. PASTORE. I want to make my position very clear, and have it understood that I want the record made clear, that if I vote to recommit this nomination, I am not voting to kill the nomination. I want that to be made very, very clear.

Some indications have been raised—and I have been very much impressed with the favorable remarks made on his behalf by the Senator from California (Mr. TUNNEY), for whom I have a lot of affection, admiration, and respect—but I think myself that if the nomination did go back and we could resolve some of the difficulties, we could clear the air with reference to the nomination.

I do not know this man personally. I do not question his integrity. I do not question his ability. But the big question has been raised here, is the credibility of the people of the country who will have to suffer, possibly, in the near future—and we all know that that is going to come to pass, that is, higher prices for gas, for gasoline, and for home heating fuels—when a decision is made to raise those rates, will the people of this country have confidence that it was an impartial decision that was made in the public interest?

Mr. STEVENS. I am very glad the Senator from Rhode Island mentioned that, because that is why I am here. I went to John Nassikas—I happened to have some young people in Alaska who were qualified for the position—and I asked Mr. Nassikas, in connection with this vacancy, "What are the qualifications for such a person, insofar as you are concerned right now?" He told me, someone who understands the California situation, that he had to be a Democrat, and he wanted a lawyer—one whom he could trust.

I am confident that John Nassikas was the one who wanted this man. I come from a gas-producing State and in time it will be "the" gas-producing State.

Mr. PASTORE. Mr. President, will the Senator yield at that point? That is the first time I have heard that. That is the point.

Mr. STEVENS. We were all at the hearings.

Mr. PASTORE. Mr. Nassikas was not at the hearings. The Senator is telling us that now.

Mr. STEVENS. I am saying, about my private conversation with Mr. Nassikas, that I believe that he wanted a lawyer on the FPC who would be fairminded, balanced, and that he would have to be a Democrat. And Mr. Nassikas has decided that he should be from California, so that eliminated my people. So what we have come up with is a person from the State of California who, I think, is qualified. I say that despite the fact that he does not agree with me on many matters. The one thing we will do, to kill his nomination, and I am telling you that it will kill his nomination, is to send him back to the committee, because he will not come back. He has got 6 days. If confirmed today, he can serve to the end of the next session of Congress without having another name sent up.

Mr. PASTORE. All I can say in that regard is, talk for yourself, John.

Mr. MOSS. Mr. President, will the Senator from Alaska yield?

Mr. STEVENS. I yield.

Mr. MOSS. Mr. President, it has been suggested that Mr. Morris has the endorsement of important consumer groups. Let us test this proposition. In a letter dated June 6 Ms. Erma Angevine, executive director of the Consumer Federation of America, the largest and most influential consumer organization in the United States expressed deep disappointment over the nomination of Mr. Morris. This organization represents more than 200 consumer-oriented groups throughout the Nation.

The PRESIDING OFFICER (Mr. HELMS). The time of the Senator from Alaska has expired.

Mr. STEVENS. Mr. President, I thought I was yielding to the Senator from Utah only for a question.

Mr. MOSS. Mr. President, I yield myself 5 minutes. I thought the Senator from Alaska had finished. I am sorry if I imposed upon him.

The PRESIDING OFFICER. The Senator from Utah is recognized for 5 minutes.

Mr. MOSS. Mr. President, California consumer organizations have strenuously opposed Mr. Morris. The San Francisco Consumer Action, Consumer's Cooperatives of Berkeley, The Farmer Consumer Reporter Associates, and the California Consumer Federation all urged that Mr. Morris be defeated.

Representative Ken Cory, chairman of the Joint Committee on Public Domain of the California Legislature stated in a telegram that:

It would be totally irresponsible to place an individual with Mr. Morris' background on the Federal Power Commission.

So universal is consumer opposition that Ms. Angevine indicated in a letter to me on June 8:

In fact we do not know of any consumer organization supporting Mr. Morris' nomination.

Mr. Lee White, former Chairman of the Federal Power Commission, and Chairman of the Energy Policy Task Force in which hundreds of public interest organizations participate, stated it is important for the Senate to defeat Morris to prevent a total anticonsumer stance by the Commission.

Mr. TUNNEY. May I ask the Senator, did they give any background information on why they were taking this position?

Mr. MOSS. Lee White indicated that.

Mr. TUNNEY. That is the most preposterous statement I have ever heard. There is no background information on it. I talked to Mr. Morris. I wonder whether Mr. White has ever talked to Mr. Morris?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. TUNNEY. Excuse me.

Mr. MOSS. I believe that he has talked to Mr. Morris. Mr. Lee White, as the Senator from California well knows, was the Chairman of the Federal Power Commission. He is an able lawyer and has been working in the city and has served as counsel to the President at the White House. He is a man who is active now. I listen to Lee White when he says anything about the Federal Power Commission because he was, I think, one of the best Chairmen we ever had on that Commission. He is consumer oriented in his views. He said that as he assessed the abilities and the background of Mr. Morris. Of course that is his opinion. I do not know what kind of evidence to bring, but I am willing to take the opin-

ion of Lee White and I think I have the right to assert it here on the floor of the Senate.

Mr. TUNNEY. Of course, the Senator does. May I ask him a question?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. MOSS. I yield to the Senator from California for a question.

Mr. TUNNEY. Then Mr. Lee White was aware of Mr. Morris' answer to the Senator's question on the committee—

Senator Moss. Would you favor the establishment of a consumer protection agency with a consumer's counsel to become a party to FPC proceedings?

Mr. MORRIS. Yes, certainly. If the staff of the Commission and the consumer groups that are organized are considered ineffective, I would say yes, some sort of supplement.

Mr. MOSS. I do not know whether he is aware of that, but I want to bring before the Senate in this discussion the opinions of many who are in the consumer field who have great apprehensions or total outright opposition about the appointment of Mr. Morris.

Ralph Nader urged the Senate "to defeat the nomination and make it clear to the President that you will only accept a person who can be counted on to serve the consumer rather than the special industry interests on the Federal Power Commission."

In addition, I have received dozens of letters in opposition to Mr. Morris. Such an outpouring of public indignation over a Federal Power Commission nominee is unprecedented.

Responding to an inquiry from the Senator from California, the Sierra Club indicated that "Mr. Morris would seem to be a fairminded member of the Federal Power Commission." But the Sierra Club pointed out that this assessment was reached solely on the basis of Mr. Morris' environmental statements since his nomination. Needless to say, such statements must be examined in the context of Mr. Morris' background of service to the oil and gas industry.

Let me revert to what I said at the beginning. I believe Mr. Morris to be an honorable and intelligent man. I do not condemn him in any way as an individual. I point out the fact that his background indicates that he will be stamped at least with the aura of being an advocate of the producers of power, the ones who are to be regulated by the Commission.

The consumers do not have a representative, in my point of view, on that Commission. The consumers are apprehensive. They think the Power Commission is there to protect the consumers at the same time they permit the producers to produce and earn a profit. But this is a balance, and I think the balance will be upset if we have five who are all producers.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. TUNNEY. Mr. President, will the Senator from Alaska yield me 2 minutes?

Mr. STEVENS. It is my understanding that we have 7 minutes remaining.

The PRESIDING OFFICER. The proponents have 7 minutes and the opponents have 12 minutes.

Mr. TUNNEY. I point out to the Senate that I received a letter from the president of the California Public Utilities Commission, which regulates the rates and service of more than 1,500 privately owned utilities and transportation companies in California. Mr. Sturgeon sent me a telegram the other day, which reads as follows:

SENATOR TUNNEY: The nomination of Robert Morris of San Francisco to the Federal Power Commission is a matter of considerable importance to California, and I believe it would be unfortunate for consumers of this state if this nomination were defeated. There is at the present time no commissioner of the FPC from California or from any other state on the west coast. There is a great need for such a person on the FPC because of California's heavy reliance on natural gas, both as a residential and industrial source of energy, and because of the fact that California's gas supply problems are somewhat unique and are quite different from those of eastern and midwestern states. I am favorably impressed with the abilities of Mr. Morris to provide this perspective and to serve generally in the capacity as FPC Commissioner. I respectfully urge your vigorous efforts on his behalf.

VERNON L. STURGEON,
President,
California Public Utilities Commission.

I agree with what was said earlier by the Senator from New Hampshire, that we need a person on the FPC who is intelligent, No. 1, a person who has had experience in matters before the FPC; a person who has integrity, and a person who is going to be representative of consumer interests. I find it terrible to tar an attorney with the views of his clients. I cannot imagine any lawyer in this Chamber doing it.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. MAGNUSON. Mr. President, we are supposed to vote at 4:30, but we did say that if someone else wanted to talk, it might be agreeable with the majority leader to extend this matter a short period of time.

I want to yield such time as he needs to the Senator from South Carolina; and if the Senator from Alaska has not had a chance to talk on this matter, I would join in extending the time to allow him to finish his speech.

Mr. STEVENS. We will be happy to await the remarks of the Senator from South Carolina.

Mr. MAGNUSON. I yield to the Senator from South Carolina.

Mr. HOLLINGS. I thank the chairman.

Mr. President, in rising to oppose the nomination of Robert H. Morris to the Federal Power Commission, I wish to note that I do not question the nominee's competence in the area of oil and gas law. There was nothing in the record to indicate incompetence or lack of integrity. As a consequence, it is only after considerable deliberation that I find it necessary to vote in opposition to his confirmation.

As has been pointed out, for the past 15 years Mr. Morris has represented Standard Oil Co. of California. From 1956 to 1964 he spent about one-third of his time on Standard Oil matters. For the 7 years between 1964 and 1971 he devoted approximately two-thirds of his time to the Standard Oil Co., focusing on natural gas matters involving the Federal Power Commission as well as nonregulatory gas problems. During this period he also played an active role in judicial appeals by Standard Oil involving Federal Power Commission decisions. The views of a client should not be ascribed to a lawyer in all cases, but here the relationship between Mr. Morris and Standard Oil was not a casual or isolated one—instead it spanned virtually his entire professional career.

In my mind this nomination represents the "last clear chance" for the U.S. Senate and for the American gas consumer. The obvious support by present members of the Commission for the industry which they are charged with regulating has repeatedly been indicated. Their statements, coupled with the decision of May 30, 1973, involving Belco Petroleum, strongly indicate that the Commission has abandoned the consumer. To confirm Mr. Morris, who has served the same industry interests for the greater part of his career, would only serve to further solidify this apparent FPC bias. To vest this agency with such unanimity of view subverts the very purpose of regulation.

In the Belco case, the Commission approved a 73-percent rate increase. This amounts to a 48-percent return on equity and was approved without a foundation in cost to the producer and without a commitment by the producer that the additional revenues would be devoted to further exploration and development activities. I am the first to agree that we need fair prices—set at a level adequate to elicit the necessary supplies, but this fact does not justify a price so high as to be only the empty promise of regulatory protection.

Regulatory commissions derive their power and authority directly from Congress. Hence, as Members of Congress, we would be remiss in our duties if we did not oversee regulatory activities to insure that they continue to serve the objectives we have set. The philosophy and background of the nominees confirmed by the Senate as Federal Power Commissioners is of overriding importance in effectuating or in frustrating these objectives. The Federal Power Commission was established with a strong mandate to protect the consumer from market powers of the energy industry. The Commission must assume the responsibility of assuring adequate supplies of energy at the lowest reasonable price to the consumer.

If it is to achieve this goal, it must have members who will look with critical objectivity at the requests of industry. If public confidence is to be restored in the fair dealing of Government during these troubled times, there would seem to be no better way to begin than with conflict-of-interest-free appointments to the Federal Power Commission.

Therefore, I urge rejection of Mr. Morris' nomination.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial published in the Washington Post of June 7, 1973.

There being no objection, the editorial

was ordered to be printed in the RECORD, as follows:

THE WRONG MAN FOR THE FPC

Regulatory agencies frequently fall captive to the industries that they are supposed to regulate. But even by the regrettable standards of that tradition, the present state of of the Federal Power Commission is extraordinary. The chairman is a New Hampshire lawyer who, in his private practice, was counsel to a gas utility. One member is a lawyer from a Texas firm that specializes in representing gas and oil interests. Two other members are Republicans from Capitol Hill, one of them a retired Illinois congressman and the second a senator's former administrative assistant. Among the four there is none who can properly be called a critic of the industry, or a spokesman for its customers.

The fifth seat on the commission is vacant. Last December the President nominated Robert H. Morris, a San Francisco lawyer who has spent much of his career representing Standard Oil of California. Several senators have carried on a long delaying action against confirmation of Mr. Morris. But now his nomination is about to come to the Senate floor. The question is not whether the industry's view deserves representation within the FPC. It is whether any other view is to be represented. Mr. Morris' integrity and competence are not in question. But at a time when public confidence in the federal government is not high, the Senate would make a grievous error in awarding still another seat on the FPC to a lawyer who, in his private career, spoke for the oil and gas industry.

That industry might usefully ask itself whether its own interests are really served by this crude tactic of excluding all dissent from the commission. Over the next several years, the federal government is going to have to make a series of hard decisions regarding prices and taxation of gas and oil. These decisions will be political. They will reflect voters' impressions as to whether they are being treated fairly. It is something of an understatement to say that currently the oil and gas industry does not enjoy any great degree of public trust and affection. The industry might consider whether anyone will put much credence in the findings and rulings of an FPC dominated by lawyers who, before coming to Washington, worked for the gas and oil companies. The senators ought not have much trouble answering that question. The proper course for the Senate is to reject Mr. Morris' nomination.

Mr. HOLLINGS. Mr. President, I will try to emphasize the very brief, cogent, and wise statement of the distinguished Senator from Michigan (Mr. HART). He got right to the point.

We are not trying Mr. Morris, I say to the Senator from California. Mr. Morris just cannot qualify. Why can he not qualify? For the simple reason that he put down right there, on the record: Standard Oil of California. It is not a matter of whether he is going to be killed or whether we are going to put a nail in his coffin.

I am not asking for delay. I am asking for credibility in this energy crisis. The President does not have it. We found that out when we passed, with only 12 dissenting votes, of S. 70 the Council on Energy Policy. Why? Because the President has continually shifted responsibility for energy policymaking within the executive branch. In November of last year, he appointed a Deputy Assistant Secretary for Energy in the Interior Department, while at the same time saying that James Atkins, Director of the State Department's Office of Fuels and Energy, would represent him on energy matters. Then he changed his mind in January and said, "No, I'm going to have Secretary Butz as my counselor on natural resources," and he was going to be the energy man. By February he changed that and said, "No, I have an energy committee made up of George Shultz, Henry Kissinger and John Ehrlichman."

After that, the Energy Committee hired a man who worked 7 weeks and delivered to us this so-called, high level, message on energy calling for deregulation. I cannot give too much credibility in this instance to the distinguished President of this country, and he causes me to be a little leery when at the same time he calls for deregulation, he is arm in arm with his best friend, the former distinguished Governor of Texas, John Connally, who has represented nothing but oil companies. We all know the facts: Come to my ranch and we will have a party, we will raise funds, and in the midst of all this, asking for deregulation.

What we do have to look at with reference to deregulation?

It is not like arguing that Mr. Morris is to be an adviser to the President. If Mr. Morris had been nominated to be an adviser to the President, I would have no objection. The President of the United States deserves the benefit of the advisers he wants, and honest ones. I believe Mr. Morris is honest, and I would welcome a chance to vote for him for a Cabinet post or whatever it might be.

But the one thing we are tied into here is the record that has been made.

I wish the distinguished Senator from New Hampshire were here and that we could get these speeches for him to see. Mr. Brooke and Mr. Moody have made speeches favoring deregulation, and of course Mr. Springer voted for deregulation as a House Member.

As a last clear chance, what we want is just that, a chance—not an oil company lawyer; anything but. I think Mr. Morris is qualified for almost any job in this country, save one, and that is, at this particular point in time to be a member of the Power Commission. This is the last clear chance for the consumer.

With Senator MAGNUSON and Senator JACKSON, we have held many hearings on energy, and from them we learned that the large oil companies in the United States own 72 percent of the natural gas reserves, 50 percent of the uranium, 25 percent of the coal. I have located industries galore in my home State; and if I go to one company for a gas rate, I find I am going to the same one for coal and the same one for electric; the same company all around. I think they are too interlocking, and they are almost in violation of the antitrust laws at the present time.

We know that in Great Britain, 4 years ago, the oil producers came to what they call the British Gas Council, and said, "We're going to have to do some offshore drilling, but we have to be guaranteed a 50-cent rate." The Council in Great Britain refused that, and instead the government said they would start drilling gas on their own. What did the oil companies do? They immediately came back to the Council and said, "Oh, no, we do not need 50 cents; we'll compromise on 28." And they have been operating at that 28 cents.

Where did that idea come from. The distinguished senior Senator from West Virginia (Mr. RANDOLPH) commenced a study on this, and we extended the idea in our debate on the Energy Council bill.

What I am telling Senators here is that if there is to be a price increase, and apparently there will be, it has to be an increase, as the Senator from Michigan stated, that has credibility.

This crowd has no credibility. They are given a 15-percent return on gas but they get 40 percent on oil. They do not put the money into exploration. That is why we do not have a credible program. They do not really develop domestic reserves in the United States even if they have more money. Then, on the contrary, in the Belco case, the Commission finds in May they are entitled to a 73-percent increase, which amounts to a 48-percent return on equity.

Mr. President, that is the situation we have. We have to look at this energy crisis. We must develop an energy policy and then we must try to administer it within Congress—Congress has the power to regulate. And the Power Commission is an arm of Congress, not an adviser to the President.

It is said that oil company lawyers are not responsible for their clients' views. I have represented murder clients and that certainly does not mean that I believe in murder.

But Morris is not the issue. He cannot qualify. He cannot change his record of Standard Oil, I do not care how many Sierra Clubs he joins, or how many $3 fees he pays.

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

Mr. HOLLINGS. I yield.

Mr. TUNNEY. Did the Senator vote for Mr. Springer?

Mr. HOLLINGS. Yes, I did, and at that time I said that on the last clear chance I was not going to let Mr. Morris go by. I thought we could balance off.

I thank the distinguished chairman for yielding.

Mr. STEVENS. Mr. President, what the Senator is saying is that we want on the Federal Power Commission people who have had no experience at all. Apparently they would be happy if we would take someone from the consumer advocacy area and put him on the Federal Power Commission, and everyone else is not supposed to represent the consumer. I do not understand it.

The real problem about this, in my opinion, and we will get into this later in this session, is that what they are advocating is what has been advocated from the other side of the aisle for 40 years. This is really a test as to whether we can take someone who is independent and give him the facts and have him tell the American consumer tough decisions have to be made. We are going to tell him, "You have to stop consuming gas for utilities and any kind of industrial facility and leave it for the consumer in residential homes." Who will do that? Will it be a consumer advocate who says he

can do that? You will have to start paying twice as much for that gas.

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

Mr. STEVENS. I yield.

Mr. TOWER. Not twice as much, but three times as much. The Washington Post, and that could hardly be accused of being a reactionary rag, editorialized in favor of deregulation because they are now making gas out of naptha. It is costing $1.25. I hope people in the East realize what will happen if they decrease the price of gas. We will use the gas in Texas, Louisiana, and Arkansas where it is produced, and you can buy it in Algeria at $1.45.

Mr. STEVENS. Or pay $2 for it from Siberia.

Mr. President, I sit here as a person from a gas-producing State and listen to comments about prices and regulations. We are in the worst situation with respect to gas. Senators ought to get the message, and the message is that things have happened in the past that have not been good. It is time for new direction in the Federal Power Commission. We are offering that new sense of direction with this nominee from the State of California, who is an able man. This is the last chance the Senate may have to vote for him.

I can assure Senators, after the statement of the Senator from South Carolina saying they will never vote for him, his name will not be sent back again. The Senator from South Carolina does not think this is going back to the committee for more evidence. There is no more evidence Senators would listen to.

Apparently it is thought that a man from a large oil company cannot represent the public interest—not the consumer interest and not the oil industry, but the public interest, involved in the protection of this country so far as supply and the pricing of natural gas is concerned. That is where Senators who believe that are wrong.

If this is sent back to committee Senators who vote for that to be done will doing a great disservice because they will be missing the opportunity to get a bright young lawyer on this Commission when he is in the prime of his life and when he is willing to take on this task.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MOSS. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. MOSS. Mr. President, I will just be a minute or 2 and then we will get to the vote.

The Senator from California was quoting Vernon Sturgeon, who was president of the California Public Utility Commission. I submit he is hardly a witness to have in favor of the candidacy of Mr. Morris. Since he has been president of the PUC in California, the Supreme Court at least 10 times threw out PUC's decisions, including environmental and antitrust matters in cases decided by the PUC favorably for Pacific Gas & Electric. These included a $300 million telephone rate increase and a $1 billion overcharge by the telephone company due to normalization, the process by which the phone company collected Federal and State taxes in excess of those levied by the Federal and State governments and kept the $1 billion in over charges.

Mr. President, I think the case has been well made that the nomination of Mr. Morris should be recommitted and that is the motion of the Senator from Washington, the chairman of the Committee on Commerce. I intend to vote for the motion to recommit. I yield back the remainder of the time.

Mr. STEVENSON. Mr. President, on May 21 I reluctantly voted against the confirmation of William Springer of Illinois to the Federal Power Commission. The issue was not William Springer, but the philosophy of appointees to the regulatory agencies. I voted against a nominee whose record gave every indication of upholding industry's interests over the consumer's interest in matters before the FPC. I will continue to vote against such nominees.

Today I shall vote for the confirmation of Robert Morris to the FPC. As with Mr. Springer, the issue is not the character or integrity of the nominee. They are both beyond reproach.

Like Mr. Springer, Mr. Morris has been characterized as proindustry—and therefore anticonsumer. Mr. Morris is characterized as such because of his work as an attorney in a large law firm which represented Standard Oil of California. That work included some work before the FPC. As a good lawyer, he put his client's best foot forward, and in some instances that meant opposing FPC policies and decisions. It cannot be inferred that because he represented Standard as a lawyer he was opposed to the consumer's interests. To draw that conclusion is to find him guilty by association and suggest that lawyers cannot represent industrial clients and later serve the public. Congressman Springer's proindustry record was made, not as a lawyer, but as a public servant. It was clear from Mr. Springer's voting record that he consistently took industry's views for his own.

We ought not to look to the clients of Mr. Morris' large law firm, but to the testimony he gave before the Commerce Committee. From this testimony and conversations I have had with Mr. Morris, I conclude that Mr. Morris is not "proindustry" and "anticonsumer." The opposite is more likely. Mr. Morris intends to be his own man and vote in the public's interest as he sees it.

On the key issue of the deregulation of the wellhead price of natural gas, Mr. Morris clearly indicated that he was not an advocate of deregulation. He said that cost-based pricing of the interstate sale of natural gas had been a failure in the past. He also said that:

> If we are able to revise the pricing standard under the Natural Gas Act as it exists today so that we have got a more stable and farseeing pricing standard than we now have, then we could and should have effective regulation for both inter- and intrastate gas.

He opposed deregulation because there was and is no effective competition in the energy industry.

To quote Mr. Morris further on this issue, he stated:

> All I am trying to say is that I think five years ago we thought of price very myopically, and at that point in time a pro-industry or a pro-consumer label meant something, because the only job that regulation was attempting to do then was to save pennies per month or dollars per month or millions of dollars per year for consumers. Price was thought of only in terms of price savings.
>
> I think the lesson we are beginning to learn out of our shortage is that price has other facets to it.
>
> Promotion of energy efficiency, environmental protection, depression of demand. It is a resource-allocated matter. I think it is very difficult to say what a pro-industry or a pro-consumer view is any more, because the parties who were traditionally considered pro-consumer in the past are beginning to say that prices must go up.

Mr. Morris stated his belief that the standard as to price in the present law was "too vague," and that as long as no change is made in the statute "regulatory policies are going to change every time you get a change in the makeup of the Commission." He said it was up to Congress to make the change by substituting a "new set of words"—to choose a specific standard rather than relying on a vague term which may have worked for most utilities but not in gas production.

I do not believe this viewpoint is anticonsumer or proindustry. In fact, it seems to me a rather farsighted view that reconciles both the consumer's viewpoint and the need for an effective long-range energy policy.

Mr. Morris said he had no objection to the creation of a Consumer Protection Agency, that he favored legislation directing the FPC to make continuous independent studies of reserves and production of natural gas and that he favored experimenting with an inverted natural gas rate structure—one in which the larger natural gas consumers in industry paid more per unit of natural gas the more they used, rather than less. In addition to favoring an inverted rate structure, he favored other conservation-oriented measures. His nomination is supported by organizations unassociated with "industry," such as the Sierra Club.

The record before the Commerce Committee indicates that Mr. Morris would be an able commissioner. It would be ironic if the Senate approved Mr. Springer, whose public record gives every indication of upholding industry over the consumer's interests, and then in the name of consumer welfare disapproved Mr. Morris who views reflect a keen commitment to consumer welfare.

It is said that "credibility" is the issue. And no doubt Mr. Morris' law firm's representation of Standard Oil raises doubts in the minds of some about his capacity for impartiality on the FPC. But I must balance that real concern against my abhorrence of guilt by association. He deserves to be considered on his merits. We ought to weigh the character of the man and his opinions on the issues which will come before the FPC—and not reject him because of a former client. Given a chance, I have no doubt he would fast establish his credibility as a dedicated and able servant of the public on the FPC.

I urge the Senate to vote against recommitting Mr. Morris' nomination to

the Commerce Committee. Mr. Morris had a full and fair hearing before the Commerce Committee almost 3 months ago, and he acquitted himself well. He deserves an up or down vote.

Mr. BAYH. Mr. President, I have determined to oppose the nomination of Robert Morris to the Federal Power Commission because of a deep conviction that our regulatory commissions can best serve the public if they are composed of a broad spectrum of opinion and backgrounds.

Nothing has been brought forth to cast doubt on the integrity of Mr. Morris. Indeed, my opposition to his confirmation is not a reflection on his ability or honesty. Rather it is a reflection on the broader issue of how regulatory commissions should be structured and how Commissioners should be selected.

It is in this context that the words of the distinguished chairman of the Commerce Committee (Mr. MAGNUSON) are so appropriate. Quoting from the chairman's additional views in the committee report on the nomination:

> The public would have more confidence in a Commission whose membership reflected independence and commitment to the public interest.

Without impugning Mr. Morris' motives or integrity, the public would fairly be skeptical of the open-mindedness of a Commissioner who served ably as counsel to Standard Oil of California for 15 years in matters where the public interest could be vastly different than that of Standard Oil.

Since there are many able persons who could serve on the FPC whose prior experience would not engender public skepticism, I am satisfied that Senate should make clear its desire to have a nominee who would definitely bring balance to a Commission which is heavily represented by Commissioners sympathetic to industry interests. The public has a right, to which we should be sensitive, to expect the FPC, and all regulatory bodies, to have a reasonable balance so that the public interest can be adequately served.

Mr. MAGNUSON. Mr. President, I made the preliminary motion to recommit, and I make it now.

I move that the nomination of Robert Morris be recommitted to the Committee on Commerce for appropriate reference.

The PRESIDING OFFICER. The question is on the motion of the Senator from Washington to recommit.

Mr. MAGNUSON. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. PELL (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the senior 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 withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from New Hampshire (Mr. MCINTYRE) is necessarily absent.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. MCINTYRE) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BARTLETT) is necessarily absent to attend the funeral of a friend.

The Senator from Oklahoma (Mr. BELLMON), the Senator from South Carolina (Mr. THURMOND), and the Senator from Ohio (Mr. SAXBE) are necessarily absent.

The pair of the Senator from South Carolina (Mr. THURMOND) has been previously announced.

The result was announced—yeas 51, nays 42, as follows:

[No. 196 Ex.]

YEAS—51

Abourezk	Fannin	McGee
Bayh	Hansen	McGovern
Bennett	Hart	Metcalf
Bentsen	Hartke	Mondale
Bible	Haskell	Montoya
Biden	Hathaway	Moss
Burdick	Hollings	Muskie
Byrd, Robert C.	Huddleston	Nelson
Cannon	Hughes	Pastore
Case	Humphrey	Proxmire
Chiles	Inouye	Ribicoff
Church	Jackson	Schweiker
Clark	Javits	Symington
Cranston	Johnston	Talmadge
Dole	Kennedy	Tower
Eagleton	Magnuson	Weicker
Ervin	Mansfield	Williams

NAYS—42

Aiken	Fong	Pearson
Allen	Fulbright	Percy
Baker	Goldwater	Randolph
Beall	Gravel	Roth
Brock	Griffin	Scott, Pa.
Brooke	Gurney	Scott, Va.
Buckley	Hatfield	Sparkman
Byrd, Harry F., Jr.	Helms	Stafford
Cook	Hruska	Stevens
Cotton	Long	Stevenson
Curtis	Mathias	Taft
Domenici	McClellan	Tunney
Dominick	McClure	Young
Eastland	Nunn	
	Packwood	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Pell, for.

NOT VOTING—6

Bartlett	McIntyre	Stennis
Bellmon	Saxbe	Thurmond

So the motion to recommit the nomination was agreed to.

Mr. MAGNUSON. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

MESSAGE FROM THE HOUSE— ENROLLED BILLS SIGNED

A message from the House of Representatives, by Mr. Berry, one of its reading clerks, announced that the Speaker had affixed his signature to the following enrolled bills:

H.R. 5293. An act to authorize additional appropriations to carry out the Peace Corps Act, and for other purposes; and

H.R. 5610. An act to amend the Foreign Service Buildings Act, 1926, to authorize additional appropriations, and for other purposes.

The enrolled bills were subsequently signed by the Vice President.

DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

The Senate resumed the consideration of the bill (S. 1248) to authorize appropriations for the Department of State, and for other purposes.

The PRESIDING OFFICER. The pending question is on agreeing to the amendment of the Senator from Michigan (Mr. GRIFFIN).

Mr. MANSFIELD. Mr. President, for the information of the Senate, there will be no further votes tonight. However, I should like to have the attention of the distinguished Senator from Texas (Mr. TOWER), so that I may propound a unanimous-consent request based on the amendment pertaining to foreign bases, to be offered by the Senator from Texas.

I ask unanimous consent that there be a limitation of 1 hour on the amendment, to be equally divided between the mover of the amendment and the manager of the bill or his designee.

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

Mr. GOLDWATER. Mr. President, will the Senator from Montana yield?

Mr. MANSFIELD. I yield.

Mr. GOLDWATER. What does the amendment do?

Mr. MANSFIELD. It is the so-called forward bases agreement by which, before an agreement is entered into, the proposal must first come to Congress.

Mr. GOLDWATER. I shall have to object.

Mr. MANSFIELD. It is immaterial to me, I may say to the Senator from Arizona.

Mr. GOLDWATER. I might explain my objection. I was told by the chairman of the committee that the war powers bill was, in effect, not to be considered in connection with the pending bill. But we are actually doing so amendment by amendment.

Mr. MANSFIELD. The war powers bill will be considered separately, because it has been reported unanimously.

Mr. GOLDWATER. I so understand.

Mr. MANSFIELD. That bill will stand on its own feet.

Mr. GOLDWATER. But we have already agreed to one part of it.

Mr. MANSFIELD. May I suggest that the distinguished Senator from Arizona consult with the distinguished Senator from Texas (Mr. TOWER) to find out just what are the possibilities of agreeing to a limitation?

Mr. TOWER. I shall be delighted to consult with the Senator from Arizona.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MANSFIELD. Mr. President, I have been informed that my unanimous consent request was granted before the distinguished Senator from Arizona rose to ask his question.

The PRESIDING OFFICER. That is correct.

Mr. MANSFIELD. I ask unanimous consent that the order granting my request be rescinded.

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

Mr. TOWER. Mr. President, I believe that if we extended the time of the agreement, there would be no objection.

Mr. MANSFIELD. Mr. President, I will then change the request from 1 hour to 2 hours, on the same basis.

The PRESIDING OFFICER. Is there objection?

Mr. JAVITS. Mr. President, is there a provision for amendments to amendments?

Mr. TOWER. The agreement will be in the usual form, I suppose—30 minutes on amendments to amendments, debatable motions, or appeals.

Mr. MANSFIELD. With 30 minutes on amendments, motions, or appeals, and 2 hours on the amendment itself, the time to be equally divided between the manager of the bill and the sponsor of the amendment, the distinguished senior Senator from Texas, under the normal procedure.

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

QUORUM CALL

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate just once today?

The PRESIDING OFFICER. The Senate will be in order. Senators will take their seats. The Senator from West Virginia may proceed.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, at such time as S. 907, a bill to authorize an appropriation of $150,000 to assist in financing the Arctic winter games, is called up and made the pending business before the Senate, there be a time limitation thereon of 1 hour, to be equally divided between and controlled by the Senator from Alaska (Mr. STEVENS) and the distinguished majority leader or his designee; that time on any amendment, debatable motion or appeal be limited to 30 minutes, with the exception of an amendment by the distinguished Senator from Wisconsin (Mr. PROXMIRE), on which there be a time limitation of 1 hour, the agreement to be in the usual form.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. GRIFFIN. Mr. President, reserving the right to object, and I shall not object, the Senator from Alaska (Mr. STEVENS), of course, has a very strong interest in this bill. There is a problem that, because of commitments, he will not be able to be here on Friday. So, it would be his hope, and with the support of the leadership on this side of the aisle, that the bill would not be brought up before Monday next so that he could be here to participate in the debate.

Mr. ROBERT C. BYRD. May I say in response to the distinguished assistant Republican leader that the leadership on this side of the aisle will have that in mind and will certainly want to accommodate the Senator. He is the author of the bill and the Senator who will manage it on the floor. I think that the leadership on this side of the aisle is prepared to say that the bill will not be brought up until Monday.

Mr. GRIFFIN. I thank the distinguished majority whip for those assurances, and I withdraw my reservation.

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

Mr. ROBERT C. BYRD. I am not absolutely sure that it can be brought up on Monday, but, as I understand it, it will not be before Monday.

UNANIMOUS-CONSENT AGREEMENT—S. 797

Mr. ROBERT C. BYRD. Now, Mr. President, I ask unanimous consent that, at such time as S. 797 is called up and made the pending question before the Senate, there be a time limitation on the bill of 1 hour, to be equally divided between and controlled by the distinguished Senator from Maryland (Mr. BEALL) and the distinguished majority leader or his designee; that time on any amendment, debatable motion, or appeal be limited to 30 minutes, with the exception of an amendment by the distinguished Senator from Wisconsin (Mr. PROXMIRE) on which there be a time limitation of 1 hour, the agreement to be in the usual form.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

Mr. GRIFFIN. Mr. President, reserving the right to object, and I do not object, I want to indicate that I have had the opportunity now to ascertain that the ranking member of the Commerce Committee, the distinguished Senator from New Hampshire (Mr. COTTON), is in agreement with this, and the Senator who is most directly interested and concerned, the distinguished Senator from Maryland (Mr. BEALL), is now in the Chamber and, as I understand it, the arrangement is agreeable to him; so I withdraw my reservation.

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

REVISION OF ORDER FOR SENATORS TO SPEAK TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on tomorrow, the order previously entered for the recognition of Senators be slightly revised; that after the two leaders or their designees have been recognized under the standing order, the following Senators be recognized, each for not to exceed 15 minutes, and in the order stated.

Senators CURTIS, HANSEN, GRIFFIN, HUMPHREY, and ROBERT C. BYRD.

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

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR CONSIDERATION OF THE UNFINISHED BUSINESS, S. 1248, TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, at the conclusion of routine morning business, the Chair lay before the Senate the unfinished business.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow will be as follows:

The Senate will convene at 11 a.m.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes and in the order listed: Mr. CURTIS, Mr. HANSEN, Mr. GRIFFIN, Mr. HUMPHREY, and Mr. ROBERT C. BYRD.

There will then be a period for the transaction of routine morning business, for not to exceed 15 minutes, with statements therein limited to 3 minutes.

The Senate will then resume the consideration of the unfinished business, S. 1248, the bill authorizing appropriations for the State Department.

At the time the Senate returns to the consideration of the unfinished business tomorrow, the pending question will be on the adoption of amendment No. 222 by Mr. GRIFFIN to amendment No. 218 by Mr. PROXMIRE.

There will be yea-and-nay votes tomorrow, and at sometime during the afternoon it is likely that a vote will occur on the amendment by Mr. TOWER, on which there is a time limitation of 2

hours. Senators are alerted to the fact, I repeat, that probably there will be several yea-and-nay votes tomorrow.

ADJOURNMENT UNTIL 11 A.M. TOMORROW

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 a.m. tomorrow.

The motion was agreed to; and at 5:16 p.m., the Senate adjourned until tomorrow Thursday, June 14, 1973, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate June 13, 1973:

AMBASSADORS

John Hugh Crimmins, of Maryland, a Foreign Service Officer of the Class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Brazil.

Ernest V. Siracusa, of California, a Foreign Service Officer of Class 1, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Uruguay.

THE JUDICIARY

William H. Webster, of Missouri, to be a U.S. circuit judge, eighth circuit vice Marion C. Matthes, retiring.

John F. Nangle, of Missouri, to be a U.S. district judge for the eastern district of Missouri vice William H. Webster.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 13, 1973:

DEPARTMENT OF COMMERCE

John K. Tabor, of Pennsylvania, to be Under Secretary of Commerce.

Tilton H. Dobbin, of Maryland, to be an Assistant Secretary of Commerce.

U.S. COAST GUARD

The following named officers of the Coast Guard for promotion to the grade of rear admiral:

Glen O. Thompson
Julian E. Johansen
Abe H. Siemens
John B. Hayes
Robert H. Scarborough

Harold James Barneson, Jr., of the U.S. Coast Guard Reserve, for promotion to the grade of rear admiral.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

LOUISIANA IS READY FOR THE SUPERPORT

HON. DAVID C. TREEN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 13, 1973

Mr. TREEN. Mr. Speaker, as a sponsor of H.R. 7501, an administration-supported bill which would facilitate the construction of deep sea ports, I am pleased to see the leadership which is coming from my State of Louisiana in the development of the superport.

In recent articles by Mr. Sam Hanna, of the New Orleans' States-Item, and Mr. Paul Atkinson of the New Orleans Times-Picayune, the question of a Louisiana superport is discussed.

Mr. Speaker, I believe these articles illustrate that with a total effort a solution to the problems surrounding the superport can be found; and that academicians, environmentalists, business leaders, as well as local and national political figures can work together harmoniously. However, it is now the time for Congress to act, so that superport proposals, like that of Louisiana, can become a reality. As a member of the Merchant Marine and Fisheries Committee, one of the three House committees with jurisdiction over this question, I will do all I can to make the superport a reality.

In my continuing effort to inform my colleagues of superport developments I am inserting in the CONGRESSIONAL RECORD some recent articles on this subject for their benefit:

[From the New Orleans Times-Picayune, Mar. 31, 1973]

OIL PORT IS URGED BY INDUSTRY GROUP—$278 MILLION PROJECT WOULD BE BUILT OFFSHORE LOUISIANA

(By Paul Atkinson)

A corporation representing 13 major oil companies Friday asked the Louisiana Superport Authority to consider adoption of its proposal to build a $278 million offshore oil port as the first stage of the planned Louisiana superport.

William B. Read, president of the oil industry group (known as Louisiana Offshore Oil Port Inc.—LOOP) said the port would utilize up to five floating single-point mooring buoys (SPMs) constructed in Gulf of Mexico Waters 21 miles south of Bayou Lafourche.

He said all offshore works would be situated in about 110 feet of water.

Superport Authority chairman Andrew Martin said the proposal will be taken under advisement.

Before approval can be given to the LOOP proposal, the Superport Authority must make an environmental impact study which is now underway. During the meeting at The Rivergate, authority executive director P. J. Mills said that a $50,000 economic impact study is also to be undertaken immediately.

Mills said $20,000 will be put up by the Louisiana Science Foundation; $22,000 by LOOP; and the remaining $8,000 by the Superport Task Force. Gulf South Research Institute and Kaiser Engineers will make the study.

For the first time, Read unveiled current thinking of the combine of oil companies. He said they will have onshore storage on a portion of 1,600 acres leased near the mouth of Bayou Lafourche in Lafourche Parish.

The tank farm would be connected by another 80-mile pipeline to the St. James terminal of the Capline, one of the world's largest crude oil pipelines.

Capline, with a potentially daily capacity of 1.2 million barrels of crude oil, serves refineries throughout the Midwest, as far north as Chicago, Ill.

During a news conference after his presentation, Read readily admitted that location of the 80-mile pipeline could have an effect on the environment.

He said a 60-foot-wide canal six to eight feet deep will be needed to service the large diameter pipeline. He said the pipeline would be larger than 48 feet wide.

"Probably half of the 80-mile distance will be serviced by a canal," said Read. "There are existing canals that we are considering using."

"It is one of the critical phases of our project, this picking out the pipeline location to minimize its effect on the estuarine area."

Read said his group is working with the Louisiana State University Center for Wetland Resources to select the best site that will do the least environmental damage.

Read said the facility is being designed to handle tankers of up to 500,000 deadweight tons.

Initially, the terminal would be able to pass on 1.7 million barrels of crude per day, an amount he said is comparable to the daily production of the thousands of producing wells offshore Louisiana. Ultimately the proposed terminal would have a throughput capacity of more than 4 million barrels a day, or almost 25 percent of the entire Nation's daily oil consumption.

Read said LOOP would like to begin construction of the terminal in mid-1974 and anticipate limited operation by mid-1976.

Utilization of the SPM system offshore Louisiana is proposed because it has proven sound in more than 100 locations around the world, he said, many of which have wind and current conditions similiar to those in the Gulf of Mexico.

Read estimated that using the SPM system, the offshore port will be able to operate 90 percent of the time in weather conditions generally found in the Gulf of Mexico.

"Because of their design, SPMs are less vulnerable to hurricane damage," said Read. "They allow quick reaction on the part of unloading supertankers to threatening weather. In the event of a collision with the SPM, a tanker will simply ride over the floating buoy with a little likelihood of serious damage to either."

Speaking of onshore storage Read said the tank farm complex would be designed to handle a number of different kinds of crude oil and may ultimately be capable of storing 50 million barrels of oil.

"The proposed location of the tank farm complex was selected from among a number of alternatives, the most important consideration being its potential impact on coastal wetlands environment," Read told the authority.

"The existence of firm sand foundation in much of the area will allow minimal land fill, and thus minimal construction impact. The facility avoids existing oyster leases, and is in an area of general development that includes roads sufficient to meet operating needs."

The LOOP timetable calls for a permit application by September, 1973, and possible approval by spring of 1974.

Member companies of LOOP are Ashland Oil Inc., Chevron Pipe Line Co., Exxon Pipe Line Co., Marathon Oil Co., Murphy Oil Corp., Shell Oil Co., Tenneco Oil Co., Texaco, Inc., Toronto Pipe Line Co., Union Oil Co. of California, Clark Oil and Refining Corp., Standard Oil Co. of Ohio and Texas Eastern Transmission Corp.

The pipeline connecting LOOP storage to Capline would not be owned by LOOP but by