United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 93d CONGRESS, FIRST SESSION

SENATE—*Thursday, January 18, 1973*

The Senate met at 12 o'clock meridian 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:

Lord God, whom our fathers revered as sovereign over men and nations, we their sons offer to Thee our praise and thanksgiving for Thy guiding hand which has brought us to this hour. Grant to us reconciling grace and good will toward all men.

"From war's alarms, from deadly pestilence,
Be Thy strong arm our ever sure defense;
Thy true religion in our hearts increase,
Thy bounteous goodness, nourish us in peace."

—DONALD C. ROBERTS.

Rule over this body for the welfare of the Nation and Thy glory.

In the Redeemer's name we pray. Amen.

EXECUTIVE REPORTS OF COMMITTEES SUBMITTED DURING ADJOURNMENT

Under authority of the order of the Senate of January 16, 1973, the following favorable reports of nominations were submitted during the adjournment of the Senate:

On January 16, 1973:

By Mr. THURMOND, from the Committee on Armed Services:

Elliot L. Richardson, of Massachusetts, to be Secretary of Defense.

By Mr. TOWER, from the Committee on Armed Services:

William P. Clements, Jr., of Texas, to be a Deputy Secretary of Defense.

By Mr. HARRY F. BYRD, JR., from the Committee on Armed Services:

James R. Schlesinger, of Virginia, to be Director of Central Intelligence.

On January 17, 1973:

By Mr. TALMADGE, from the Committee on Finance:

Frank C. Carlucci, of Pennsylvania, to be Under Secretary of Health, Education, and Welfare.

THE JOURNAL

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, January 16, 1973, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. ROBERT C. BYRD. 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.

MESSAGE FROM THE HOUSE—ENROLLED JOINT RESOLUTION SIGNED

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the Speaker had affixed his signature to the enrolled joint resolution (H.J. Res. 1) extending the time within which the President may transmit the budget message and the Economic Report to the Congress and extending the time within which the Joint Economic Committee shall file its report.

The enrolled joint resolution was subsequently signed by the President pro tempore.

ATTENDANCE OF A SENATOR

Hon. JAMES B. PEARSON, a Senator from the State of Kansas, attended the session of the Senate today.

ADMINISTRATION OF OATH

Mr. SCOTT of Pennsylvania. Mr. President, I ask unanimous consent, at this time, that the oath of office may be administered to the distinguished senior Senator-elect from Kansas (Mr. PEARSON).

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

Since the certificate of election of Senator-elect JAMES B. PEARSON of Kansas has already been received and placed on file and printed in the RECORD on January 3, 1973, the Chair will now administer the oath of office to Senator-elect PEARSON, if he will present himself at the desk for that purpose.

The Senator, escorted by Mr. SCOTT of Pennsylvania, advanced to the desk of the President pro tempore; the oath prescribed by law was administered to him by the President pro tempore; and he subscribed to the oath in the Official Oath Book.

[Applause, Senators rising.]

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON SATURDAY, JANUARY 20, AND ORDER FOR ADJOURNMENT FROM SATURDAY TO TUESDAY, JANUARY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, following the recognition of the two leaders or their designees on Saturday next, that there be a period for the transaction of routine morning business not to extend beyond 10:45 a.m., with statements therein limited to 3 minutes; and that at the conclusion of the aforesaid period for the transaction of routine morning business, the Senate stand in adjournment until 12 o'clock meridian on Tuesday next.

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

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, am I now recognized as the designee of the distinguished majority leader under the 5-minute standing rule?

The PRESIDENT pro tempore. Yes.

ORDER FOR RECOGNITION OF SENATOR BENTSEN TODAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, at the conclusion of legislative business—not morning business—today, the distinguished Senator from Texas (Mr. BENTSEN) be recognized for not to exceed 15 minutes.

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

VIETNAM

Mr. ROBERT C. BYRD. Mr. President, a report from Saigon, published on the front page of today's Washington Post, is deeply disturbing.

In this report, Peter Osnos, quoting "reliable South Vietnamese sources," claims that President Thieu has given his Province chiefs wide latitude to make political arrests after the cease-fire, and has empowered them to "shoot troublemakers on the spot."

Although we have no way of judging how reliable the "reliable" South Vietnamese sources are, past history of political repression on both sides of the DMZ gives some credence to the report.

It is tragic that after more than a

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decade of U.S. involvement in South Vietnam, 50,000 Americans dead, 300,000 wounded, hundreds in prisoner-of-war camps and missing in action, to say nothing of the hundreds of billions of dollars expended, the Chief Executive of the country for which we have been trying to gain self-determination, should use such totalitarian methods of silencing political opposition.

It is my earnest hope that the reports to which I refer are ill-founded, but if they turn out to be true, it is time for us to do some hard thinking about our post-peace policy in South Vietnam.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS ON TUESDAY, JANUARY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, on Tuesday next, immediately following the recognition of the two leaders or their designees, and the execution of any special orders for the recognition of Senators that may be entered prior thereto, there be a period for the transaction of routine morning business for not to exceed 45 minutes, with statements therein limited to 5 minutes.

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

ORDER OF BUSINESS

The PRESIDENT pro tempore. The minority leader is now recognized.

FACTS AND NONFACTS—KOREA

Mr. SCOTT of Pennsylvania. Mr. President, every now and then there is a tendency to rewrite history. The way it goes, someone will recall something that did not happen. Then it is picked up by two or three people with influence on public opinion who assert that, yes, the nonfact was a fact and it did happen. Then, eventually, someone comes along and says, "As everyone knows" such and such a thing happened.

Thus the fact is erased from the record and the nonfact is substituted.

I should like to mention an instance of that on a recent Agronsky and company program. Two participants made the statement that before going into the Korean war President Truman—and I want to make the point here that I support what President Truman did—had consulted widely with the Congress and with Government officials at various echelons.

The story is promptly picked up by Tom Wicker of the Times who elaborates on it a bit and asserts it as a fact. Then it appears in Time magazine to the extent of alleging that President Truman even consulted down to the third echelons of government before he went into the Korean war.

Now, Mr. President, what actually happened was—and I was there as a young Representative on the floor of the House of Representatives—there were only three Members present on the floor. I looked at the CONGRESSIONAL RECORD of that day this morning and the RECORD does not show this, because a great deal of the business that was transacted in the morning hour that day between 12 o'clock and 12:30 was later inserted between the majority leader's announcement and statements by Representative FULTON and myself.

At 12:30 p.m. that day, there were present on the floor only three Members of Congress. The rest were down in the restroom or elsewhere. There were two members of my party and one member from the other. At that point, the then majority leader, McCormack, read a long statement by the President announcing for the first time, without any prior announcement to the people of America, that he had ordered the deployment of U.S. forces into Korea and elsewhere in the Far East for the purpose of repelling Communist aggression.

Representative FULTON rose to say, "What does this mean?" And his comment is in the RECORD.

I rose to say that whatever it meant, I was prepared to support my Government and I believed that all others would feel the same way in whatever action was necessary by this country to repel such aggression.

The history of those times was that Mr. McCormack and probably Speaker Rayburn and one or two other leaders from the Senate side had been advised very early in the morning of the President's intention.

This business of third echelon people being consulted refers obviously to the fact that with the aggression of North Korea, the Defense Department and the State Department collated all the information they could get and made it available to the President. President Truman acted decisively; he acted firmly.

As the only two members of our party on the floor, we immediately rallied behind him and gave him our support. We did not indulge in talk of dissent; we did not seek to make politics of it.

Before this nonfact becomes embedded in history—it is perfectly clear from the RECORD that that announcement fell like a bombshell on the American people. There was the element of surprise.

I have talked to members of the press who were there at the time and they confirm my recollection, and Members of Congress who were here at the time will confirm my recollection. President Truman did firmly what he had to do, and in my judgment what he did was right. But what is wrong is for the television commentators and certain newspapers and magazine commentators, perhaps because they were not here, perhaps because they do not remember, perhaps because they did not research it, to rewrite history. Whatever the reason, before this nonfact gets any further, let us nail it. I suggest that they read the RECORD of June 27, 1950, and thereafter.

ORDER OF BUSINESS

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

(The remarks of Senator BELLMON when he introduced S. 437 are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

FORCED BUSING OF MEMPHIS SCHOOLCHILDREN TO BEGIN NEXT WEEK

Mr. BROCK. Mr. President, next week schoolchildren in Memphis will begin a difficult and unfortunate chapter in their lives.

On that day forced busing, ordered by a Federal court, will take effect in Memphis. It is being done against the will of the people, in spite of the strong objections of public officials at all levels, and most importantly against the best interests of the children of Memphis and the quality of the education they receive.

The tremendous tolerance and forebearance of the people of our State, and others under similar coercion, is a testament to their respect for the law and this Nation. Such faith is a fragile and precious thing. Ultimately it must be rewarded by a solution to the problem, but until it is, frustration and impatience grows daily.

We have fought in the courts, and lost. We have passed prohibitory legislation, but it has not worked. The President, who feels so very deeply on this subject, has expressed his concern, and lent his support, to no avail. We have considered the issuance of an executive order by the President, halting the imposition of this program, only to be told that such an order, in the face of a Federal court decision, would have no effect.

It has been a long, disheartening struggle, and it now appears that nothing can stop the buses from rolling next week. I pray it will be in a setting of peace out of concern for innocent young people.

But I shall not abandon the legal fight. I am going to press with all the vigor at my command for the adoption of a constitutional amendment to end forced busing once and for all. I have reintroduced such a measure in the Senate, and shall not rest until the Senate accepts its constitutional and representative responsibility.

Can there be any doubt that this is the will of the people? Can there be any doubt that, put to a vote, it would be supported overwhelmingly? I think not.

Senators are elected to represent the people. I, for one, intend to do so.

It is my great regret that no proposal is going to take effect in time to prevent Wednesday's sadness in Memphis. Now, we must fight to stop the abuse at the earliest possible moment. The constitutional amendment will do that, and public and private citizens alike must unite to bring it about.

No school administrator can do his real job when he must consider transportation as his first priority. No community can concentrate on quality education when it is embroiled in this kind of controversy. No child ever got a good education on a bus.

We must get off the bus and back on the right track—to good schools for black and white, rich and poor.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. HATHAWAY). Under the previous order, the Senator from Alabama (Mr. ALLEN) is recognized for not to exceed 15 minutes.

(The remarks Senator ALLEN made when he introduced S. 416, the Equal Educational Opportunities Act, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER. The Senator from Connecticut (Mr. RIBICOFF) is recognized.

(The remarks Senator RIBICOFF made when he introduced S. 423, to provide for a separate Cabinet level Department of Health, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon (Mr. HATFIELD) is to be recognized for not to exceed 15 minutes.

Mr. SCOTT of Pennsylvania. Mr. President, I ask unanimous consent that the Senator from Oregon yield to me for a colloquy with the majority leader without the time being taken from his 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I ask unanimous consent that I be permitted to yield to the distinguished Republican leader half of the time I have been allotted under the previous order.

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

Mr. SCOTT of Pennsylvania. Mr. President, I thank the distinguished majority whip for his generosity.

RESUMPTION OF TOP LEVEL PARIS PEACE TALKS

Mr. SCOTT of Pennsylvania. Mr. President, I rise because there is good news. I am very happy to call to the attention of the Senate a fact concerning language approved by both the United States and North Vietnam.

A bulletin from the Associated Press ticker reads as follows:

KEY BISCAYNE, FLA.—The Florida White House and Hanoi jointly announced today that top-level Paris peace talks will be resumed Tuesday "for the purpose of completing the text of an agreement."

Emphasizing that he was reading language approved by both the United States and North Vietnam, Press Secretary Ronald L. Ziegler said:

"Dr. Henry Kissinger will resume private negotiations with special adviser Le Duc Tho and Minister Xuan Thuy on Jan. 23, 1973, for the purpose of completing the text of an agreement."

Ziegler indicated Kissinger would leave Washington Monday for Paris and said he could not predict how long the envoy might remain there.

Asked if this would be the final meeting of Kissinger and Tho, Ziegler said, "The announcement will have to speak for itself."

I believe that the language used there, "completing the text of an agreement," is of unusual importance. This is the furthest that any of these announcements have gone. The fact that it is a joint announcement from Hanoi and the United States indicates that something very serious—and something that we hope will prove to be imminent—is going on.

I am glad to make the announcement, and I yield now to the distinguished majority leader.

Mr. MANSFIELD. Mr. President, I knew nothing about this until I was leaving the Chamber, at which time I encountered the distinguished Republican leader. He showed me a copy of the bulletin containing the information which he has just read to the Senate.

May I say that I am glad in this 12th winter of our discontent, we have reached the point where the prospects are looking up and up. As the distinguished Republican leader has indicated, this is a joint announcement from both North Vietnam and the United States.

I wish to reiterate the quote which the distinguished Senator from Pennsylvania used. It is "for the purpose of completing the text of an agreement."

This is good news. I hope that this time it will go through, that this war will be ended, that an agreement will be reached, that all U.S. forces will be withdrawn from all of Indochina, that Laos will have a chance once again to resume its independent sovereignty under the leadership of its King, Souphanouvong, and that once again Cambodia will become a neutral haven.

I would expressly hope, as I have done many times before, that Prince Norodim Sihanouk would be returned from Peking to take over Phnom Penh, because he is the only one, in my opinion, who can bring peace and neutrality to Cambodia.

Evidently it would appear on the basis of this report that this agreement has at least been acceded to in part by the Vietcong, the so-called National Liberation Front, and the Vietnamese Governmen in Saigon.

I join the distinguished Republican leader in expressing the hope that I know is dear to his heart also, that this sad struggle, this mistaken war in which we have been engaged for 12 years, is drawing to a close, and that we may learn something from this and never again be involved in an Indochinese war.

Mr. SCOTT of Pennsylvania. Mr. President, in response to what the distinguished majority leader has said, I say, "Please, Lord, never, never again."

The item from the United Press International ticker reads:

This is the first time that the Presidential spokesman has ever used the term "Agreement" in discussing the secret peace negotiations that go back to Aug. 4, 1969.

While I have not done so before, I would now strongly plead with my colleagues for some temperament and some restraint so that nothing said in or out of this Chamber would imperil the situation which appears to be moving toward a conclusion.

I hope that no one will seek any publicity for the sake of publicity, that no one will seek an advantage for the sake of an advantage and that all of us, in a spirit of patriotic obligation to those who fight, to those who wait in a prisoner of war camp, and to those who are missing in action who may yet be accounted for and to all of those in the country who cry out for an end to the war in Vietnam, will at least now give the negotiators a chance to carry out without interference and without the kind of speculation which would imperil the negotiations. I hope that we will give them a chance to arrive at a peaceful and just settlement.

Mr. MANSFIELD. Mr. President, if the Senator would yield further, may I say that I have been very proud of the attitude of the Senate since Dr. Kissinger left this country 2 weeks ago this coming Sunday to resume the negotiations and talks with Le Duc Tho. I think the Senate on both sides of the aisle has acted with remarkable restraint.

I would point out that as far as the Democrats in this body are concerned, we are prepared to do our best to see that these negotiations are carried to a fruitful conclusion and that an agreement is finally reached. The distinguished Republican leader may be glad to know that this pledge will be kept because what we want first is peace and then we want out. That is what we want, that is what the Senate wants, and that is what the American people want.

Mr. SCOTT of Pennsylvania. I thank the distinguished majority leader. He always meets an occasion with patriotism and responsibility. I thank him for his assurance from his side of the aisle. I can give the same assurance from this side of the aisle. The members of the Republican Party will join with the Democratic Party in the recognition that we are, first of all, Americans, and that our country's future is best guaranteed by a joinder of forces, by a common unity, and by a determination to see that whatever can be done will be done to bring to an end this most dreadful of all wars.

The PRESIDING OFFICER. The time allotted to the majority leader has expired.

Mr. MANSFIELD. Mr. President, will the Senator from West Virginia yield me 1 minute?

Mr. ROBERT C. BYRD. I yield 3 minutes to the able majority leader.

Mr. MANSFIELD. With apologies to the Senator from Oregon.

EXECUTIVE PRIVILEGE—THE STENNIS-NELSON RESOLUTION

Mr. MANSFIELD. Mr. President, on January 16 I inserted in the RECORD phase 1 which comprised a set of resolutions which were adopted by the Democratic Conference on Thursday, January 11, 1973. Those resolutions had to do with priority in considering legislation, a resolution on open hearings, and the refusal of Cabinet and other executive officials to testify before Senate committees.

At this time, Mr. President, I ask that phase 2 in the resolutions, deliberations, and considerations of the Senate Democrats in conference be printed in the RECORD, and that will include the resolution of the Senate Democratic Policy Committee as approved by the conference this morning in relation to executive privilege and also the comments

made by the leadership on the Stennis-Nelson resolution, which was the resolution pertaining to the question of executive privilege.

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

RESOLUTION OF SENATE DEMOCRATIC POLICY COMMITTEE—RE EXECUTIVE PRIVILEGE

Whereas, The Senate must be fully informed of the facts and premises upon which proposed actions of the government are based if the Senate is to exercise its constitutional responsibility in enacting the law and appropriating the funds of this government, and

Whereas, The refusals in the past of Cabinet officers and other officials of the Executive Branch of the government to testify and inform the Senate when requested by its Committees have constituted a grevious erosion of the checks and balances prescribed in the Constitution, and

Whereas, The Executive Branch has asserted that the refusal to testify before Senate Committees is based upon the notion of privileged communications between the President and the officials requested to testify, and

Whereas, The Senate Democratic Policy Committee is charged by the Majority Conference of the Senate to recommend proposals for correcting these deficiencies, Be It Therefore

Resolved, That all such proposed witnesses appear; that all questions propounded by Senate Committees be answered unless the President expressly pleads in writing that he has requested the witness to refuse to answer specific questions dealing with a specific matter because the President desires to invoke executive privilege, in which event it shall then be a question of fact for the Committee to decide as to whether or not the plea of executive privilege is well taken. If not well taken, the witness shall be ordered to answer the question or questions; and Be It Further

Resolved, That when any Committee upholds or denies the invocation of executive privilege, it shall within ten days file with the Senate a resolution together with a report and record of its proceedings bearing on such claim of executive privilege, and the Senate shall take such action as it deems proper on disposition of said resolution.

COMMENTS ON THE STENNIS-NELSON RESOLUTION BY SENATOR MIKE MANSFIELD

Before putting the Stennis-Nelson resolution on Executive Privilege before the Conference, I wish to set out the background on this measure as well as my own position.

Senator Stennis first made his proposal at the last Conference, as a floor amendment to the Policy Committee's Draft Resolution on the Confirmation of Executive appointees. I opposed its adoption at that time and in those circumstances. I did so not on the merits of Senator Stennis' proposal but because I thought the question of Executive Privilege should have prior consideration in the Policy Committee and in connection therewith, the comments of Senator Ervin who is a recognized legal authority on the subject.

I was concerned, too, that adding Executive Privilege to the Committee's resolution would confuse two separate but related issues. The first issue arises from what is, in my judgment, the absolute Constitutional obligation of Executive appointees "to appear and testify" when summoned by duly constituted Committees of the Senate and the right of the Senate to insist upon recognition of that obligation as a condition for confirmation. That idea and only that idea was incorporated into the resolution which the Policy Committee proposed and the Conference finally adopted last week.

The second issue is the doctrine of Executive Privilege. I regard that as in a gray area of the Constitution. Whatever the validity of the doctrine, it seems to me that the plea of Executive Privilege ought not to be made, in any event, by any Senate-confirmed appointee until *after* he has appeared before a Committee and then not in a sweeping fashion but only in response to specific questions of the Committee.

That is what the Stennis-Nelson resolution, as I understand it, is all about. It is a way of facing up to the question of when to accept and when to reject the plea of Executive Privilege, as it may be made by a Senate-confirmed appointee *after* he has clearly accepted his obligation "to appear and testify," as a condition of confirmation.

The Stennis-Nelson resolution was considered by the Policy Committee and after hearing from Senator Ervin, the resolution was adopted unanimously.

I intend to support, as is, the adoption of the Stennis-Nelson resolution by the Conference. It would be my hope, however, that Members would be extremely wary of interpreting it as applying to the President's most intimate advisors. I have in mind advisors such as Mr. Kissinger, Mr. Ehrlichman and others of that kind who are chosen by the President directly and who are paid for out of appropriations for the White House staff, who have no departmental responsibilities and who are not subject to Senate confirmation. In interpretations to date, it seems to me that the press has tended to bring these people within the scope of the Stennis-Nelson resolution. It would be diversionary and dangerous, in my judgment, for the Democratic Conference to insist on doing the same.

In the first place, I believe any President is entitled to have a few intimate advisors on the basis of absolute confidentiality who are not subject to Senate confirmation. The Senate, in my judgment, should respect that confidentiality at least while the advisors remain in the close counseling relationship with the President. If the number of such White House advisors is growing excessively, as appears to be the case, there are ways to curb the growth. As I promised the Conference at the last meeting, the Policy Committee is also going to look into that question and, if warranted, a resolution will be offered to curb Presidential appointments not subject to Senate confirmation. But that is not the same question as Executive Privilege and I would hope that we can keep the two separate.

It seems to me, if the matter of Executive Privilege does come to a Court test, as may well be the case, the Senate will be on much sounder ground if we do not insist that we have a right to be privy to everything that Mr. Kissinger may whisper into the President's ear. We will be on much sounder ground if we insist, for example, that a sweeping interpretation of Executive Privilege by a Secretary of State to the extent that he will not even respond to reasonable summons from a Committee is not Constitutionally permissible whereas the same may not hold in the case of a Mr. Kissinger, or a Mr. Rostow or a Mr. Bundy.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the first three nominations on the calendar.

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

DEPARTMENT OF COMMERCE

The second assistant legislative clerk read the nomination of Frederick B. Dent, of South Carolina, to be Secretary of Commerce.

Mr. THURMOND. Mr. President, since we are considering the nomination of Mr. Fred Dent to be Secretary of Commerce, I ask unanimous consent that my remarks before the Commerce Committee last week be inserted in the RECORD.

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

STATEMENT BY SENATOR STROM THURMOND BEFORE THE COMMERCE COMMITTEE REFERENCE HON. FREDERICK B. DENT, JANUARY 12, 1973

Mr. Chairman, it is indeed a pleasure for me to appear here today on behalf of the nomination of a fellow South Carolinian to be Secretary of Commerce. I of course share the pride of the people in my state in having one of our distinguished citizens named to the President's Cabinet. In addition, I am particularly pleased that a man of Fred Dent's nature has been chosen by the President. I have known Fred Dent personally for a number of years, and know firsthand of the outstanding character and ability he brings to this post.

Fred Dent is a textile executive whose career is characterized by the respect he enjoys from his peers throughout the Nation. Although Mayfair Mills, which he serves as president, is by no means a giant in the field, Fred Dent was President of the American Textile Manufacturers Institute for 1967–68, and in 1971 he was selected "Man of the Year" by the Textile Section of the New York Board of Trade. He is also a member of the Labor Management Labor Textile Advisory Committee and serves as Trustee and Treasurer of the Institute of Textile Technology.

Mr. Chairman, in addition to his affiliations with the textile industry, Fred Dent has also served in numerous positions representing a broad spectrum of commercial interests. He is a member of the Commerce Department's International Business Advisory Committee, the National Industrial Pollution Control Council, and the Business Council. He is a Director of General Electric, the Crompton Company, Scott Paper Company and South Carolina National Bank and a Trustee of Mutual Life Insurance Company of New York.

In addition to his numerous business affiliations, Fred Dent has shown an active interest in public affairs on both the local and national level. He serves as a member of the President's Commission on the All Volunteer Army, and is Chairman of the Spartanburg County Planning and Development Commission in South Carolina. He also serves as a Trustee of Spartanburg Day School.

Fred Dent is married to the former Mildred Harrison and they are the parents of five children. He attended St. Paul's and Yale, graduating with a B.A. degree. He served in the Pacific Theater in World War II as an Ensign in the U.S. Naval Reserve.

Mr. Chairman, this biography certainly attests to Fred Dent's ability, his achievements, and his broad experience and interests. It does not, however, give an adequate picture of the man, for he possesses important qualities which are difficult to measure by reference to Committees and Boards of Directors. He is a courteous and considerate man. He is a man who cares about

his community. His principles are above reproach. His concern for his community and mankind are well known. He is a man of achievement and success, but more than that, he is a man of character, capacity and dedication. He is not only a true scholar, but is a modest gentleman.

In closing, Mr. Chairman, I consider it an honor and a privilege to present Mr. Fred Dent to you. I believe him to be highly qualified in every respect for the position of Secretary of Commerce. His nomination by the President is a tribute to him, and I am confident that his tenure as Secretary of Commerce will make a significant contribution to the United States government.

We were delighted in South Carolina that he saw fit to come South. We hope more Yankees of his caliber and stripe will do likewise. Thank you.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

DEPARTMENT OF TRANSPORTATION

The second assistant legislative clerk proceeded to read sundry nominations in the Department of Transportation.

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

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that communications which I have received pertaining to the willingness of the nominees to appear before the appropriate committees be incorporated at this point in the RECORD.

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

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., January 18, 1973.

MEMORANDUM

To Senator MANSFIELD.
From Senator MAGNUSON.

In connection with the nominations of Claude S. Brinegar as Secretary of Transportation and Egil Krogh, as Undersecretary, I am enclosing for your information copies of letters by the nominees confirming their willingness to appear and testify before the Committee upon request.

During the nomination hearing of Frederick B. Dent as Secretary of Commerce, the Committee received similar assurance from Mr. Dent.

CLAUDE S. BRINEGAR,
Rolling Hills, Calif., January 17, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I refer to the Committee's request for a statement from me as to my willingness to appear and testify before duly constituted Committees of the Congress in response to Committee requests. You may be assured that I will appear and testify whenever such a Committee indicates that a personal appearance by me is necessary to the Committee's consideration of any matter before it.

I would hope, of course, that the date of an appearance will be mutually agreeable, so that I may have adequate time for preparation. I would also assume that, as has been the custom in the past, the Committees will consider accepting as witnesses in my stead other Presidential appointees in the Department in circumstances where those appointees are more intimately informed concerning the subject matter of a particular hearing.

Sincerely,

CLAUDE S. BRINEGAR.

EGIL KROGH, Jr.,
Washington, D.C. January 17, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I refer to the Committee's request for a statement from me as to my willingness to appear and testify before duly consituted Committees of the Congress in response to Committee requests. You may be assured that I will appear and testify whenever such a Committee indicates that a personal appearance by me is necessary to the Committee's consideration of any matter before it.

I would hope, of course, that the date of an appearance will be mutually agreeable, so that I may have adequate time for preparation. I would also assume that, as has been the custom in the past, the Committees will consider accepting as witnesses in my stead other Presidential appointees in the Department in circumstances where those appointees are more intimately informed concerning the subject matter of a particular hearing.

Sincerely,

EGIL KROGH, Jr.

EXECUTIVE REPORT OF A COMMITTEE

As in executive session, the following favorable report of a nomination was submitted:

By Mr. JACKSON, from the Committee on Interior and Insular Affairs:

John C. Whitaker, of Maryland, to be Under Secretary of the Interior.

DEPARTMENT OF THE INTERIOR

Mr. MANSFIELD. Mr. President, I send to the desk the nomination of John C. Whitaker, of Maryland, to be Under Secretary of the Interior. I understand that he has indicated his willingness to appear before the Committee on Interior and Insular Affairs. That assurance was given by the distinguished chairman of that committee, the Senator from Washington (Mr. JACKSON), and I ask that the Senate proceed to the consideration of that nomination.

The PRESIDING OFFICER. The clerk will report the nomination.

The second assistant legislative clerk read the nomination of John C. Whitaker, of Maryland, to be Under Secretary of the Interior.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. MANSFIELD. I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

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

LEGISLATIVE SESSION

Mr. MANSFIELD. I ask unanimous consent that the Senate return to the consideration of legislative business.

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

SENATE RESOLUTION 20—RESOLUTION INCREASING THE MEMBERSHIP OF THE SPECIAL COMMITTEE ON AGING

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

The PRESIDING OFFICER. The resolution will be stated.

The assistant legislative clerk read the resolution (S. Res. 20), which was considered and agreed to, as follows:

S. RES. 20

Resolved, That the Special Committee on Aging, established by S. Res. 33, Eighty-seventh Congress, agreed to on February 13, 1961, as amended and supplemented, shall hereafter consist of twenty-two members, thirteen of whom shall be appointed from the majority party and nine of whom shall be appointed from the minority party.

The PRESIDING OFFICER. Pursuant to Senate Resolution 20 and on behalf of the Vice President, the Chair appoints the Senator from Rhode Island (Mr. PELL) to the Special Committee on Aging.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that, for purposes of seniority among the majority party membership of the Committee on Aging, Senator PELL be given seniority immediately following Senator HARTKE. The committee should read as follows: Mr. CHURCH, chairman, Mr. WILLIAMS, Mr. BIBLE, Mr. RANDOLPH, Mr. MUSKIE, Mr. MOSS, Mr. KENNEDY, Mr. MONDALE, Mr. HARTKE, Mr. PELL, Mr. EAGLETON, Mr. TUNNEY, Mr. CHILES.

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

SENATE RESOLUTION 12—MEMBERSHIP ON THE SELECT COMMITTEE ON SMALL BUSINESS—RECONSIDERATION AND AMENDMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the adoption of Senate Resolution 12, as agreed to on January 4, 1973, and as modified on January 9, 1973, and January 11, 1973, be reconsidered and amended as follows: the name of Mr. PELL be stricken from the list of names of the membership on the Select Committee on Small Business; and that the resolution as thus modified and amended be agreed to.

The amended resolution reads as follows:

SENATE RESOLUTION 12

Resolved, That the following shall constitute the majority party's membership on the standing committees, and the Select Committee on Small Business of the Senate for the Ninety-third Congress:

Committee on Aeronautical and Space Sciences: Mr. Moss (Chairman), Mr. Magnuson, Mr. Symington, Mr. Stennis, Mr. Cannon, Mr. Abourezk, Mr. Haskell.

Committee on Agriculture and Forestry: Mr. Talmadge (Chairman), Mr. Eastland, Mr. McGovern, Mr. Allen, Mr. Humphrey, Mr. Huddleston, Mr. Clark.

Committee on Appropriations: Mr. McClellan (Chairman), Mr. Magnuson, Mr. Stennis, Mr. Pastore, Mr. Bible, Mr. Byrd of West Virginia, Mr. McGee, Mr. Mansfield, Mr. Proxmire, Mr. Montoya, Mr. Inouye, Mr. Hollings, Mr. Bayh, Mr. Eagleton, Mr. Chiles.

Committee on Armed Services: Mr. Stennis (Chairman), Mr. Symington, Mr. Jackson, Mr. Ervin, Mr. Cannon, Mr. McIntyre, Mr. Byrd of Virginia, Mr. Hughes, Mr. Nunn.

Committee on Banking, Housing and Urban Affairs: Mr. Sparkman (Chairman), Mr. Proxmire, Mr. Williams, Mr. McIntyre, Mr. Cranston, Mr. Stevenson, Mr. Johnston, Mr. Hathaway, Mr. Biden.

Committee on Commerce: Mr. Magnuson (Chairman), Mr. Pastore, Mr. Hartke, Mr. Hart, Mr. Cannon, Mr. Long, Mr. Moss, Mr. Hollings, Mr. Inouye, Mr. Tunney, Mr. Stevenson.

Committee on Finance: Mr. Long (Chairman), Mr. Talmadge, Mr. Hartke, Mr. Fulbright, Mr. Ribicoff, Mr. Byrd of Virginia, Mr. Nelson, Mr. Mondale, Mr. Gravel, Mr. Bentsen.

Committee on Foreign Relations: Mr. Fulbright (Chairman), Mr. Sparkman, Mr. Mansfield, Mr. Church, Mr. Symington, Mr. Pell, Mr. McGee, Mr. Muskie, Mr. McGovern, Mr. Humphrey.

Committee on Government Operations: Mr. Ervin (Chairman), Mr. McClellan, Mr. Jackson, Mr. Muskie, Mr. Ribicoff, Mr. Metcalf, Mr. Allen, Mr. Chiles, Mr. Nunn, Mr. Huddleston.

Committee on Interior and Insular Affairs: Mr. Jackson (Chairman), Mr. Bible, Mr. Church, Mr. Metcalf, Mr. Johnston, Mr. Abourezk, Mr. Haskell.

Committee on the Judiciary: Mr. Eastland (Chairman), Mr. McClellan, Mr. Ervin, Mr. Hart, Mr. Kennedy, Mr. Bayh, Mr. Burdick, Mr. Byrd of West Virginia, Mr. Tunney.

Committee on Labor and Public Welfare: Mr. Williams (Chairman), Mr. Randolph, Mr. Pell, Mr. Kennedy, Mr. Nelson, Mr. Mondale, Mr. Eagleton, Mr. Cranston, Mr. Hughes, Mr. Hathaway.

Committee on Public Works: Mr. Randolph (Chairman), Mr. Muskie, Mr. Montoya, Mr. Gravel, Mr. Bentsen, Mr. Burdick, Mr. Clark, Mr. Biden.

Committee on Rules and Administration: Mr. Cannon (Chairman), Mr. Pell, Mr. Byrd of West Virginia, Mr. Allen, Mr. Williams.

Committee on Post Office and Civil Service: Mr. McGee (Chairman), Mr. Randolph, Mr. Burdick, Mr. Hollings, Mr. Moss.

Committee on the District of Columbia: Mr. Eagleton (Chairman), Mr. Inouye, Mr. Stevenson, Mr. Tunney.

Committee on Veterans Affairs: Mr. Hartke (Chairman), Mr. Talmadge, Mr. Randolph, Mr. Hughes, Mr. Cranston.

Select Committee on Small Business: Mr. Bible (Chairman), Mr. Sparkman, Mr. Nelson, Mr. McIntyre, Mr. Nunn, Mr. Johnston, Mr. Hathaway, Mr. Abourezk, Mr. Haskell.

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

Mr. MANSFIELD. I thank the Senator from Oregon for his patience.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. HATFIELD. Mr. President, may I inquire as to the time situation I am under?

The PRESIDING OFFICER. The Senator has 15 minutes.

PRIVILEGE OF THE FLOOR

Mr. HATFIELD. Mr. President, I ask unanimous consent that Keith Kennedy, of my staff, be permitted to be present in the Chamber during my speech and immediately thereafter.

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

FREEDOM OF INFORMATION LEGISLATION

Mr. HATFIELD. Mr. President, Thomas Jefferson one said that—

> The basis of our government being the opinion of the people, the very first object should be to keep that right. . . . Were it left to me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate a moment to prefer the latter.

For some time I have been concerned that Jefferson's admonition may have been forgotten. In 1966, Ms. Annette Buchanan, a reporter for an Oregon student newspaper, was called upon to divulge the identities of unnamed persons referred to in a story about marihuana use among students. She refused to disclose this information, pleading a protection against such disclosure under the first amendment guarantee of a free press.

But the Oregon Supreme Court found that the first amendment did not afford such protection, and ordered Ms. Buchanan to comply with the subpena. This ruling prompted the Oregon Legislature to consider legislation to protect newsmen from forced disclosure in both the 1967 and 1971 sessions. Although these earlier efforts failed, the legislature will be considering similar legislation in the 1973 session, and I certainly support that action.

The ramifications of this issue have now spread beyond Oregon, for in recent months the press throughout the Nation has been subjected to frequent judicial interference with its news-gathering and reporting activities that threatens our constitutional right to a free press. Since the Supreme Court's decision in Branzburg against Hayes, which involved circumstances very similar to those in the Buchanan case, several newsmen across the country have gone to jail for contempt of court after refusing to disclose their confidential sources and information, and more are facing similar action. This need never have happened, and the legislation I will introduce today need not have been necessary. For nearly 200 years the first amendment's guarantee of a free press has protected the free flow of information vital to a democracy. But now the courts have seen fit to issue subpenas and harsh contempt of court rulings against newsmen, and this has endangered the people's "right to know."

This right to know, implicit in the guarantees of the first amendment, means that the people must have access to a wide range of information, not just the official pronouncements and press releases of Government. The Founding Fathers, keenly aware of the abuse of power, never envisioned a government so unmindful of its own self-interest that it would freely disseminate information detailing its failures as well as its successes. James Madison put it succinctly:

> The truth is that all men having power ought to be mistrusted.

The task of reporting to the people what their Government is doing to them, for them, and in their name was therefore reserved for a free press, protected from Government interference and control by the first amendment.

Free from interference, the press is able to provide us with information on what is happening in all levels of Government, from the White House to the county courthouse. It is important to remember that what is at stake here is not just the rights of a few large newspapers or wire services, but also of the small dailies and weeklies throughout the country. We are not only talking about the rights of the Nicholas Von Hoffmans and the James J. Kilpatricks of journalism, but also about the rights of the city hall reporter, providing us with information about the conduct of our local government. Indeed, the protection of these rights may be more important to small newspapers and local broadcast stations, since they lack the legal and financial resources to combat a flurry of subpenas. If they are forced out of business because of high court costs, our supply of information will be limited further. Without the information uncovered by diligent reporters, or supplied them by confidential sources, we would only have the unchallenged assertions of public officials themselves, making it virtually impossible for us to make informed judgments placing blame where it belongs, giving credit where it is due.

Mr. President, later on, I shall ask unanimous consent to have some very important documents relating to the bill printed in the RECORD, but at this time I should like to refer to an excellent editorial written by L. R. Zimmerman, editor of the Cottage Grove, Oreg., Sentinel. He points out succinctly:

> We are concerned about the pressure because once the long standing walls which have protected press freedom since our constitution was written begin to crumble there will be no stopping the fall. If the courts and the government once get their foot into the door of controlling the press the control will filter down rapidly to the smallest of governmental bodies and then that is when the small community will really feel the pinch.

Our right to know does not merely extend to the relationship between the press and the Government, however. The press reports on the entire society, its truth and its sham, its beauty and its ugliness. Without such knowledge about all aspects of society, the people cannot respond in a rational and principled way. Newsmen's efforts to penetrate the suspicion and hostility of protest and underground groups will be impeded if these groups feel that anything newsmen learn will be subject to forced disclosure. Any disruption of the already tenuous channels of communication between alienated segments of our society is a loss which we cannot afford.

In its Branzburg ruling, the Supreme Court was unable to accept the argument, according to Justice White, that:

> The public interest in possible future news about crime from undisclosed, unverified sources must take precedence over the public interest in pursuing and prosecuting those crimes reported to the press by informants.

But the Court overlooks the fact that it is highly unlikely the public will even hear very much about criminal activity if press informants "dry up" for fear of forced dsclosure. Surely the ends of justice are better served if all the people, not just law enforcement agencies and judges, have access to information on criminal activity. Certainly they are better served if that information points to corruption and malfeasance by those officials themselves.

As Justice Stewart said in his ringing dissent to the Court's Branzburg decision:

> The Court . . . invites state and federal authorities to undermine the historic independence of the press by attempting to annex the journalistic profession as an investigative army of the government. Not only will this decision impair the performance of the press' constitutionally protected functions, but it will, I am convinced, in the long run, harm rather than help the administration of justice.

Thomas Jefferson urged his countrymen to:

> Let no more be heard of the mischief of man, but bind him down with the chains of the Constitution.

Those chains have not yet been broken, but some of the links are weakening under the strain that judicial interference has put upon our right to a free press.

Our democracy is not distinguished from totalitarianism by our technological achievements or our material affluence. Totalitarian regimes will eventually catch up in these areas. Our greatest triumph is our commitment to the right of free speech and a free press, freedoms which no totalitarian regime can afford to grant its people, and freedoms which we cannot afford to lose.

I am therefore introducing today, with my distinguished colleagues Senators MANSFIELD, YOUNG, METCALF, and COOK as cosponsors, a bill to protect newsmen from forced disclosure of their confidential sources and information, except when a newsman is the defendant in a libel action. I have made this one qualification to an absolute privilege to prevent a newsman from attributing allegedly defamatory information to a "reliable source," and the using that source in his defense without identifying him.

It has been argued that this qualification will expose newsmen to court action from irate public officials whose record has been criticized by the press, and in that court action the newsmen's confidential source will be disclosed. I do not believe that will happen, if my understanding of two court rulings is correct. In New York Times against Sullivan, the Supreme Court ruled that public officials can make recovery for a defamatory falsehood only if the same is published with actual malice. And in Cervantes against Time, Inc., a case on appeal from the eighth circuit court of appeals, it was held that a newsman's confidential sources need not be identified to a plaintiff in a libel suit absent a concrete demonstration that the identification will lead to persuasive evidence on the issue of malice.

Beyond this one exception to an absolute privilege, I feel that further qualifications will erode the basic intent of the bill and subject the press to continued judicial interference. To rescind the privilege on the grounds of "overriding national interest," for example, makes the integrity of the privilege fluctuate along with the vagaries of partisan politics. I doubt very much that it was in the overriding national interest to send Earl Caldwell to jail for withholding information on the activities of the Black Panthers.

Nor would it be wise to allow rescission of the privilege if the information is not readily obtainable from other sources. It would be dangerous to make the press an investigative arm of the government, doing what law enforcement agencies do not have the capability or the desire to do.

I offer this bill in the belief that an informed public is the backbone of our democracy. It is not an attempt to grant newsmen a special status exempting them from the demands of justice. It is an effort to protect our constitutional right to a wide-open and robust dissemination of ideas and information. For nearly 200 years, the press has served us well in providing us with the information we need to be good citizens. Its unbridled voice is as vital today as in 1776.

Mr. President, I now ask unanimous consent to have various newspaper articles printed in the RECORD.

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

[From the Oregonian, Dec. 26, 1972]

SERIOUS TROUBLE—NATION'S PRESS PUT IN JEOPARDY BY COURT ORDERS TO OPEN FILES

(By William F. Thomas)

It will come as no surprise to you that the press is in serious trouble with the courts. Our people are going to jail and, perhaps even more serious in the long view, some elements of the press already are avoiding the kind of story that might cause them trouble.

The question, of course, is why. Why this confrontation with the courts on issues so occasional lapses, it is true—for a couple of hundred years?

You have heard many answers in recent months, references to the Constitution, to hallowed tradition, to the appropriate utterances of the great and famous, to the public weal.

Many of these have been eloquent and penetrating and true but, judging from some of our mail and from public statements by a variety of spokesmen, qualified and unqualified, they do not seem to have answered all of the questions.

One reason seems to be that we have not always explained ourselves in less than abstract terms.

When we're asked, "How come you guys don't have to obey the judge just like everybody else?" we often come back with the basic that they have been accepted—with Constitution, which is valid, but not altogether convincing, since the other side is always citing the Constitution too.

So. Why are we so special? And how do you answer that question without the risk of sanctimony?

One way to begin might be to admit to some imperfection. As all the world knows anyway, we have potted some beauties. So pomposity, with which we often seem afflicted, ill becomes us and deflects attention from our cause.

And we do have a cause, and by we I mean all journalists, print and electronic, newspaper and magazine. Warts and all, we are your only avenue of information, for all practical purposes, except agencies and people directly involved in whatever it is you want information about.

If you want to know what the governor did today—without us—you will have to listen to the governor himself, and his friends and opponents.

Without us, if you want to know what happened in city council, you will have press releases from parties involved.

If you want to know what happened in the courtroom—without us—you must rely on the judge to explain and evaluate his own actions, and each attorney to do the same—providing the judge will permit you to hear anything at all.

And so it goes. With all our faults, it's hard to visualize an American public that would knowingly permit the stifling of the press, whose main purpose is to inform it, however imperfectly, and leave itself in the position of making judgments based on information by press release.

I exaggerate, of course, but not so much as you might think.

Let me give you a few specifics, true specifics.

Some years ago the Times published a prize-winning series of stories on zoning practices which attempted, with considerable success, to shed some light on the way in which land intended for one purpose got to be used for quite another purpose.

The original source was a very prominent lawyer, angered by what he considered the chicanery he was forced to engage in to do business in this field.

However, he was not angry enough to forget that he had to continue to do business with the public officials who caused his anguish, so he would not permit use of his name or even the publication of specifics which would tend to identify him.

But he provided enough information, under our guarantee that he would never be publicly identified, to lead to other sources and—after several years of hard work—to the series itself.

This, more or less, is the pattern followed in other such stories, in the Times, in other newspapers, in the electronic media.

Which leads us back to the judge. Because he is now insisting that we publicly identify such sources when he decides this is in the interest of the court and even, as has happened, in the interest of a grand jury investigation.

Well, this is fine for the judge and for the grand jury, but it's hell on wheels for us, and thus for you.

Even if some of us go to jail to protect sources, and you have seen that happen, we soon are not going to have any.

It doesn't take a cynic to figure out that few potential sources will take a chance on a newsman's continued willingness to go to jail to protect his anonymity. Jail, after all, is not a fun experience.

If you think the fears of our potential sources are unreal, let me cite another specific.

The principal source in another Times series, this time outside the city, was a man of courage who permitted himself to be publicly quoted and provided facts and figures.

Two convictions of public officials resulted from those stories, and a shakeup in procedures of a public agency which spends millions of your dollars.

Our source, however, was fired by the

agency's directors after 27 years on the job, and got his job back only after more than two years of litigation and considerable publicity resulting in public pressure.

Another example: After literally years of trying to find a businessman willing to tell in detail how he did business with a public agency, we persuaded one to do so as a public service. Anonymously, of course, for he wanted to continue to be a businessman.

Two weeks ago, long after this story was published, he called me and asked if these stories about the judges and newsman's sources meant he faced the danger of retroactive identification. He was serious, and he was afraid.

Do you think this respectable man, and others like him and others not so respectable, will ever tell what they know to a newspaper again?

And if they don't, do you think that you will ever hear through any other avenue what it is that they have to tell you.

Until last week, the Times had been backed against the wall from an entirely unexpected direction. The Watergate case confronted us with a demand that we turn over to the defense attorney everything we possess—notes, memos, tape recordings, everything—having anything at all to do with an interview with the chief prosecution witness. Such an order only months ago would have been unthinkable.

If we had lots our appeals—and today's Supreme Court has already made clear its contempt for the rights of the press—we and all the media would have become a grab bag for every attorney in every conceivable kind of case.

Give us all you've got that has anything to do with our client or his opponent, they would be able to say—even though they may not have the foggiest notion what we have in our files or, indeed, whether we have anything at all.

And it wouldn't be long, obviously, before there would be little in our files pertaining to anything, for nobody in his right mind would thenceforth communicate with us except by press release.

The Watergate case was resolved unexpectedly when the confidential source we were protecting requested that we release his tape recordings in his own best interest, but the issues raised here are sure to confront us again.

So this business of getting at our sources works in many ways, but they all have the same result: We lose our sources, we spend an awful lot of time in court—not to mention money—and we would be less than human if we did not begin to get cautious. And all of this means there are an increasing number of things you are not likely to hear about in the future.

Even large, successful newspapers are tempted now to squint carefully at stories with danger flags sticking out all over them, stories in the public interest.

The trouble is, these would include the kind of stories that won two of the Times' Pulitzer prizes in the past five years. At the time of the riots, can you imagine the people of Watts talking frankly with us about their troubles with the police, or educators talking candidly about the schools there, to mention only a few, if they knew we might be forced to publicly identify them?

The same goes for the many businessmen and public officials who provided the leads for stories on the city commissions which resulted in indictments, convictions and—we hope—some changes in attitudes and procedures there.

If it's tough for the big papers, imagine what it must be like for the smaller ones. The Times in the past four years has fought 30 subpoenas involving either our people or our information, and staved off some 50 other attempts to obtain our materials.

We have been through the appellate procedures many times and all the way to the Supreme Court twice. We have spent well in excess of $100,000, and the rate of such spending is rising sharply. One of our reporters is in jail, another was jailed briefly two weeks ago, and the chances against others meeting the same fate are not good.

How many small newspapers or magazines or radio or TV stations do you think have the resources or the will to put up this kind of fight? Most don't even have legal staffs, and few have great financial resources, and it is to their credit that more of them don't simply lie down and play dead.

How did we get into this terrible fix?

Well, you can get as many explanations as you ask for. Some blame the newspapers themselves. Sensationalism, and lack of sensitivity for the rights of defendants, they say, brought our plight upon ourselves.

A grain of truth here, of course, but this scenario falls down in some important aspects. For one thing, newspapers have been steadily heading in the direction of less sensationalism, not more. For another, many of the cases in which we find ourselves in the most trouble have more to do with the use of our information to help the defendant or the prosecution than with punishing us for hurting either one.

In other words, many of our problems stem from attempts to force the press to serve as an agent of the judge, the prosecution or the defense.

So the complicated issue of fair trial, under whose name all of these restrictions started building, is of doubtful application to many of them.

Others seeking the cause of our dilemma blame the judges, as public officials whose awesome powers have brought to some god-complex, leading them to run their public institutions by their own rules at the expense of the rights of public and press. A grain of truth here, too, but again some troubling factors.

For instance, the powers of judges have not been substantially redefined, or enlarged, except by their own decisions, yet it has been only in recent years that they seized this bit in their teeth.

Another thing. Many of the judges involved in the kind of case we're talking about are good judges, decent men, motivated by understandable intentions with which we can sympathize. Not all of them, but many.

So how did we get from there to here?

I think it's possible that in the beginning we just drifted here, undramatic as that sounds, scarcely noticing that we had started on a route that could take us over the cliff.

[From the Cottage Grove, Oreg., Sentinel, Dec. 28, 1972]

FREEDOM OF THE PRESS

Three newsmen have been jailed and numerous others are being threatened with the same treatment if they refuse to turn over material to courts that they obtained in writing exclusive "expose type" stories.

It is hard to say what has brought about this sudden rash of pressure by the courts and the government to interfere with the working newsman. Since the beginning of our country freedom of the press guaranteed by the First Amendment of our Constitution, has been one of the most cherished freedoms and now suddenly many judges and some members of the Nixon Administration are acting like they are above the constitution of our land.

Probably one of the most misunderstood things about freedom of the press is that it does not involve "only the press as such." As the Los Angeles Times recently pointed out, "Freedom of the press belongs not to the press but to the public. By protecting the press, the First Amendment protects the people's right to know. Without that right, the people become not the masters of their government but its servants. The First Amendment became the First Amendment because the founders of this republic wanted to protect the nation from that fate."

We do not believe the press needs any special privileges and we do not believe the First Amendment guarantees any such thing. We do believe that "an absolutely free press" without any pressure from the judicial or executive branches of our government must be maintained if the people are going to be guaranteed their right to know what is going on.

The squabble which has landed several newsmen in jail recently involves whether or not material relating to stories and interviews must be turned over to the courts even though it is not used by the newsman. Journalists generally defend their position in these cases by saying if they are forced to release such material a number of their news sources will "dry up." Investigative reporting will become almost impossible and our government will be able to operate a bit more freely because the public will not be as well informed because of the new fear that will have been created.

Naturally this general defense is not a likely one for the smaller newspaper because we don't have an "investigative" reporter as such. A small community doesn't often turn up the big story so why should we be concerned about the recent pressure being placed on the big boys?

We are concerned about the pressure because once the long standing walls which have protected press freedom since our constitution was written begin to crumble there will be no stopping the fall. If the courts and the government once get their foot into the door of controlling the press the control will filter down rapidly to the smallest of governmental bodies and then that is when the small community will really feel the pinch.

As a newspaper we do not begin to face the number of federal controls placed on the broadcast media—radio and television. And, now the Nixon Administration is suggesting that these controls over the broadcast media should be stiffened even further. The present administration is talking about stiffer controls to make sure that the broadcast media presents a "fair" picture to the public. The only problem with this approach is that administration appointed people are going to make the decision as to whether the broadcast media have been fair so what does this do to a radio or television station that is critical of the administration? It is too early to tell but if more rigid controls are approved it could well cause some stations to withhold criticism for fear they might lose their license when it comes up for renewal.

Since the recent jailing of newsmen in the country many members of Congress, including Senator Mark Hatfield of Oregon, have indicated a great concern about the pressure now being placed on the First Amendment. There is an indication that a "shield law" or "freedom of information" law may well be considered and hopefully passed by the new Congress which convenes in January. The same situation is involved in Oregon. Journalists in the state are presently putting together a freedom of information bill which they hope the State Legislature will approve when it convenes after the first of the year. We hope that both of these laws on the state and national level will be approved.

As we said earlier, we do not favor special laws to protect the press. All we favor are laws which will protect the people because they are the ones who benefit from a free

press and suffer when the press is not free.—Irz.

[From the World (Coos Bay, Oreg.) Jan 15, 1973]

"OTHER ROLE" OF THE PRESS

Sen. Mark O. Hatfield is among those U.S. senators who are concerned with the threat against the free press in America. The senator is proposing legislation which will guarantee newsmen privilege from disclosure of certain information and sources of information.

Once such legislation is passed, it remains to be seen if President Nixon will accept it. The President has a way of ignoring the Congress and the votes of Congress; not only in war but in domestic matters as well.

The New York chapter of Sigma Delta Chi, the national journalism society, recently asked President Nixon to stop interfering with the press. George Bookman, president of the New York chapter, charged in a telegram to Nixon that the administration "has done nothing to protect the rights of professional journalism. Indeed, if anything, it has encouraged interference with professional journalism."

Elsewhere recently a resolution passed by the Overseas Press Club says "We respectfully request that the administration and others in government defend the rights of working journalists as they are embodied in the 1st Amendment to the Constitution and which you are duty bound to enforce."

But Nixon has not, nor is likely, to come forward in defense of the 1st Amendment and the press. We have seen in the past where he has sent his vice president on missions of attacks against the press. Nixon himself often remains away from press scrutiny and away from public scrutiny in turn.

We support legislation, both federal and state, to insure the continuance of a free, unmolested press.

We also support efforts, however slight at the moment, for a reformed press; one that shows more courtesy, more forethought, more responsibility in its job. Jack Anderson's column last year charging Sen. Thomas Eagleton with certain things which later proved erroneous serves as an example of a news media which too often stands ready to record half-truths in a blind rush to beat the competition; to "scoop" the other guy.

It is increasingly difficult nowadays to remain objective and without emotion in covering the news. The improved coverage of news has, itself, served to bring issues and people closer together than ever before, and reporters are drawn ever nearer those issues and those people involved in today's controversial developments. It behooves the news media to re-examine its role and to strive more than ever before for honesty, objectivity and courtesy.

[From the Oregon Journal Dec. 7, 1972]

PUBLIC REAL LOSER IF FREE FLOW OF INFORMATION CURTAILED

(By Donald Sterling)

Has the time come when Oregon should adopt a law to protect writers and broadcasters from being forced by a government official to reveal the sources of confidential information?

I have come around to thinking so, and the proposal met with general agreement, at least in principle, from several Oregon newspaper reporters and editors who met in Portland at the call of the Oregon Newspaper Publishers Association last week.

The argument for a so-called shield law for newsmen is that it is in the public interest to assure as free a flow of information as possible. The "don't tell who told you, but . . ." kind of confidence is common currency which we all use regularly, in ordinary conversation as well as in the news gathering business.

Needless to say, when a professional newsman publishes this kind of information, he has an obligation to his readers to be as sure as possible that it is accurate. The best practice is to confirm it independently. But an experienced newsman can do this, and the "informed source," while anonymous, can be a helpful provider of information to the public.

But in the past few years, in various parts of the country at both the state and federal levels, there has been an alarming increase in the practice of prosecutors and grand juries to subpoena newsmen, with their notes and film, and demand that they reveal their sources.

Sometimes, this has been done as part of a perfectly legitimate attempt at law enforcement—and I'll come back to that subject later in this article.

But sometimes the prosecutor either is unable or too lazy to dig up the same information the reporter has found. Or he is acting out of pique: The reporter's stories have revealed lawbreaking which the prosecutor ought to have prevented, so the prosecutor goes after the reporter instead of the lawbreaker.

John Oakes, the editor of the New York Times' editorial page, when he was in Portland last week, went even further. He sees the subpoenas as a repressive attempt by government officials, up to and including members of the Nixon administration, to harass and undermine public confidence in their natural monitors and critics, the press.

Whatever the reasons for them, excessive use of subpoenas against newsmen has a number of unfortunate effects from the public's point of view:

For one, the news sources tend to dry up. The person who knows of wrongdoing but who fears reprisals if he is known to have revealed it decides not to talk. And so the wrongdoing is likely to go on.

For another, the reporter is likely to stop digging. He always has the dramatic choice of refusing to reveal his source and going to jail, as has happened in recent weeks in the widely publicized cases of reporters Peter Bridge in Newark and William Farr in Los Angeles. But reporters, believe it or not, are human, and no more eager to go to prison than anyone else.

Even if it never comes to this kind of showdown, the very possibility of a subpoena can have a damaging effect on a newspaper's ability to serve its readers. An editor in an Eastern city with a large black population told me that he had been visited by his paper's two black photographers, who said that if any more of their pictures were subpoenaed, they would quit. If it became known that they were, in effect, working as extensions of the city's police force, it would simply not be safe for them to travel in the black neighborhoods where the paper sometimes assigned them.

In the past, many Oregon editors have said they have felt no need for a law to protect them from this kind of harassment, and for all I know many of them still do. Oregon still is a relatively free and open state.

But it can happen here, and in fact it has—significantly, not against an employe of an established newspaper, but against a college newspaper editor who was in a relatively weak position to defend herself. Annette Buchanan, then managing editor of the Daily Emerald at the University of Oregon, wrote an article in the Emerald in 1966 in which seven anonymous persons described what they claimed to know of marijuana smoking on the university campus.

This was regarded as news back in 1966, and the reaction of the then district attorney of Lane County was not to make his own investigation but to call Miss Buchanan before a grand jury and demand that she identify her sources. This she refused to do.

Some newsmen believed, and some still do that the freedom of the press guarantee in the United States and state constitutions implies the right to protect their sources, since the right to print and speak isn't worth much unless there is something worthwhile to say.

But when Annette Buchanan's case reached the Oregon Supreme Court, the court held unanimously in 1968 that there is nothing inherent in the freedom-of-the-press guarantees of either the federal or Oregon constitutions which permits a newsman to refuse to reveal his sources. The United States Supreme Court said the same thing, but only by the narrow margin of 5 to 4, in a decision involving three other reporters which was announced last June 29.

But both the state and federal supreme courts, in their opinions, specifically invited legislators, if they wish, to provide by statute the newsman's privilege which the judges failed to find in the constitution.

There is nothing unusual about this. Oregon's statutes, for example, find that it is in the public interest to prohibit a court, under at least some circumstances, from compelling testimony about the communications that pass between a remarkably varied list of persons: Husband and wife, lawyer and client, priest and penitent, physician and patient, a public official and official communications in his office, stenographer and employer, professional nurse and patient, certified psychologist and client, and certified school employee and student. Without approval of the legislature, the courts have added another: Police officer and his confidential informer or stool pigeon.

The federal courts recognize a similar but not identical list.

So the principle is well established that under certain circumstances public officials ought to be restrained from forcing someone to testify about his sources of information. The question remains whether newsmen ought to be added to those who shelter under this umbrella; and for the reasons given above, I think they should.

But that still leaves another highly important and complicated question: How sweeping should that protection be?

Some newsmen believe that it should be an absolute protection; that they should never under any circumstances be required to reveal their sources. Any qualified privilege, they argue, is no privilege at all, since a nervous source would not talk if he thought that the newsman might give him away under some unpredictable future circumstances.

But on this I disagree, and so do many other newsmen.

In the first place, we in the news gathering business are citizens, with the same duty any other citizen has to assist in the law enforcement which protects the liberties of all of us.

In the second place, the guarantees of freedom of speech and freedom of the press were not written into the First Amendment for the benefit exclusively of the publishers who own giant rotary printing presses, or broadcasters with high-powered stations, or of the newsmen who are on their payrolls. They were written, as the Oregon Supreme Court said in its opinion in the Buchanan case, to apply even to "a shaggy nonconformist who wishes only to write out his message and nail it to a tree." The opinion was written by Alfred T. Goodwin, now a federal court of appeals judge but at one time in his life a reporter for the Eugene Register-Guard, and Ted Goodwin put the case very well.

He pointed also to a third pitfall in writing a shield law, and that is that if you try to define a special class of newsmen who

are entitled to its protections, you are inviting the government to define who is entitled to be considered to be a newsman at all, and in that direction lies that most dangerous threat to a free press and to freedom for all, government licensing.

For all of these reasons, it is better to write a law which is qualified, not absolute, and which applies not just to professional newsmen, but to any citizen who is exercising his right to print or speak freely.

It probably can be done. After considerable study, agreement to support one of the several newsmen's privilege bills which have been introduced in Congress has been reached by authorized representatives of the American Society of Newspaper Editors, Associated Press Managing Editors Association, National Press Photographers Association, Radio-Television News Directors Association and Sigma Delta Chi professional journalism society.

The chief sponsor of the bill is Rep. Charles W. Whalen Jr., R-Ohio, who calls it the Free Flow of Information Act. These are its main provisions:

It would apply to "a person connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." This appears to extend its protection to any citizen.

It would apply to proceedings before any federal body, legislative, executive or judicial.

It would grant a right to refuse to reveal one's source of information. But this protection could be lifted if a federal district court should find affirmatively, after a hearing, that the person seeking the information has shown that "(1) there is probable cause to believe that the person from whom the information is sought has information which is clearly relevant to a specific probable violation of law; (2) has demonstrated that the information sought cannot be obtained by alternative means; and (3) has demonstrated a compelling and overriding national interest in the information."

There would be another exception saying that no one could use the law as a shield against a libel action. In other words, a reporter could not write that "according to a reliable source, Jones beats his wife," without identifying him, as evidence to defend against a libel action brought by Jones.

Even if Congress did pass a shield law, it would apply only to federal courts and other federal bodies, and there still would be a need for a similar state law in Oregon. Eighteen other states already have one.

The Oregon Newspaper Publishers Association presently is canvassing editors and broadcasters in Oregon to see whether there is consensus on supporting such a bill in the 1973 Oregon Legislature.

But like so many other things, this is too important a matter to be left to legislators and newsmen alone. All citizens have a stake in assuring that the press is both free and responsible. Now is the time to give thought to a shield law.

[From the Oregon Statesman, Jan. 6, 1973]

U.S. Public's Access to Information Threatened

The American public's access to information is being threatened by a combination of two forces.

The U.S. Supreme Court in a recent tough-line decision, has required newspapermen to reveal their sources of information. Judges have begun abandoning their traditional common sense approach to permitting newsmen a certain measure of discretion in shielding their sources and have begun throwing members of the news media into jail.

In addition, the Nixon Administration is continuing to restrict access of information to the public through the press. President Nixon has refused to face public questioning through the press. He hasn't held a news conference since Oct. 5.

The Nixon Administration has been streamlined since the election to weed out those who aren't likely to follow the Administration line. The President has even denied access to the White House to the Washington Post which has criticized his policies.

The Nixon Administration will seek legislation requiring TV stations to stay "attuned to community views" or lose their licenses, with a federal agency deciding who is "attuned" and who isn't.

The Statesman has traditionally opposed special protective legislation for newsmen. For one thing, normally a newsman should be willing to reveal his sources to the police or the courts—unless such would be a direct violation of a confidence. For another, if a newsman is automatically granted the right to keep his sources secret, such a shield could protect the unscrupulous as well as the honest reporter.

So the Statesman has preferred to rely upon the First Amendment Constitutional guarantee of freedom of the press and the good sense of the judiciary in recognizing a reporter's need to respect confidences if he's ever to get any more, as ample protection.

But as Chief Justice John Marshall declared, "The Constitution is what the Supreme Court says it is." And the current Supreme Court has ruled that newspapermen must reveal the sources of their information to the authorities when so ordered regardless of circumstances.

This will dry up important sources of the public's information from inside government and about public issues. Coupled with the Nixon Administration's barriers to newsgathering, the balance of power has swung heavily away from the public's right to know and towards government's ability to jam the normal sources through which the people learn more than what government sees fit to tell them.

Government ceases to be the servant of the public and becomes its master when it controls, either through coercion or regulation, the sources of information. It is time for a re-evaluation. Special legislation may be needed to restore the public's side of the balance of power.

[From the Oregonian, Jan. 2, 1973]

First Amendment Provides Diminished Protection

(By Robert Notson)

Over many years there has existed concern regarding efforts and potential threats to force newspapermen to divulge the confidential sources of information on which exposes had been published. As a result, "shield" laws have been enacted in some 18 states, giving reporters varying degrees of privilege approximating that afforded clergymen, physicians, lawyers and the like.

Meanwhile, punishment of editors and reporters for maintaining such confidence was rare and, in Oregon, nonexistent. It was generally believed by Oregon newspapermen that the First Amendment put a protective cloak over them in such matters and many district attorneys and judges shared the idea. And then, there was always the influence of the newspaper when a judge or district attorney came up for election.

The well-known Annette Buchanan case in 1966 stirred interest for the need of legislation. As a result, presentations were made to House Judiciary committees of the Legislature at the 1967 and 1971 sessions. Both proposals died in committee essentially because of a lack of a united front among newspapermen.

Initially, nearly all of us were cool to legislation, feeling that it was better not to ask the Legislature for any favors in the nature of class legislation. When the Oregon Supreme Court passed on the Buchanan case, however, it made two findings:

(1) That nothing in the law or Constitution afforded newsmen any special protection against being forced to divulge confidential sources and (2) that such a privilege could only properly be created by legislative action, not by judicial fiat.

This altered matters. To many of us it seemed that the protection we believed we had enjoyed for years was suddenly swept away, and we stood naked before the courts. Worse yet, the lower courts had been instructed not to afford or create any such protection.

However, some newspapermen continued their reluctance toward legislation. They still believed that they could handle matters locally on a case-by-case basis. It was pointed out that the Buchanan case was the first in over 100 years—in Oregon—in which an editor was punished for refusing to break confidences. At least some did not think this record justified undue concern or legislation.

A few reporters declared robustly that they would simply defy court orders to testify and "go to jail," if necessary. Others cautioned that this would place newsmen in the guise of defying the courts and the law at a time when we were urging others not to take law into their own hands.

In 1970 there was a sudden wave of subpoenas to newsmen which developed out of riots and student disorders, especially anti-war demonstrations. This produced a national uproar, and the attorney general quashed many of these, causing the indignation to fade. Then came the Caldwell case in San Francisco and the holding of the court that public policy under the First Amendment dictated that newsmen be forced to divulge confidences only if the testimony could not be otherwise obtained or if a compelling public reason had been demonstrated.

Other judges began following this dictum, and it appeared that judicially endorsed remedies were on the way. These hopes were dashed by the U.S. Supreme Court when it held quite bluntly that the First Amendment afforded no privilege to a newspaperman over any other citizen.

A whole procession of cases has followed of which the Bridge case in New Jersey, the Farr case in Los Angeles and the Lawrence case in Washington have been outstanding examples. These reporters were jailed on contempt orders. There are lesser cases, some still pending. Both newsmen and legislators have suddenly become aware that a substantial issue exists, including the potential intimidation of newsmen and newspapers not to investigate—not to publish. Also, confidential sources could be dried up.

The debate turns on the First Amendment, which states that "Congress shall make no law . . . abridging the freedom . . . of the press."

The argument of the press has been that, if a free press is to be maintained, both the right to gather and print the news, without impairment, must be protected. Protection of confidential sources must be insured or they will be choked off and the public will lose access to information of possible wrongdoing.

Legal sources have responded that newsmen, like any other citizens, must come forward with information to aid administration of justice.

The issue, from the newsmen's viewpoint, was pointed up by Justice Potter Stewart in a strong dissent which came down with the Supreme Court's decision on the Caldwell case last June 29. The court majority upheld the proposition that a reporter, in the absence of legislation, had no immunity

from subpoena by a grand jury to testify regarding confidential sources.

Stewart commented:

"The court thus invites state and federal authorities to undermine the historic independence of the press by attempting to annex the journalistic profession as an investigative arm of government. Not only will this decision impair performance of the press' constitutionally protected functions, but it will, I am convinced, in the long run harm rather than help the administration of justice."

Justice Stewart added: "The right to gather news implies, in turn, a right to a confidential relationship between a reporter and his source."

[From the Oregonian, Jan. 8, 1973]

JAILED REPORTER NO HERO—JUST CONVINCED AMERICAN FREEDOM OF PRESS NOT PERSONAL, BUT PUBLIC, PREROGATIVE

(By Harlan Draeger)

Joe Weiler is no hero. He's just a reporter, doing his job of getting facts to the public.

Nowadays, he discovered, that can get you into a lot of trouble.

Weiler almost landed in jail because he refused to tell Tennessee lawmakers the source of stories about child abuse in a mental hospital.

He's lucky at that. Some of his fellow newsmen have been placed behind bars recently for the same reason. Others probably are headed there.

Weiler is a member of a rapidly growing club—reporters either jailed or threatened with jail because they won't reveal confidential sources.

The issue is only one of several creating a serious clash between the rights of government and those of a free press.

The irony, says Weiler, is that most Americans don't realize their stake in the outcome.

"I would say that the public is now not aware, and generally not in favor, of giving these rights to newsmen.

"But these really are rights for them. This is protection, not for the newsmen, but for the public."

Weiler is restating the operating creed of any good reporter—that, in going after a story, he represents all citizens.

In Tennessee, the citizens did sense that Weiler was acting in their interests and rallied to his support.

The results: He is a free man today. And the legislature is virtually certain to pass a law shielding reporters from revealing their sources.

On many other fronts, however, journalists are losing the battle over confidential news sources. For six months, they have reeled under the spreading impact of a U.S. Supreme Court decision that deeply undercut their position.

The broad issue is whether government is trampling on the guarantee of "freedom of the press" built into the U.S. Constitution.

Not so lofty, but more to the point, is the practical question of getting vital news before the public.

Reporters know from long experience that a good story, especially about official corruption, nearly always begins with an inside tip. Yet such informants often insist on not being identified for fear of losing their jobs or other reprisals.

Can a free press function effectively without confidential information? Weiler, a serious-minded young reporter for the Memphis Commercial Appeal, says no.

"Without it, we couldn't possibly have a truly strong, investigative, hard-hitting newspaper," he said.

"People couldn't find out things they have to find out about their government and other institutions. If you can't get at the heart of government through your own sources, then you have to rely on sources the government provides. You are reduced to printing handouts. And without a strong, free press you can't have a strong democracy."

High-sounding phrases, perhaps. But Weiler's own experience gives them meaning. Here is his story—a case-history on the issue of reporter's "privilege."

Early last summer, the Commercial Appeal received reports of widespread child abuse at a state mental hospital outside Memphis. The sources seemed reliable but asked that their names be kept secret.

"Once we thought we could prove it, we went to the hospital administration," said Weiler. "They confirmed it was true. There were numerous cases of child abuse. Eight persons already had been fired. None of this had been made public."

Weiler's first story on the hospital scandal broke in July. One more employe was fired. More than a dozen others were reprimanded and suspended.

In September, with rumors of further irregularities flying, a state senate committee began an investigation. Weiler was called as a witness on the second day of the hearing.

"They wanted my sources, all my notes and any information I had concerning child abuse at the hospital," Weiler said. "I refused to provide it."

The 26-year-old reporter was questioned on and off for two days. On the first day, he appeared without a lawyer. He remembers it well:

"I was scared. The committee members had stated publicly their main purpose was getting the sources and the newsmen so they could stop the publicity.

"They said we were creating a disturbance at the hospital and we were responsible for the continued uproar out there by publishing these stories. We felt the problem wasn't the uproar being created but child abuse."

Weiler returned with a lawyer and his editors for the second day of questioning. The newspaper's lawyer offered a compromise, agreeing to turn over information if he could determine what would be withheld to protect the sources.

The lawmakers wanted no part of the deal. In a unanimous vote, the committee gave Weiler 30 days to show why he should not be held in contempt. His prospect was anywhere from 10 days to six months in jail.

"It had come down to a show of force between their rights and our rights," he said.

"Yet if we had not run the story, and if the confidential sources had not been willing to talk to us, then the people and the senate itself would never have known of the child abuse."

Weiler's paper, other newspapers, radio and television stations took up his cause. "Child abuse became a major story in Tennessee."

Before Weiler took the witness stand, a radio newsman had divulged the source of a parallel story on the hospital. "That didn't help my case any," he said. But Weiler said he was certain of his position when the radio man's identified source was fired immediately.

Finally, the public pressure began to tell.

The mood of the committee changed so that it no longer wanted to hold (contempt) hearings," said Weiler. "Several members already had prepared bills to shield newsmen."

Tennessee's lieutenant governor and others asked the state attorney general to rule whether the committee still was in existence after the Nov. 7 election. The attorney general said no, and Joe Weiler was home free.

"It was a political ploy and a method to evade holding the hearings," said Weiler. "It was fairly obvious we had been able to make our point."

At least half a dozen "free flow of information" bills now are waiting to be introduced next month in the Tennessee legislature. Weiler said there is "no doubt" one will pass since a poll showed 90 per cent support.

Weiler thinks his troubles date back to June 29 and the Supreme Court's decision in the so-called Caldwell case. In three simultaneous rulings, the court held that the First Amendment gives newsmen no right to conceal the identity of their sources from a grand jury.

"We are asked . . . to grant newsmen a testimonial privilege that other citizens do not enjoy," said Justice Byron R. White, who wrote the majority opinion in the 5–4 decision. "This we decline to do."

In a dissent, Justice Potter Stewart said the court was inviting authorities to "annex the journalistic profession as an investigative arm of the government."

All three cases decided by the Supreme Court involved grand jury investigations of alleged criminal activities. Earl Caldwell, a New York Times reporter, had refused to identify his sources on a story about the Black Panthers. So had Paul Pappas, a New Bedford (Mass.) television reporter. Paul Branzburg, formerly of the Louisville Courier-Journal, had refused to disclose the sources of a story about a drug-manufacturing ring.

Weiler says the Caldwell decision opened the gates for a widespread assault on freedom of the press.

"I think these are actions the legislatures, courts and grand juries have been wanting to take for a long time," he said.

"They thought they had the authority, only the courts hadn't upheld their position. As soon as the pendulum started to swing with the Caldwell decision, they immediately took it as a signal and rushed ahead."

In a way, Weiler is sorry his case didn't go to the Supreme Court because it dealt with the actions of a legislative body—not a grand jury. "I think we would have won an important victory," he said.

Like many journalists, Weiler is starting to add up the growing number of reporters facing jail over the same issue. "There's a fantastic progression," he said, "including cases all over the country most people never heard of."

Some reporters in trouble recently:

William Farr, 38, of Los Angeles, who was found in contempt for refusing to reveal the source for a story about the Charles Manson trial. Farr has been in jail more than a month—longer than any newsmen refusing to identify his sources.

John F. Lawrence, chief of the Los Angeles Times' Washington Bureau, who was jailed for two hours Dec. 19 for refusing to surrender taped interviews with a key witness in the Watergate bugging case. Lawrence later gave up the tapes with the consent of the witness.

Peter Bridge, of Newark, N.J., who recently served 20 days in jail for contempt after refusing to answer grand jury questions going beyond what he had written.

Harry Thornton, a Chattanooga (Tenn.) TV personality, who was jailed several hours for refusing to reveal the name of a phone caller who said he was a member of a grand jury.

Last month, Weiler gave a talk at the University of Southern California and visited Farr in jail. Commenting on the trial judge's statement that Farr was intent on being a "martyr," he said:

"I guarantee that Bill Farr has no interest in being a martyr. He simply feels he has to stand up for this. The job was just thrust on him."

In its latest troubles, the press has developed new defenders, such as Sen. Lowell Weicker Jr. (R-Conn.), who plans to ask Congress to protect newsmen from revealing sources except in trials involving major crimes or national security.

Gov.-elect Daniel Walker of Illinois said he would push for a stronger "shield" law. Illinois is one of 18 states with laws protecting newsmen from being forced to disclose

sources. But its law is limited by a provision allowing a court to order disclosure if all other sources have been exhausted and the information is "essential to the protection of the public interest." (Oregon has no shield law, but one likely will be introduced at this session of the legislature.)

By and large, says Joe Weiler, the American public does not recognize the growing threat to the press—and to themselves.

"In Tennessee they do now because it's been brought home to them," he said.

[KATU Broadcast]

Newsman's Shield

December 4, 1972.

Newspaper reporter Bill Farr remains in a Los Angeles jail today because he refused to divulge the source of information he received about the Charles Manson murder trial. Mr. Farr is the second newsman to spend time behind bars in recent weeks over the issue of confidential news sources.

The rationale for the constitutional guarantee of a free press simply stated, is that the public must have access to information about the public's business. If elected officials are dishonest or incompetent, the obligation of the news media is to bring that information to the public's attention. If politicians or the courts are allowed to censor the media, they build a wall of secrecy behind which they may hide their own errors and transgressions.

Most newsmen believe protection of news sources is essential to the conduct of a free press. If the reporter is compelled to divulge his sources of information, he becomes little more than an investigative arm of government; an agent of politicians who may not deserve public confidence.

Television, too, believes an effective legal shield is necessary to protect newsmen from political and judicial retribution. We urge the Oregon legislature to enact such a law, and suggest the following guidelines: The law provide qualified protection for newsmen, that is, establish a court of last resort that could be convened when all other information sources are exhausted. If the government could then prove the information they seek is of a crucial public importance, the newsmen would be directed to testify. Thus the shield law would take into account the newsman's obligations of citizenship, as well as the constitutional guarantee of freedom in his profession.

Mr. MANSFIELD. Mr. President, will the distinguished Senator from Oregon yield?

Mr. HATFIELD. I am happy to yield to the Senator from Montana.

Mr. MANSFIELD. I think that what the distinguished Senator has just said throughout his excellent speech, and especially in his last paragraph, is something which we should all note.

I have been somewhat concerned by a number of recent court actions, extending from coast to coast, as they affect newsmen and their rights as guaranteed under the Constitution, which the distinguished Senator has emphasized.

I do not believe that any branch of the Government, be it the executive, the legislative, or the judicial, should ever lose sight of the first amendment to the Constitution, around which the distinguished Senator is making his case today. Nor should we ever fear to repeat what it says, because repetition may well serve to drive its real meaning home.

It is my belief that in recent years the first amendment has been violated more often than is understood by the people of the Nation or the officials of the Nation's Government.

The first amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably—

And I emphasize the word "peaceably"—

To assemble, and to petition the Government for a redress of grievances.

Mr. President, this is probably the most remarkable of all amendments to the Constitution. It certainly is a great addition to the greatest document ever wrought by the hand of man—to wit, the Constitution of the United States of America.

All I want to say is that I am delighted to serve under the leadership of the distinguished Senator from Oregon in being a cosponsor of this proposal, and I would hope that action would not be too long delayed. If matters continue unchecked in this direction the end result will have a most adverse effect on the concept of a free press as it has arisen in our society.

I am delighted to join the Senator in this effort to stem the tide and protect the right of a free and independent press.

Mr. HATFIELD. Mr. President, I want to express my gratitude to the distinguished majority leader for his cosponsorship of this bill and for his generous comments.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from New York (Mr. Buckley) is recognized for not to exceed 15 minutes.

THE ENERGY CRISIS

Mr. BUCKLEY. Mr. President, as a participant in the Senate's national fuels and energy study, it has been my privilege to attend a series of hearings and briefings which has served to sharpen my own understanding of the scope and long-term implications of what has come to be called our "energy crisis."

The facts now publicly available ought to speak for themselves. We are faced with a chronic and growing shortage of environmentally compatible domestic fuels which for the next 10 to 15 years will make us uncomfortably dependent on foreign sources in order to meet up to 25 percent and more of our projected energy needs by the year 1985.

The economic and security implications of these facts are serious enough. But I fear that if the full dimensions of the energy crisis are not understood by the public, we may find ourselves making the wrong policy decisions. Only a fully informed public will assure full support for the measures best designed to meet the energy crisis and assure our country of continuing supplies of reasonably priced fuels on a basis that will not place a catastrophic strain on our balances of payments or jeopardize our national security.

We are beginning to experience actual shortages in gas deliveries in various parts of the country. For the first time in many decades, our oil fields are producing at 100 percent of capacity while we are running short of fuel oil in various parts of the country. Yet I suspect that too many Americans may be writing off current congressional concerns as "scare talk" designed to justify special-interest legislation at the expense of the consuming public. To speak candidly, Mr. President, I believe this reaction may be encouraged by the fact that the current energy study is being conducted under the auspices of the Interior Committee which is traditionally associated with oil- and gas-producing States.

Let us remember that for over a decade, the citizens of our Northeastern States—myself included—have felt that they have been required, through the imposition of oil import quotas, to pay excessively high prices for petroleum products in order to maintain an artificial level of prices for the benefit of producers in our Southern and Western States. They have felt, as I do, that the security considerations advanced as an excuse for the original imposition of quotas were spurious. I recognize that the situation we face today is materially different from that which existed a decade or so ago. It has now become far more difficult and costly to find new oil. We no longer have a standby production capacity, and recent developments on the international scene threaten to create a dependence on foreign sources of energy which could prove dangerous. Consequently, I am persuaded that some mechanism to encourage the rapid discovery of new indigenous reserves of oil and gas is justified until such time as we can develop the necessary cushion in our domestic energy resources.

It is not my purpose today, however, to discuss the security aspects of the energy crisis. Rather, I wish to address myself to an examination of the interests of my constituents as consumers of energy. In recent years, New Yorkers have had more than their share of brownouts and shortages. Today there are areas of New York State where for the first time natural gas is now being rationed among pipeline customers. It is clear that New Yorkers and all other American consumers of energy have an interest in the outcome of the current national fuels and energy study which is every bit as immediate and every bit as urgent as that of the energy-producing States.

One thing which I hope will emerge from this study is a better understanding of where the consumer's interest really lies; for it seems clear from the evidence to date that we are witnessing a classic example of the harm done to the ultimate interests of the consumer by an excessive zeal in attempting to protect him, through Government intervention, from the hazards of the marketplace.

Perhaps the most objective summary of the U.S. energy problem I have read was published in a recent issue of the very scholarly British Petroleum Press Service. From their vantage point 3,500 miles from our east coast, this is what the authors had to say:

Natural gas is in many ways the key to the U.S. energy problem, creating an imbalance because of the interchangeability of fuels in four of the major energy markets and the ease by which they could convert to gas. Its rapid growth over the last twenty years or so has been stimulated by artificially low prices, controlled by the Federal Power Commission on behalf of Congress. This might have been justified at a time when natural gas was virtually a by-product of oil exploration and production but hardly when demand had risen so high that gas was supplying about one-third of the total energy market, second only to oil. The result of low prices has been to discourage exploration for new reserves, which have shrunk to only twelve years' supply at current production rates. . . .

The article concludes that—

Because of apparently unlimited supplies of indigenous fuels, energy in the U.S.A. has always been cheap: indeed, a major factor in the nation's economic growth and prosperity. More recently however it is apparent that energy has been too cheap, leading to a certain degree of waste but more importantly to a lack of incentive in developing new resources to meet the very demand that low prices have created. The U.S.A. faces not so much an energy crises as a shortage of cheap energy, caused by price distortions and a lack of understanding that environmental improvements must ultimately be paid for by the consumer.

Clearly, an important contributor to our present energy crisis was the decision of the Federal Power Commission a decade or so ago to regulate the wellhead price of gas delivered to interstate pipelines. This interference with market forces resulted in an diversion of risk capital from exploration to other investment opportunities, and of newly discovered gas into intrastate uses. At the same time, it created a rapidly expanding market for gas which resulted in the displacement of a substantial part of the market for oil and coal. Oil and coal could not compete with the lower cost of regulated gas. On a B.t.u. basis, gas has been selling for about one-half the price of oil, despite its superiority as a fuel. Thus the regulation of the wellhead price of gas has not only resulted in the rapid depletion of existing reserves, it has diverted too much of our natural gas away from its best use, and has destroyed the incentive to develop new gas for delivery into interstate pipelines.

This contention is amply supported by the statistics. In 1971, for example, there were 437 exploratory wells completed as gas discoveries in the United States as against 822 such discoveries in 1956, the year the FPC first proposed to control wellhead prices for gas. In 1971, 9.4 trillion cubic feet of gas were added to our national reserves as against 24.7 trillion cubic feet of gas in 1956.

The experience in the Permian Basin after 1965, when the FPC first moved to impose area controls on gas producers, offers a classic example of how FPC policies have served to channel new gas into intrastate markets with a consequent loss to interstate markets. Mr. President, I ask unanimous consent to have printed in the RECORD a table of figures showing how new gas found in the Permian Basin from 1966 through the first half of 1970 was committed.

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

NEW GAS COMMITMENTS IN THE PERMIAN BASIN, 1966-70

Year	Percent committed to intrastate market	Percent committed to interstate market	Total commitments
1966	16.3	83.7	178.0 BCF
1967	21.8	78.2	77.2 BCF
1968	87.2	12.8	156.1 BCF
1969	83.3	16.7	175.8 BCF
1970 (6 mos.)	90.9	9.1	113.4 BCF

Source: From FPC data.

Mr. BUCKLEY. Mr. President, what the figures tell us is that while, in 1966, 83.7 percent of new Permian Basin gas was sold to interstate pipelines, by the end of the first 6 months of 1970 the proportion of new gas being committed to interstate as opposed to intrastate markets had been reversed. In the first 6 months of 1970, 90.9 percent of new Permian Basin gas was being sold to intrastate consumers while only 9.1 percent was connected to interstate pipelines. Interestingly enough, the most dramatic change in the pattern of gas commitment took place in 1968 following a Supreme Court decision affirming the FPC's Permian Basin area rate decision.

In plain English, what all these statistics add up to is that when gas producers compare their increasing costs of exploring for and producing new gas to the regulated price at which they are allowed by the FPC to sell it, they tend to conclude that the possible rewards simply do not justify the investment of risk funds to find new gas for commitment to the interstate market. One does not have to be a Ph. D. in economics to understand why, under existing policy, the domestic oil and gas industry has not been moving mountains for the privilege of providing east coast consumers with a premium fuel at regulated prices.

Let us examine some of the realities of present and future supply which have resulted from Federal regulation.

Since the FPC began regulating the wellhead price of gas in a widespread basis, we have witnessed a rapid depletion of existing reserves from a 20-year supply in 1963 to less than an 11-year supply in 1971. Since 1968, our Nation has consumed approximately twice as much natural gas as it has discovered and added to present reserves.

According to testimony given at the energy study hearings last week by Chairman John N. Nassikas of the Federal Power Commission, the FPC's Bureau of Natural Gas has projected, on the basis of currrent rates of discovery:

An annual gas short fall of domestic supply to anticipated demand [that] will range from about 10 [trillion cubic feet] in 1980 to about 18 Tcf in 1990.

To meet this excess of demand over supply, we will have to rely on five principal supplemental sources of gas. These are, first, pipeline imports—largely from Canada, including Alaskan gas transported by pipeline through Canada; second, liquified natural gas imports; third, gas derived from coal; fourth, synthetic natural gas derived from liquid hydrocarbons; and fifth, natural gas discovered in the United States above and beyond the rates of discovery projected on the basis of current policy. According to Mr. Nassikas, the first three supplementary sources "could reduce the annual projected gas deficit to about 10 Tcf in 1980 and 18 Tcf by 1990." These deficits, it should be noted, amount to approximately 27 percent of the 1980 demand and 37 percent of the 1990 demand.

What, then, are the alternatives facing the consumer interested in long-term supplies of energy at the most reasonable cost? There are three major alternatives available within the time frame of the next 10 to 15 years:

First. We can adopt conservation measures that will force a reduction in projected demand to meet the projected supply. While I believe, Mr. President, that it is highly important that we develop effective measures to encourage the conservation of energy, I think most of our colleagues would agree that it would be politically and economically unrealistic to believe that we could enforce measures so stringent as to achieve really dramatic short-term reductions in demand.

Second. We can meet the excess demand for gas by redirecting that demand to alternative fuels, such as oil, coal, and uranium. Given the fact, however, that natural gas is expected to meet approximately one-third of our total energy needs, any major diversion of demand to these other fuels would only serve to aggravate the supply and environmental problems which will be associated with each of them well into the 1980's.

Third. This leaves us with the third major alternative. We can take steps designed to accelerate the development of the supplementary sources of gas which I have already listed; to wit, pipeline imports, LNG imports, gas from coal, gas from liquid hydrocarbons, and an acceleration of the rate of discovery of new natural gas. Although we will undoubtedly have to encourage less waste in our use of energy, and although we should encourage some shift from the use of gas to other fuels, our major hope lies in finding new sources of our most desirable fuel.

The next question to be asked is which of these supplementary sources offers the consumer the best hope of meeting his projected needs at the lowest cost? Let us examine each in turn; but, first, by way of a bench mark, let us recall the current costs of regulated natural gas. In 1970, the average well-head price of gas subject to FPC regulation was about 18 cents per Mcf, and it is in the vicinity of 20 cents now. The transported city gate price of that gas at New York City is about 51 to 52 cents. By the time the gas reaches the individual household, about another $1.18 for distribution costs, and so forth, will have been added.

First. Pipeline imports: The quantity of Canadian gas which will be available for importation into the United States is, of course, highly dependent on Canada's own energy policies and on the rate at which Canada's exportable reserves can be increased. These are not factors over which American policymakers have any

direct control. With respect to Alaskan gas, even if huge reserves are discovered on the Arctic Slope, it will take years before a pipeline can be completed from the fields to the border between Canada and the lower 48; and because of the enormous projected cost of such a pipeline—between $3 to $5 billion—it is estimated that the cost of delivering pipeline gas from the Alaskan Arctic to the U.S. border would range upwards from 90 cents to $1.40 per Mcf. Thus there is little reason to believe that we can improve on the FPC's admittedly optimistic estimate that by 1985, net pipeline imports could satisfy as much as 4.8 percent of projected demand; and to the extent that these imports consist of Alaskan gas, the price will be several times higher than the current city gate price for U.S. pipeline gas in New York City.

Second. LNG imports: The cost of delivering Algerian LNG to the East Coast has been estimated at from 84 to 91 cents per Mcf. The estimated cost to produce and deliver a thousand cubic feet of gas under the proposals now being explored with the U.S.S.R. range from $1.25 to $1.50—over two or three times the delivered price of domestic gas at New York City.

Third. Gas from coal: Based on an application filed with the FPC, the estimated cost of a commercial project to produced gas from coal, mined in the four corners region of New Mexico, is $1.21 per Mcf.—a "wellhead" price over twice the delivered price of natural gas at New York City.

Fourth. Synthetic natural gas produced from liquid hydrocarbons: Based on applications filed with the FPC, the cost of synthetic gas is estimated to range from $1.10 to $1.80 per Mcf.—two to more than three times the delivered price of natural gas at New York City.

Fifth. Natural gas discovered in the United States above and beyond current rates of discovery: There is no doubt that the gas is there to be discovered. The U.S. Geological Survey estimates that 2,100 trillion cubic feet of natural gas, recoverable under present technology, remain to be discovered within the United States, including the Outer Continental Shelf. This represents almost a hundred year supply at the 1971 rate of consumption. Estimates may vary as to how much of this potential may be available at costs comparable to those of alternative fuels, but it is safe to conclude that much domestic gas remains to be discovered if the industry is allowed the incentives to go out and find it.

The question to be asked, therefore, is what action is best designed to stimulate a resumption of large scale exploration for new gas for interstate markets, and what will be the probable effect of this action on the consumer? Only when we have the answers can we make a judgment as to which of the supplemental sources of gas offers the consumer the best prospect for meeting his future demands at a reasonable price.

Economists have concluded that if the wellhead price of new domestic gas is deregulated, domestic exploration and development will experience a substantial surge. The extent to which new gas supplies, free from continued price regulation, would be elastic to price is subject to debate as is any economic assessment of the future. I am nevertheless confident that supply would be responsive to price. I am also confident that so long as new gas remains regulated at the wellhead, as it is today, we may expect the supply-demand gap to continue to expand.

I take this position because I believe that our basic near- and intermediate-term efforts to provide gas for American consumers should be centered around stepped-up domestic production. It is the least costly of the alternatives.

These conclusions are supported by the testimony of administration witnesses at the energy study hearings last week, who clearly stated that potential U.S. gas reserves were sufficiently high to warrant stepped-up production under economic conditions conducive to development. They are also supported by a growing host of academic economists, and the press. The Washington Post, Fortune, Barron's, the Wall Street Journal, bank studies and other analyses, not to mention the industry's own calculations, all point to the need to stimulate domestic gas production by freeing the wellhead prices of new gas.

Such a policy will serve an additional purpose, and that is to provide a disincentive to waste. It will favor residential and commercial overuses which may be less related to human needs. In other words, some industries now relying on low-cost natural gas will probably switch to other fuels, thereby conserving gas, once the price of natural gas raises to a level at which other fuels such as oil and coal can compete with it.

But even though gas prices would rise under such a policy of deregulation, they would not rise as quickly as they would under a policy which discouraged conventional natural gas production and encouraged the development of the more costly supplemental sources.

Further, even with the freeing up of new gas at the wellhead, the burden on consumers would not constitute a shock effect. Residential and commercial consumers in particular would be paying perhaps as little as 5 percent a year more for their gas. This is because the higher priced new gas would be rolled in with the cheaper old gas that consumers are now burning, and which would continue to be produced under existing long-term contracts.

Based on all the facts, Mr. President, I think the conclusion is inescapable that the best interests of the energy consuming citizens of this country will best be served by freeing newly discovered gas to find its own level.

We have paid a very high price for our overzealous attempt to protect the consumer against the operations of the marketplace. I hope we will learn from this experience the ancient lesson that the one sure way to create a shortage in a given commodity is to try to hold its price below the level which justifies its production. There are certain economic laws which even the U.S. Congress cannot legislate out of existence.

QUORUM CALL

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

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold that suggestion?

Mr. BUCKLEY. I withhold the suggestion.

Mr. ROBERT C. BYRD. Mr. President, how much time did the Senator have remaining?

The PRESIDING OFFICER. About 30 seconds.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and I ask that it be charged against my time under the order.

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.

Mr. ROBERT C. BYRD. Mr. President, did I use all my time allotted to me for the quorum?

The PRESIDING OFFICER. The Senator has.

Mr. ROBERT C. BYRD. I thank the Presiding Officer.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senator from New York (Mr. JAVITS) is recognized for not to exceed 15 minutes.

(The remarks made by Senator JAVITS when he introduced S. 440, the War Powers Act, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

(The remarks of Mr. CASE on the introduction of S. 445 and S. 446, dealing with executive agreements, are printed in the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The PRESIDING OFFICER (Mr. DOMENICI). Under the previous order, the distinguished Senator from Virginia (Mr. HARRY F. BYRD, JR.) is now recognized for not to exceed 15 minutes.

THE PANAMA CANAL

Mr. HARRY F. BYRD, JR. Mr. President, I note that this week the United Nations Security Council, over strong U.S. objections, voted to meet in Panama City on March 15–21, to discuss Latin American issues and particularly the status of the Panama Canal.

The American Ambassador to the United Nations, Mr. George Bush, characterized the United Nations' action as an attempt to pressure the United States into renegotiating the Panama Canal Treaty while bilateral negotiations are still underway between the United States and Panama.

Mr. President, as one member of the Senate who consistently has supported the United Nations, I would resent any attempt on the part of the United Nations to inject itself into this matter of a treaty between the United States and Panama.

The treaty with Panama was consummated in 1903, and it gave the United States control of the international waterway in perpetuity. An effort is being made by the Panamanian Government, and now apparently by the United Nations, to coerce the United States into changing that treaty.

Several years ago, during the term of President Johnson, an effort was made to renegotiate this treaty, and it was renegotiated; but then it had to come before the Senate for ratification, and the opposition in the Senate was such that the administration decided to let the matter die.

I was one of the Senators who took a strong position against giving up American rights in the Panama Canal, I certainly am strongly opposed to any effort on the part of the United Nations to try to force the United States to change the treaty of 1903 with the Panamanian Government.

I commend Ambassador Bush for the strong position he took in the United Nations on this question. I hope that the administration will be very careful in their discussions with the Panamanian Government as to any commitments they may seek to make to Panama in regard to changing this treaty.

If it comes back to the Senate in the form that it did under the Johnson administration, so far as the senior Senator from Virginia is concerned, I expect to oppose it.

The action of Ambassador Bush at the United Nations this week gives me considerable hope that in making any concessions to Panama, they will be of a relatively minor nature and will not give up guaranteed American rights to the Panama Canal.

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. FANNIN). Under the previous order, there will now be a period for the transaction of routine morning business, for not to exceed 1 hour, with statements therein limited to 5 minutes each.

UNION CAMP DONATES DISMAL SWAMP LAND

Mr. HARRY F. BYRD, JR. Mr. President, the Union Camp Corp. has announced the donation of nearly 50,000 acres in the Great Dismal Swamp to the Nature Conservancy, a nonprofit land conservation organization.

This generous act will contribute materially to the preservation of the historic, scenic, and recreational potential of the Dismal Swamp, which is located in southeastern Virginia and northeastern North Carolina.

The appraised value of the property donated by Union Camp is $12.6 million, but its actual value cannot be measured in purely financial terms. The Dismal Swamp is one of the last remaining wilderness on the eastern seaboard; parts of it once were owned by George Washington and Patrick Henry. It is rich in historic association and in potential as a wilderness area accessible to millions of Americans.

I salute Union Camp for its action. The corporation, which is headquartered in Wayne, N.J., has major facilities in Richmond and Franklin, in my own State of Virginia. It has long played an important part in the economy of the State.

During the last Congress, I was a sponsor of S. 2441, a bill which authorized a feasibility study of means of preserving Dismal Swamp. This legislation became Public Law 92–478.

I hope that the legislation which we approved in 1972 will lead to conservation of this historic swamp area. Certainly the cause of conservation has been greatly advanced by the action of the Union Camp Corp.

WORLD BANK LOAN TO ZAMBIA TO AID IN DEVELOPMENT OF TOBACCO

Mr. THURMOND. Mr. President, agriculture is an important area of our national life, and the farm problem and the farmer deserve our attention.

I have been a farmer all my life, studied agriculture in college, and taught agriculture along with other subjects in the schools of South Carolina. I know the problems confronting our farmers and am sympathetic to them.

Mr. President, we need to aid our farmers and should not be a party to any policies which are detrimental to them. One particular incident illustrates the complications our farmers must face.

On Tuesday, January 16, 1973, the International Bank for Reconstruction and Development, also known as the World Bank, approved an $11.5-million loan to Zambia. Known as the integrated family farming project, this loan will aid in the development of their maize and tobacco crops.

Mr. President, when I heard rumors of this proposed loan, I contacted the White House and the U.S. representative on the governing board of the World Bank. I am pleased that our country did not support this loan, and regret that the other nations saw fit to disregard the interests of America's tobacco farmers. The World Bank, and President McNamara in particular, subordinated the interests of our farmers to the interests of farmers in Zambia.

Mr. President, I am specifically concerned about the effect of this loan on our own tobacco growers. We export over $550 million of tobacco per year, and this export is of great importance to our economy. Now, our farmers must compete on the foreign market with tobacco from Zambia, which this loan will encourage. It does not make sense to aid foreign countries in the development of agricultural crops where such crops will compete with the crops of our own farmers on the foreign markets.

Mr. President, I oppose the outlay of America's tax dollars when such money is used in callous disregard of the welfare of our farm population.

A WELCOME TO THE INAUGURATION OF PRESIDENT NIXON

Mr. DOMENICI. Mr. President, we will soon be witness to one of the great traditions of this country—the inauguration of the President of the United States. This ceremonial event brings people from around the world to our Nation's Capital. They come from diverse backgrounds; and they are the people who make this country great. Our country was founded upon diversity and now it is drawing its strength and its freedom from that same force. The people of my great State, the State of New Mexico, are contributors to that diversity—people such as its former Governor Tom Bolack, a life-long conservationist; people such as Les Davis, a prominent national agricultural community figure; and people like Mrs. Tillie Simion who has been involved in the governmental processes all her life; and Angel Collado, editor of New Mexico's leading Spanish language newspaper. These are a few of the several hundred New Mexicans who have traveled 2,000 miles to be here in the Nation's Capitol today. All of them contribute to making New Mexico a strong and good State, and because of them, New Mexico contributes to making our Nation great. I would like to welcome them and all Americans from across the land who have come here to witness the inauguration of President Richard M. Nixon. They are all a vital part of this great tradition.

LOUIS W. BALLARD

Mr. DOMENICI. Mr. President, I would like to take this opportunity to recognize one of New Mexico's fine Indian citizens, Louis Ballard. Mr. Ballard is a descendant of Cherokee and Quapaw chiefs and has recently been named the recipient of the Indian Achievement Award for 1972. Because he is the first New Mexican to receive this award, I am extremely pleased to call attention to some of his outstanding achievements. He is a noted musician-composer and is the first musician to receive this award. He was appointed chairman of the music department of the Institute of American Indian Arts of 1962. In 1968, he became a national curriculum specialist for the Bureau of Indian Affairs, with the task of bringing music into the lives of 400,000 Indian children in 300 Indian schools from Florida to Alaska. He will be receiving the award here in the Nation's Capitol on Sunday. I believe Mr. Ballard serves as a fine example of the self-determination that is being displayed by other Indian people across the country. He, and others like him, are able to preserve the culture, religion, and tradition of the Indian people, yet he is a vital participant in the mainstream of America. I praise his efforts as representative of the thousands of Indian people in America.

MR. HAROLD WILSON, OF GREAT BRITAIN, CANCELS AMERICAN LECTURE TOUR

Mr. HASKELL. Mr. President, I have in my hand a letter from Mr. Mitchell, chancellor of the University of Denver, in which he calls my attention to the fact that Harold Wilson, head of the Labor Party of Great Britain, has canceled a lecture tour "owing to international situation and following American bombing of Vietnam."

I ask unanimous consent that the letter be placed in the RECORD because I believe it illustrates the far-reaching effects of the administration's unfortunate action.

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

UNIVERSITY OF DENVER,
Denver, Colo., January 4, 1973.

Hon. FLOYD HASKELL,
Englewood, Colo.

DEAR FLOYD: We have just received the following message from Harold Wilson:

"Deeply regret to say I am obligated to cancel next week American lecture tour owing to international situation and following American bombing Vietnam."

It is distressing after much effort and weeks of careful preparation to receive this word, which of course cancels in turn our dinner at Phipps House on January 10. You will wish to know, however, that Mr. Wilson has had conveyed to us by telephone his feelings while reemphasizing the political liabilities of a visit to the United States at this point in time.

Sincerely,

MAURICE B. MITCHELL.

ECONOMIC AND POLITICAL OBSERVATIONS ON VISIT TO CHINA—SPEECH BY LAURENCE W. LEVINE

Mr. HASKELL. Mr. President, I call the attention of Senators to a speech given yesterday at the Georgetown Club, Washington, D.C., by Mr. Laurence Levine, who is a graduate of Harvard Law School and was a member of the Harvard defense studies program with Dr. Kissinger. Mr. Levine's speech of yesterday is very informative on the history of relations, or lack of relations with China. Mr. Levine was instrumental in having the United States resume relations with China.

I ask unanimous consent that the speech be printed in the RECORD.

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

ECONOMIC AND POLITICAL OBSERVATIONS ON VISIT TO CHINA

The privilege of speaking here today is only surpassed by the pleasure it gives me. I want to talk to you today openly, frankly and practically. This Club of which I am familiar because I've been here many times over the years, has some of the most influential members of the community as members and you are part of the decision making apparatus of our nation.

You may have read my articles on China published in East Europe Magazine in 1971 prior to the President's visit and if you haven't, they are in book form (U.S.-China Relations, published December 15, 1972 by Robert Speller & Sons, New York). The first of the articles in question were actually written as a Memo in September, 1969 after I had returned from London on business and had talked at length with people closely associated with the People's Republic of China. The Memo was written for a man in the White House, Murray Chotiner, then General Counsel for the office of the Special Representative for Trade Negotiations. In 1970 he became Special Counsel to the President.

I am going into these details because just as I thought it was important in 1969 that a new President change and renew relations with our historical friends—I believe now that there must be a continuous exchange of people from both sides and I believe that you who occupy many important positions in the country and will continue to do so—must create a decent rapport between the two countries—China and the United States.

It is my belief that if we had had a dialogue with China—if we had realized in 1949 that a nation of 800 million people with thousands of years of a great culture had just finished 15 years of torture, devastation and war—and that it was none of our business to interfere in any way in which she could rebuild herself—even Communism—and that China needed peace—we might not have had a Korea or Vietnam. I may be wrong, but I believe it.

Everyone in China is a guest of the Government and treated as such. You don't go in. You are invited in. Don't forget that. China today for the first time in 500 years is governing herself and Westerners who once ran the country are welcome, and they are invited.

Nobody in the United States is an expert on China and nobody will be an expert in our lifetime. We may have had experts before and during World War II—and I say "may" guardedly, because if we had experts, the result of the last 20 years would not have occurred. An expert is defined by me as a person who was born with 3 hands so he could always say "on the other hand". Hindsight is worth only 20–20—but I think it is fairly obvious that we have made such a mess of our policy in all administrations since World War II in Asia that it is better, with respect to China that we start with a clean slate.

Until 1949 there was no China. There was a huge mass of land, divided up and in chaos. Millions starved to death yearly. Those who lived did not live. They existed if they were lucky. There were, of course, a few wealthy Chinese and Westerners, and a small middle class—but it was a society that was devoid of care for the human being generally. And, there was no organization, purpose or self-respect. The Chinese were not equal with the Western World and were not equal with themselves.

The people of the United States are and were very sympathetic to the problems of China and we did for a time try to help, although our economic depression of the 1930's made that difficult.

United States policy since Pearl Harbor was to keep China in World War II against Japan and Chiang Kai-shek was the chosen instrument. In 1944, as the War was ending, the United States Government sent a mission to China. It was a United States Army observer group and called the "Dixie Commission" and it spent 7 months in China. It had 17 Army men and 2 Foreign Service officers. Their reports were scrupulously accurate on the problems of China, and they reported on the Communist forces, organization and intentions. There is no question that they were loyal and honorable Americans, devoted to their country's best interests. Not only were their reports not listened to, but most of them were accused of being "pro-Red" in the post-World War II chaos and many lost their jobs.

We have had 30 years of war in Asia fanned in part by the Soviet Union, a country as I explained to the Chinese that cannot even feed itself and which has the highest rate of alcoholism in the world.

I wouldn't, as an American citizen, exchange places with anyone. Our country is unequalled in the world and I'm proud to be part of it. I am not proud of how we have run things since 1927 in Asia and irrespective of what party was in office.

The professional and business people that provide the jobs and pay the taxes and have the common old-fashioned American sense, do not speak up or go into Government except rarely. And, our Congress does not concentrate on the many matters such as this.

I advocated in my book that the President appoint a good friend of his or a group—someone close to him, to follow China and I advocated in 1969 that a Trade Group be appointed first because trade always precedes politics. The traders can talk to one another even if the politicians cannot. And, I advocated a Special Joint Committee of Congress to follow China. We ought to do these 2 steps immediately.

I want to talk to you first about trade.

My book states:

"China needs to build up light industries to supply her own market and raise the living standards of her own people. Eventually she can supply these goods to other countries in the Far East. To help pay for this foreign trade and investment, she has raw materials and agricultural products.

"America is not only the most suitable country to assist this economic development of China; she is also the only country fully able to participate.

"For all these reasons there must not and cannot be any conflict, estrangement or misunderstanding between the Chinese people and America."

Who do you think said that! Well, Mao said that to John Stewart Service on March 13, 1945. It is in my book and it is taken from Service's book, "The Amerasia Papers" published in 1971.

We missed out from 1950–1971. China bought her first generation of equipment from the Soviet Union in 1950. It was both paid off and outmoded by 1970.

China is ready for her second generation of equipment. But, if a few people in the city don't get on the ball, we are going to lose out. Last week all the newspapers carried a story issued by the Department of Commerce stating that China trade is one way—that China sold $136 million worth of goods to the United States and only bought $17 million.

How do you think the Chinese feel when they see that? Especially after they ordered $200 million in Boeing jets!! The President ought to muzzle whoever is doing that. I think it's probably unintentional, but who knows—maybe someone in the Department of Commerce does not want the U.S.-China trade. If any event, the story is inaccurate.

Attached to my speech is a letter I wrote to the New York Times on China Trade. It doesn't come from teaching at a university, or reading a book. It comes from talking to the Chinese.

China's trade is based on "equality and mutual benefit." There's no magic to that. The Chinese want (a) the tariffs reduced, (b) the seizure of the Bank of China funds which are small, settled. And, of course, they want the Vietnam War ended—as we all do. When those 3 things happen, I think large trade will begin.

"Chinese exports are $2.1 billion and her imports $2 billion, which is relatively small. But Chinese intelligence and drive will be a force, now that she is self-sufficient in food—to expand into areas of technology in much the same way that the United States, when first founded, developed its Western granaries first and then its modern industry.

"This development will be kindled by China's natural ambition and the fear of a modern industrialized Soviet Union at her border.

"These Chinese must know that until the United States Congress takes the steps to end the political discrimination of the tariffs on Chinese goods, which the Chinese resent, and takes action on Chinese assets seized during the Korean War—that she cannot either open her Bank of China here or really trade with us as if nothing happened.

"China, I believe, uses trade as a political lever to reward and punish. Japan is now being rewarded as we were to a certain extent."

I suggest the Secretary of Commerce, Mr. Dent, encourage putting together a team to visit China as an "Icebreaker Mission" as the

British did in 1953. I explain this "Icebreaker Mission" in my book.

I want to talk to you now about history.

At each place I visited, the procedure was the same. We all sat down and talked, drank tea and smoked cigarettes, exchanging pleasantries about both countries and people. Then I would tour the plant or farm. Then we returned for "suggestions and criticism"—none of which I had. The only suggestion I ever made was that they publish at the Canton Trade Fair each day for the Westerners—a one page summary of the news since Westerners are without knowledge of what is occurring. I think that suggestion will be followed.

My most interesting discussion was on the Korean War. One evening after dinner in a small city at the Liberation Guest House, the group of us sat talking. Some of the academicians and so-called China Watchers say the Chinese are circumspect. I have always found them most direct and if we would learn to follow their statements, we would avoid a lot of trouble. They said to me that they didn't expect me to agree with all they said—and they might not agree with all I said—but that friends always don't agree—and we should talk in a relaxed friendly manner. We did.

I was interested in their knowing that I thought that the Korean War was a war started by Russia and that most intelligent people in the United States knew that. I explained that originally we were told it was started by China and that was nonsense just as it was nonsense that the Chinese were supplying the narcotics of the world.

They replied as follows, and I want to give it verbatim. I took notes and they suggested I do so.

"When our people were liberated in 1949 and our government took over, there were no roads connecting a city, no railroads, electric plants, sewage plants, water plants, hospitals, generators, etc., working in China. We lost 700,000 people in the city of Shanghai alone of starvation in 1949; the country was in chaos. In 1950, less than a year later, we were just getting organized and were in very bad shape. Do you know what we did in the middle of June 1950? The decree for demobilizing our army was signed that month. We sent all our troops back home with rice on their backs. We had to start rebuilding a destroyed nation.

"Do you know, Mr. Levine, who the most surprised people in the world were, when the Korean situation occurred? I replied, "China was."

They said, "Do you, Mr. Levine, think that a country that wants to start a war would demobilize its army 10 days before that war starts?" I replied, "No."

Then they went on. "Chou En-lai and our other leaders made statements all during the summer that the Chinese people cannot sit back if the United States crosses the 38th parallel. The statements also were circulated to all foreign Embassies. The statements stated that Americans should not come near the Yalu River. Do you know why that is so important?" I replied, "Yes."

They replied, "All the electricity for Manchuria—which is the Chinese State on the north of the Yalu is supplied from generators on the North Korean side of the Yalu. How would you Americans feel if 100,000 foreign troops were invading Canada and were on the Canadian side of Niagara Falls?" I replied, "We would probably feel the same way the Chinese did."

Now let's look at the Chinese statements.

The Chinese told me that their demobilization order was signed on or about June 19–24, 1950 and that nobody intending a war would do that. War started on June 25th. In August, 1950, Chou En-lai told the U.N.:

"Korea is China's neighbor . . . The Chinese people cannot but be concerned about the solution of the Korean War . . . It must and can be settled."

On September 25, 1950 and again later, China made statements that the United States should not advance to the Yalu.

On October 2, 1950 China said in a statement sent to 22 foreign embassies and relayed to the State Department:

"Should United States troops invade North Korea—China would be forced to enter the war." (Note that date, October 2, 1950).

On September 27, 1950 President Truman sent a directive to General MacArthur—approved by both the USC and JCS. It is important to note that General Marshall became Secretary of Defense on September 21st.

MacArthur could conduct operations over the 38th Parallel:

"If there had been no entry into North Korea by Russian or Chinese Communist forces, no announcement of intended entry, nor a threat to counter our operations militarily in North Korea."

Truman's memoirs mention this on page 360.[1] This statement was sent to MacArthur one week before Chou En-lai's October 2nd statement.

On October 15, 1950 MacArthur assured Truman at Wake Island that the Chinese would not intervene. I quote you from Truman's Memoirs which he autographed for me (p. 365) attached. Truman says MacArthur said:

"He also informed me that the Chinese Communists would not attack . . . He repeated that the Korean conflict was won and that there was little possibility of the Chinese Communists coming in." He repeated to a larger group (see p. 366 of Truman's Memoirs) . . . **"We shook hands . . ."**

President Truman then returned and addressed the United Nations in the San Francisco Opera House on October 19, 1950 where he lambasted the Russians—not the Chinese:

"If the Soviet Union really wants peace—it can prove it—and could have proved it on any day since last June 25 by joining the rest of the U.N. in calling upon the North Koreans to lay down their arms "at once" . . . China was not mentioned.

So, Harry S Truman left to meet MacArthur on October 13, 1950. He announced his trip on October 9th.

Do you know why he went? Chou En-lai's statement about what China would do if U.S. troops crossing the 38th parallel was relayed to the State Department on October 3rd.

The JCS message of September 25th was a direct order to MacArthur not to cross the 38th parallel if there was any intention of Chinese intervention.

By October 9th Truman did not like what his political smell told him. He flew 10,000 miles to make sure he got his message across—"don't cross that parallel if China has any intention of coming in."

The Chou statement of October 9th raised a flag in a good political head:

"The Peiping reports of threatened intervention in Korea were another reason for my desire to confer with General MacArthur."

MacArthur still insisted on October 15th at Wake Island that there was no possibility of Chinese intervention. MacArthur had on October 19, 1950 entered Pyongyang, the capital of North Korea.

As Truman stated on page 373 of his Memoirs:

"The Chinese prisoners stated that their units had crossed the Yalu on October 16th, only one day after General MacArthur had assured me on Wake Island . . . that he did not expect them to do that . . ."

The New York Times December 27, 1972 review on Harry Truman states on page 48:

". . . strategists differ as to what prompted the (intervention) . . . but on October 25th the Chinese did enter the conflict."

The Chinese did not enter on October 25th. Truman says they entered on October 16th. They actually entered on October 12, 1950.

Now what happened between September 21st and October 1st, 1950. First, General Marshall was appointed Secretary of Defense. Secondly, the President through the JCS said no crossing of the 38th parallel if any intention of Chinese intervention. Thirdly, Cho En-lai makes a statement on October 2, 1950 that China would enter the war.

MacArthur as late as October 15th told Truman the Chinese won't intervene.

Truman flies to Wake Island to make sure MacArthur understands policy—a local war—no war with China. That trip comes after Chou's statement of October 2nd.

I think it's high time we released all the documents on the Korean War so both our peoples know what happened. All three parties are now dead. MacArthur, Truman and on the Chinese side, Lin Piao.[2]

CONCLUSION

1. I was both fascinated and overwhelmed both by the progress China has made since it became independent 22 years ago and by the friendship offered to me and the American people. We forget that in 1950 China had just ended 13 years of war with Japan and internally was a vast wasteland. Today, it is an agricultural nation not only feeding itself but exporting food and other commodities.

The only shortage is wheat and that is because of the drought last year. The Chinese have a mission in life. I don't think it is war. It's to rebuild China. Let's keep that in mind. While they have done well—they know they have a long way to go.

2. The Chinese people seem well fed and clothed. Considering the history of China over the last 500 years (spelled out in my book, "U.S.-China Relations"), it is a pleasure to see this. The Chinese are the first to admit that they are in the beginning stages. The food is simple as is the clothing—but they have it and everyone gets it and it's good.

3. Housing is adequate. By Western standards, it is not elegant, but by the standards of what China used to have, it's fine. And it will get better each year.

4. The Chinese for the first time in a long time are in control of China and have the pride that goes with running your own country.

5. The Chinese are gracious and want to restore the friendship between our two people. This I found everywhere I went. They admire the American people and know their history. And I think they are sincere about it.

6. China has her own problems. She has the Soviet Union on her border and I believe we can assume from the Lin Piao episode that there is internal dissension. The United States Government has to start moving immediately to appoint a Trade Commission to visit China as the British did in 1953. The Chinese, I think, want very much to do a lot of business with us and we should be a big trading partner with her provided we can settle the Vietnam War, straighten out the tariffs and straighten out the seized asset problem. We seem to have done it with Russia. We certainly can do it with China.

7. Congress which was so bamboozled in the 1960's by the Chiang Lobby in this city, and which Lobby prevented an objective appraisal of American interests in Asia in the

[1] The exact cables not in Truman's memoirs are published in Chapter 9 of "The Morning Deluge" by Hansuejin.

[2] For instance, President Truman states in his Memoirs that on August 3, 1950 he sent Averill Harriman to discuss the Far Eastern situation and "for reasons of brevity and for national security, I have omitted portions of Harriman's Memoranda." It would be interesting to see that Memoranda.

1950–70 era, must have at least one or two standing committees thoroughly familiar on a day to day basis with China and American policy towards China. I stated this in my 1971 article and if you read my book, it is spelled out.

8. Congress and the President must take steps to begin removing the impositions of the Trade Agreements Extension Act which withdrew favored nation treatment to China and the President should start negotiating through the Trade Commission I suggested on the foreign claims and the seizing of the foreign assets of China in the United States and of our own assets in China. The Bank of China, I believe, wants to open up an office here, but cannot do so until that matter is cleared up. We ought to initiate those negotiations tomorrow morning.

9. China's development, I think, will be kindled by her natural motivation and extreme intelligence and the fear also of a modern Soviet Union at her border. China is now entering stage 2 of her development. It will require better plants and machinery.

10. Our policy towards China should be the same as our policy towards Japan has been for 20 years and we should encourage the three countries—China, Japan, United States—to be friendly and to work with one another. I personally think that China's overtures to Japan now are good, but I want to make sure that the Japanese do not get any special advantages because I think we are in at least as good a position as they are.

Lastly, I would urge that all of these steps be taken quickly because time is working against us. The present leaders of China, as I state in my book, are all in their 70's. Despite all the mistakes that we both have made, they know that there is a basic fondness by American people for the Chinese people and vice versa. We don't know who the next Chinese leaders will be and I suggest that we think very carefully about that. We know whom we are dealing with now—men whom I think respect the United States.

PEACE IN VIETNAM

Mr. STENNIS. Mr. President, I am not privy to the details of the peace negotiations now being conducted with North Vietnam, but it appears from press reports that the Government of South Vietnam is considering draft peace proposals, and may have some objections.

I am fully cognizant of the sacrifices the South Vietnamese people have made in their long struggle. But, at the same time, as we all know, the United States has carried the military burden of this longest war in our history for 8 years, and the economic burden for far longer. Thousands of young Americans have given their lives in this cause. Our sacrifices, in many ways, have been unparalleled. A peace agreement at this time may not be all that we want, much less all that the South Vietnamese want. But it is time to close ranks and agree to a settlement.

As one who has opposed all legislative amendments that demand an end to American participation in the war after a given time, including amendments to appropriation bills cutting off funds for the conduct of the war by American forces, I want to make it clear that I do not think this is the time for the Government of South Vietnam to be an obstacle to peace. The South Vietnamese Government must realize that there are limits to what the American people are willing to do.

The South Vietnamese will need economic and military aid in the coming years, and I expect to be able to support reasonable programs of this type. However, the South Vietnamese can jeopardize American support for such programs if they emerge now as the obstacle to peace in Southeast Asia.

The crucial element now is now particular legal clauses in a document but rather the maintenance of unity between our two countries.

ORDER FOR RECOGNITION OF SENATORS MUSKIE AND TALMADGE ON TUESDAY, JANUARY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, following the recognition of the two leaders or their designees under the standing order, the distinguished Senator from Maine (Mr. MUSKIE) be recognized for not to exceed 15 minutes, and that he be followed by the distinguished Senator from Georgia (Mr. TALMADGE) for not to exceed 15 minutes.

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

LEAVE OF ABSENCE

Mr. ROBERT C. BYRD. Mr. President, in accordance with paragraph 1, rule V of the Standing Rules of the Senate, I have been asked by the able senior Senator from Indiana (Mr. HARTKE) to request unanimous consent that he be granted a leave of absence from the Senate for the next week, if need be, due to the serious illness of his mother.

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

EXECUTIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Frank C. Carlucci.

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

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The PRESIDING OFFICER. The clerk will state the nomination.

The second assistant legislative clerk read the nomination of Frank C. Carlucci, of Pennsylvania, to be Under Secretary of Health, Education, and Welfare.

Mr. ROBERT C. BYRD. Mr. President, at the hearing on the confirmation of Mr. Carlucci before the Senate Committee on Finance the following colloquy occurred between the distinguished chairman of that committee (Mr. LONG) and the nominee, Mr. Carlucci:

The CHAIRMAN. Mr. Carlucci, can the committee expect to have you available for testimony at hearings that we may call during the time that you are in office with respect to matters coming within your jurisdiction?

Mr. CARLUCCI. I can foresee no reason why I would not be available to the committee when it wished, subject only to scheduling requirements, of course.

The PRESIDING OFFICER. The question is on the confirmation.

Without objection, the nomination is confirmed.

Mr. GRIFFIN. Mr. President, I ask that the President be immediately notified of the confirmation of the nomination.

The PRESIDING OFFICER. Without objection, the President will be so notified.

LEGISLATIVE SESSION

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business.

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

Mr. ROBERT C. BYRD. 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.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

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

REPORT ON OVEROBLIGATION OF AN APPROPRIATION

A letter from the Secretary of Health, Education, and Welfare, reporting, pursuant to law, on an overobligation of an appropriation, Department of Health, Education, and Welfare (with accompanying papers); to the Committee on Appropriations.

TEMPORARY PROMOTION OF NAVY ENSIGNS AND MARINE CORPS SECOND LIEUTENANTS

A letter from the Secretary of the Navy, transmitting a draft of proposed legislation to amend title 10, United States Code, to provide for the temporary promotion of ensigns of the Navy and second lieutenants of the Marine Corps, to provide that these appointments may be made by the President alone, and for other purposes (with an accompanying paper); to the Committee on Armed Services.

REPORT OF DEPARTMENT OF DEFENSE PROCUREMENT FROM SMALL AND OTHER BUSINESS FIRMS

A letter from the Acting Assistant Secretary of Defense (Installations and Logistics), transmitting, pursuant to law, a report of Defense procurement from small and other business firms for July–October 1972 (with an accompanying report); to the Committee on Banking, Currency and Urban Affairs.

GAS SUPPLIES OF INTERSTATE NATURAL GAS PIPELINE COMPANIES, 1971

A letter from the Chairman, Federal Power Commission, transmitting, for the information of the Senate, a publication entitled "The Gas Supplies of Interstate Natural Gas Pipeline Companies, 1971 (with an accompanying publication); to the Committee on Commerce.

REPORT ON HEALTH CONSEQUENCES OF SMOKING

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on the health consequences of smoking, dated January 1973 (with an accompanying report); to the Committee on Commerce.

1972 FINANCIAL AND STATISTICAL REPORT OF THE DISTRICT OF COLUMBIA GOVERNMENT

A letter from the Commissioner, District of Columbia Government, transmitting, pursuant to law, the 1972 Financial and Statistical Report of the District of Columbia (with an accompanying report); to the Committee on the District of Columbia.

INTERNATIONAL AGREEMENTS OTHER THAN TREATIES

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

REPORTS OF COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on development of a nationwide criminal data exchange system—need to determine cost and improve reporting, Department of Justice, dated January 16, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report on opportunities to improve the model cities program in Kansas City and St. Louis, Mo., and New Orleans, La., Department of Housing and Urban Development, dated January 16, 1973 (with an accompanying report); to the Committee on Government Operations.

REPORT ENTITLED "LAKE TAHOE—A SPECIAL PLACE"

A letter from the Secretary of the Interior, transmitting pursuant to law, the report "Lake Tahoe—A Special Place," dated January 1973 (with an accompanying report); to the Committee on Interior and Insular Affairs.

THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATIONS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders entered granting temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

Two resolutions of the Legislature of the Commonwealth of Massachusetts; to the Committee on Foreign Relations:

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES FOR COMPLETE U.S. WITHDRAWAL FROM SOUTHEAST ASIA

"Whereas, The bombing of the people and territory of Vietnam and Southeast Asia is a wrongful and immoral escalation of our role in the Indochina war; and

"Whereas, Continued bombing in Vietnam and Southeast Asia is a flagrant and direct violation of the declared policy of the Nixon Administration to end the war; and

"Whereas, The national interest would be best served by an negotiated agreement for prisoner release and by the immediate and complete withdrawal of all material and armed forces—land, sea and air—in and over all of Southeast Asia; and

"Whereas, It is within the scope and authority of Congressional power and responsibility to cut all funds from the military budget for military expenditures in Southeast Asia; now, therefore, be it

"Resolved, That the Massachusetts Senate respectfully urges the Congress of the United States to prepare at once legislation designated to accomplish the aforesaid objective and requests the President of the United States to expedite the implementation of such action; and be it further

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

"Senate, adopted, January 8, 1973."

"RESOLUTIONS CONDEMNING THE INVASION OF SOUTH VIETNAM AND THE ESCALATION OF THE VIETNAM WAR BY NORTH VIETNAM

"Whereas, the government of the United States is being urged to withdraw all its troops and war-related materiel from Southeast Asia; and

"Whereas, the government of North Vietnam bears the responsibility for the full-scale invasion of South Vietnam which prompted United States involvement in Southeast Asia; and

"Whereas, the government of North Vietnam has continued to introduce its troops and war-related materiel into South Vietnam; therefore, be it

"Resolved, That the Massachusetts Senate herewith urgently requests the government of North Vietnam to immediately withdraw all communist troops from territory in Southeast Asia not encompassed by the boundaries of North Vietnam, and to release all American prisoners of war; and be it further

"Resolved, That the Massachusetts Senate hereby condemns the invasion of South Vietnam by North Vietnam and the escalation of the war by North Vietnam; and be it further

"Resolved, That copies of these resolutions be transmitted forthwith by the Senate Clerk and Parliamentarian to the President of the United States, to the presiding officer of each branch of the Congress and each member thereof from the Commonwealth and copies of these same resolutions be sent by the Senate Clerk and Parliamentarian to the President of North Vietnam and to the Chief American Negotiator at the Paris Peace talks.

"Senate, adopted January 9, 1973."

A resolution of the Guam Legislature; to the Committee on Interior and Insular Affairs:

"RESOLUTION NO. 667

"Relative to commending the Honorable Antonio B. Won Pat upon his election as Guam's first non-voting delegate to the United States Congress and declaring the election of Guam's representative in Congress as one of the milestones in Guam's attainment of local self-government.

"Be it resolved by the Legislature of the Territory of Guam:

"Whereas, the territory of Guam was ceded to the United States as a result of the Treaty of Paris of December 10, 1898, which ended the Spanish-American War; and

"Whereas, the island of Guam was administered by the United States Navy for almost fifty years, its indigenous people having the status of nationals of the United States; and

"Whereas, the Organic Act of Guam enacted by the United States Congress in 1950 established civil government on Guam and bestowed American citizenship upon its inhabitants, the Congress of the United States thus granting the people of Guam a substantial measure of self-government; and

"Whereas, another milestone in the territory's constitutional development was achieved in 1968, with the passage by the United States Congress of the Elected Governorship Bill for Guam, which resulted in the election of Guam's first elected Governor and Lt. Governor in November of 1970; and

"Whereas, H.R. 3237 enacted by the 92nd Congress of the United States in 1971 extended representation to the territory of Guam in the United States House of Representatives; and

"Whereas, Honorable Antonio B. Won Pat was elected in November of 1972 to hold the prestigious office of Guam's first non-voting delegate to the House of Representatives; and

"Whereas, the members of this Legislature recognize that the cornerstone of our democratic system of government is the concept of self-government in which the people determine their own form of government; and

"Whereas, it is the consensus of this Legislature that the people of Guam desire closer ties with their fellow citizens in the American Mainland and that, having gained a voice in the halls of the United States Congress, Guam has made substantial and undeniable progress toward the attainment of this goal; and

"Whereas, the people of Guam who now enjoy this measure of self-determination and self-government consider any requirements for periodic reports to foreign powers or the United Nations relative to their political, economic, and social status as an intrusion and infringement on their dignity and rights as a self-governing people; now therefore be it

"Resolved, that the Eleventh Guam Legislature on behalf of the people of Guam does hereby commend the Honorable Antonio B. Won Pat upon his election in November of 1972 as Guam's first elected Non-Voting Delegate to the United States Congress; and be it further

"Resolved, that the Eleventh Guam Legislature on behalf of the people of Guam does hereby declare any requirement for making periodic reports to any foreign power or to the United Nations on its political, economic and social status to be an infringement on Guam's present level of self-rule and demeaning to the people of Guam and does hereby assert that any such requirement should therefore be terminated forthwith; and be it further

"Resolved, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies of the same be thereafter transmitted to the Honorable Antonio B. Won Pat, to the Secretary of the Interior, to the Secretary of State, to the Speaker of the House of Representatives, to the President of the Senate, to the Chairman, House Committee on Interior and Insular Affairs, to the Chairman, Senate Committee on Interior and Insular Affairs and to the Governor of Guam.

"Duly and regularly adopted on the 17th day of November, 1972."

A concurrent resolution of the Legislature of the State of Oklahoma; ordered to lie on the table:

"ENROLLED HOUSE CONCURRENT RESOLUTION NO. 1003

"A concurrent resolution relating to the life and achievements of the Honorable Harry S. Truman, thirty-third President of the United States, relating his many significant contributions to America and to the world as a stateman, scholar and public servant; commending his life as an example to be followed by all who aspire to contribute to the well-being of mankind; and directing distribution

"Whereas, on December 26, 1972, the Supreme Ruler of the Universe did call forth his loyal and dedicated servant Harry S. Truman, statesman, scholar, dedicated public official, and Thirty-third President of these United States; and

"Whereas, it is fitting that Oklahoma, the Nation and the world pause in recognition of the life and many accomplishments of "Mr. Citizen," to the end that his achievements might be fittingly memoralized and serve as an example for all who aspire to contribute to the well-being of mankind; and

"Whereas, President Harry S. Truman was born in Lamar, Missouri, on May 8, 1384, and grew to young manhood working on his family's farm, from which he entered military service in World War I; and

"Whereas, Mr. Truman received his initial military training in his sister state of Oklahoma, at the Fort Sill Field Artillery School in 1917, becoming a First Lieutenant and seeing action in the Vosges. Meuse-Argonne and St. Mihiel campaigns, being honorably discharged with the rank of major in 1919; and

"Whereas, Mr. Truman maintained his active connection with the military, holding the rank of Colonel in the Army Reserve throughout his public career; and

"Whereas, Harry S. Truman first entered upon public service as a County Judge in Jackson County, Missouri, eventually being chosen Presiding Judge of that Court, and later attaining election to the United States Senate in 1934 and 1940; and

"Whereas, Senator Truman was chosen as the Vice Presidential candidate of the Democratic Party in 1944 and was elected to serve with President Franklin Delano Roosevelt in that year; and

"Whereas, barely one year later, on April 12, 1945, following the untimely demise of President Roosevelt, Vice President Truman succeeded to the Presidency, where it became his immediate and burdensome responsibility to steer the American ship of state as well as the free world through a period marked by the disruption of a World War, and the beginning of the 'Cold War'; and

"Whereas, President Truman, by his forthright stands in defense of Greece and Turkey, by the promulgation of the Truman Doctrine, by his early and fervent support of the Marshall Plan for the rebuilding of Europe, and by his support of the North Atlantic Treaty Organization, did demonstrate to all the strength and resoluteness of the free world in the face of Communist aggression; and

"Whereas, winning the 1948 Presidential election in the face of overwhelming odds and despite the predictions of all polisters, he proceeded to direct and guide the greatest bipartisan program for the rebuilding of a war-torn world that this or any other nation has ever witnessed; and

"Whereas, his contributions included the formation of the Economic Recovery Administration, the naming of General Dwight D. Eisenhower as Supreme Allied Commander in Europe, the creation of the Office of Defense Mobilization, the dispatching of United States aid to Korea under the auspices of the United Nations which he had helped formalize, and the direction of the 'Berlin Airlift' in 1948; and

"Whereas, on the domestic front, President Truman established a higher minimum wage, increased social security benefits for all Americans, promoted more federal aid to insure adequate housing standards and more decent housing units for all our citizens, instituted controls over materials and prices until inflationary tendencies caused by the war were banished, and drafted the first version of national health insurance coverage for the United States;

"Whereas, although he retired to Independence, Missouri, to write his memoirs in 1952, the policies and programs he set in motion continue to bear his distinctive stamp in American foreign policy as well as internal social and economic programs fully two decades after his Presidency; and

"Whereas, in spite of all his accomplishments, he insisted throughout his public career that he was merely a 'common man,' and hoped only to be judged as one who, when the responsibility was passed to him, would accept it and do the best he could, for in his own words, 'The buck stops here'; and

"Whereas, it is clear to the rest of the world the President Harry S. Truman was indeed an uncommon man, as any man would have to be to lead a great nation through what his own *Memoirs* called the *Year of Decisions*, and the *Years of Trial and Hope;* and

"Whereas, with the passing of Harry S. Truman, each of us has lost not only a great leader and an inspiring public servant, but a great friend and a true human being, and every man is himself diminished by the loss.

"Now, therefore, be it resolved by the House of Representatives of the 1st session of the 34th Oklahoma Legislature, the Senate concurring therein:

"Section 1. That the life and achievements of President Harry S. Truman be and hereby are memorialized as an example for all who aspire to contribute to the well-being of mankind.

"Section 2. That this Resolution be spread in full upon the pages of the House and Senate Journals of the 1st Session of the 34th Oklahoma Legislature.

"Section 3. That duly authenticated copies of this Resolution, following consideration and enrollment, be prepared for and sent to Mrs. Harry S. Truman; Mrs. Margaret Truman Daniel; President Richard M. Nixon; Honorable Carl Albert, Speaker of the U.S. House of Representatives; Honorable Spiro T. Agnew, Vice President of the United States and President of the U.S. Senate; and to the Harry S. Truman Library in Independence, Missouri.

"Adopted by the House of Representatives the 9th day of January, 1973.

"Adopted by the Senate the 10th day of January, 1973."

REPORT OF A COMMITTEE

The following report of a committee was submitted:

By Mr. SPARKMAN, from the Committee on Banking, Housing and Urban Affairs:

S. 421. An original bill to provide that appointments to the office of Director of the Cost of Living Council shall be subject to confirmation by the Senate (Rept. No. 93–1).

Mr. SPARKMAN. Mr. President, from the Committee on Banking, Housing and Urban Affairs, I report favorably the bill (S. 421) to amend the Economic Stabilization Act of 1970 to provide that appointments to the office of Director of the Cost of Living Council shall be subject to confirmation by the Senate, and I submit a report thereon. I ask unanimous consent that the report be printed.

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

EXECUTIVE REPORTS OF COMMITTEES

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

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

William W. Erwin, of Indiana, to be an Assistant Secretary of Agriculture.

By Mr. CURTIS, from the Committee on Agriculture and Forestry:

Clayton Yeutter, of Nebraska, to be an Assistant Secretary of Agriculture.

By Mr. BELLMON, from the Committee on Agriculture and Forestry:

John A. Knebel, of Virginia, to be General Counsel of the Department of Agriculture.

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. TOWER (for himself, Mr. BEALL, Mr. BENNETT, Mr. BENTSEN, Mr. BIBLE, Mr. CHURCH, Mr. DOMENICI, Mr. DOMINICK, Mr. FANNIN, Mr. GOLDWATER, Mr. GRAVEL, Mr. MUSKIE, Mr. STEVENS, Mr. THURMOND, and Mr. PERCY)

S. 414. A bill to provide increased job training opportunities for people with limited English-speaking ability by establishing a coordinated manpower training program, a teacher training program for instructors of bilingual job training, and a capability to increase the development of instructional materials and methods for bilingual job training. Referred to the Committee on Labor and Public Welfare.

By Mr. GOLDWATER:

S. 415. A bill for the relief of Jack and Barbara Collins. Referred to the Committee on the Judiciary.

By Mr. ALLEN (for himself, Mr. BAKER, Mr. BUCKLEY, Mr. CANNON, Mr. HELMS, Mr. SCOTT of Virginia, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, and Mr. TOWER):

S. 416. A bill to further the achievement of equal educational opportunities. Referred to the Committee on Labor and Public Welfare.

By Mr. SCOTT of Pennsylvania:

S. 417. A bill to amend the act of June 28, 1948, to provide for the addition of certain property in Philadelphia, Pa., to Independence National Historical Park. Referred to the Committee on Interior and Insular Affairs.

By Mr. BELLMON:

S. 418. A bill to amend the Consolidated Farm and Rural Development Act of 1972. Referred to the Committee on Agriculture and Forestry.

By Mr. PEARSON:

S. 419. A bill to establish a National Energy Resources Advisory Board. Referred to the Committee on Commerce.

By Mr. SPARKMAN:

S. 420. A bill to designate the University College library, the University of Alabama in Birmingham, Ala., as a depository of Government publications. Referred to the Committee on Rules and Administration.

By Mr. SPARKMAN (from the Committee on Banking, Housing and Urban Affairs):

S. 421. An original bill to provide that appointments to the Cost of Living Council shall be subject to confirmation by the Senate. Ordered to be placed on the calendar.

By Mr. HATFIELD:

S. 422. A bill to authorize the issuance of twenty-five dollar gold pieces bearing the seal or symbol of the American Revolution Bicentennial Commission. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. RIBICOFF (for himself, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCINTYRE, Mr. STEVENS, Mr. HATHAWAY, Mr. NELSON, Mr. CANNON, Mr. MCGOVERN, Mr. HUMPHREY, Mr. STEVENSON, Mr. MCGEE, Mr. ABOUREZK, Mr. MONDALE, Mr. RANDOLPH, Mr. WILLIAMS, Mr. PASTORE, Mr. CHILES, Mr. HART, Mr. PELL, Mr. CRANSTON, Mr. HUGHES, Mr. TALMADGE, and Mr. MUSKIE):

S. 423. A bill to establish a Department of Health. Referred simultaneously to the Committee on Government Operations and the Committee on Labor and Public Welfare by unanimous consent; and when reported by one committee, the bill be referred to the other.

By Mr. JACKSON (for himself, Mr. METCALF, Mr. PASTORE, Mr. BENNETT, Mr. MOSS, Mr. CHURCH, Mr. GURNEY, Mr. INOUYE, Mr. HUMPHREY, Mr. TUNNEY, and Mr. HASKELL):

S. 424. A bill to provide for the management, protection, and development of the national resource lands, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. JACKSON (for himself, Mr. MANSFIELD, Mr. METCALF, Mr. Moss and Mr. BUCKLEY):

S. 425. A bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. ROBERT C. BYRD (for Mr. MAGNUSON) (for himself, Mr. TUNNEY, and Mr. HART):

S. 426. A bill to regulate interstate Commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes. Referred to the Committee on Commerce.

By Mr. KENNEDY (for himself, Mr. RANDOLPH, Mr. WILLIAMS, Mr. JAVITS, Mr. BEALL, Mr. CRANSTON, Mr. HATHAWAY, Mr. MONDALE, Mr. PELL, Mr. SCHWEIKER, and Mr. TAFT):

S. 427. A bill to provide for the extension of the Developmental Disabilities Services and Facilities Construction Act. Referred to the Committee on Labor and Public Welfare.

By Mr. ABOUREZK:

S. 428. A bill for the relief of Ernesto Espino. Referred to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD for Mr. MAGNUSON) (for himself and Mr. KENNEDY):

S. 429. A bill entitled the "Children's Dental Health Act of 1973." Referred to the Committee on Labor and Public Welfare.

By Mr. HARTKE:

S. 430. A bill to amend the Internal Revenue Code of 1954. Referred to the Committee on Finance.

S. 431. A bill to amend titles I, IV, X, XIV, and XVI of the Social Security Act to prevent recipients of assistance under programs established pursuant to such titles from having the amount of such assistance reduced because of increases in the monthly insurance benefits payable to them under title II of such act. Referred to the Committee on Finance.

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

S. 432. A bill for the relief of Quy Thi Thu Pham. Referred to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD (for Mr. MAGNUSON) (for himself, Mr. HART, and Mr. TUNNEY):

S. 433. A bill to assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes. Referred to the Committee on Commerce.

By Mr. HARTKE:

S. 434. A bill entitled "The Foreign Investment and Technolcgy Export Control Act of 1973;" and

S. 435. A bill to promote full employment, restore a diversified production base, to promote orderly world marketing and the long-run growth of foreign trade. Referred to the Committee on Finance.

S. 436. A bill to provide for the coverage under medicare of dental care, eye care, dentures, eyeglasses, and hearing aids. Referred to the Committee on Finance.

By Mr. BELLMON:

S. 437. A bill to amend the Export Administration Act of 1969, as amended. Referred to the Committee on Banking, Housing and Urban Affairs.

By Mr. HARTKE:

S. 438. A bill to amend the Social Security Act to provide coverage for out-of-hospital prescription drugs under medicare. Referred to the Committee on Finance.

S. 439. A bill to amend the U.S. Tariff Code. Referred to the Committee on Finance.

By Mr. JAVITS (for himself, Mr. STENNIS, Mr. EAGLETON, Mr. BENTSEN, Mr. TAFT, Mr. ABOUREZK, Mr. BAKER, Mr. BAYH, Mr. BIBLE, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. ROBERT C. BYRD, Mr. CASE, Mr. CHILES, Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. FONG, Mr. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUDDLESTON, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SCHWEIKER, Mr. SCOTT of Pennsylvania, Mr. STAFFORD, Mr. STEVENS, Mr. STEVENSON, Mr. SYMINGTON, Mr. TALMADGE, Mr. TUNNEY, Mr. WEICKER, Mr. WILLIAMS, and Mr. YOUNG):

S. 440. A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress. Referred to the Committee on Foreign Relations.

By Mr. HARTKE:

S. 441. A bill to amend the Tariff Act of 1930. Referred to the Committee on Finance.

S. 442. A bill to establish a Foreign Trade and Investment Commission, and to amend the adjustment assistance provisions of the Trade Expansion Act of 1962. Referred to the Committee on Finance.

S. 443. A bill to establish a Foreign Trade and Investment Commission, to amend the Antidumping Act of 1921 and to amend the counteravailing duty law. Referred to the Committee on Finance.

By Mr. HARTKE (for himself, Mr. HANSEN, Mr. BAKER, Mr. BEALL, Mr. DOMINICK, Mr. EASTLAND, Mr. FANNIN, Mr. GOLDWATER, Mr. GURNEY, Mr. HRUSKA, Mr. MCCLURE, Mr. PACKWOOD, Mr. SCOTT of Virginia, Mr. SPARKMAN, Mr. THURMOND, and Mr. YOUNG):

S. 444. A bill to amend the Social Security Act to provide for medical, hospital and dental care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities. Referred to the Committee on Finance.

By Mr. CASE:

S. 445. A bill to cut off funds for the implementation of the Azores base agreement with Portugal until that agreement is submitted to the Senate as a treaty. Referred to the Committee on Foreign Relations.

S. 446. A bill to require all agreements with foreign governments for U.S. military bases abroad be submitted to the Senate as treaties. Referred to the Committee on Foreign Relations.

By Mr. HARTKE:

S. 447. A bill to require reporting of certain data bearing on foreign trade and to require the clear labeling of foreign imports. Referred to the Committee on Government Operations.

By Mr. BUCKLEY:

S. 448. A bill to amend title 45, United States Code, in order to provide that a State may act in the case of labor disputes involving a railroad industry primarily engaged in intrastate operations and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. DOMINICK:

S. 449. A bill to amend the Wild and Scenic Rivers Act of 1968 (82 Stat. 906) by designating a portion of the Colorado River, Colo., for study as a potential addition to the National Wild and Scenic Rivers system. Referred to the Committee on Interior and Insular Affairs.

By Mr. HUGHES (for himself, Mr. ABOUREZK, Mr. CLARK, Mr. CRANSTON, Mr. HART, Mr. HATFIELD, Mr. HUDDLESTON, Mr. MANSFIELD, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. PELL, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 450. A bill to require the public disclosure of certain information relating to U.S. military activities in Southeast Asia. Referred to the Committee on Armed Services.

By Mr. HATFIELD (for himself, Mr. MANSFIELD, Mr. MCGOVERN, Mr. YOUNG, Mr. COOK, and Mr. METCALF):

S. 451. A bill to amend title 18, United States Code, to provide for a privilege against disclosure of information and the sources of information obtained by persons in the communications media. Referred to the Committee on the Judiciary.

By Mr. HART (for himself, Mr. GRIFFIN, Mr. MONDALE, Mr. HUMPHREY, Mr. PROXMIRE, Mr. NELSON, Mr. PERCY, Mr. STEVENSON, Mr. SAXBE, Mr. TAFT, Mr. HARTKE, and Mr. BAYH):

S. 452. A bill to designate certain lands in the Isle Royale National Park in Michigan as wilderness, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. MOSS:

S. 453. A bill to establish a National Minerals Processing Institute for research investigation, information, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

S. 454. A bill to establish a corporation for the development of new energy sources, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

S. 455. A bill to amend the Federal Aviation Act of 1958 to provide a definition for inclusive tour charters, and for other purposes. Referred to the Committee on Commerce.

S. 456. A bill to amend the Internal Revenue Code of 1954 to tax cigarettes on the basis of their tar content, and for other purposes. Referred to the Committee on Finance.

By Mr. MOSS (for himself, Mr. MANSFIELD, and Mr. METCALF):

S. 457. A bill to amend the act of June 21, 1949 (81 Stat. 116, 30 U.S.C. 54) enlarging the liability for damages to stock raising and other homesteads by mining activities. Referred to the Committee on Interior and Insular Affairs.

By Mr. JAVITS (for himself, Mr. WILLIAMS, Mr. KENNEDY, Mr. BROOKE, Mr. BURDICK, Mr. CRANSTON, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. MCGEE, Mr. METCALF, Mr. PASTORE, Mr. PERCY, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. STEVENS, Mr. STEVENSON, Mr. TAFT, Mr. TOWER, Mr. TUNNEY, Mr. MOSS, Mr. PELL, Mr. RANDOLPH, and Mr. DOLE):

S. 458. A bill to provide for the humane care, treatment, habilitation and protection of the mentally retarded in residential facilities through the establishment of strick quality operation and control standards and the support of the implementation of such standards by Federal assistance, to establish States plans which requires a survey of need for assistance to residential facilities to en-

able them to be in compliance with such standards, seek to minimize inappropriate admissions to residential facilities and develop strategies which stimulate the development of regional and community programs for the mentally retarded which include the integration of such residential facilities, and for other purposes. Referred to the Committee on Labor and Public Welfare.

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

S. 459. A bill to require the Secretary of Agriculture to carry out a Rural Environmental Assistance Program. Referred to the Committee on Agriculture and Forestry.

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

S. 460. A bill to revise and restate certain functions and duties of the Comptroller General of the United States; to change the name of the General Accounting Office to "Office of the Comptroller General of the United States," and for other purposes. Referred to the Committee on Government Operations.

By Mr. BENTSEN:

S. 461. A bill for the relief of Shirley Ramkissoon.

S. 462. A bill for the relief of J. B. Riddle.

S. 463. A bill for the relief of Swiff-Train Company.

S. 464. A bill for the relief of Guido Bellanca.

S. 465. A bill for the relief of Guillermo Teodore Ardid-Borraz. Referred to the Committee on the Judiciary.

By Mr. MOSS:

S. 466. A bill to designate the High Uintas Wilderness in Ashley and Wasatch National Forests, in the State of Utah. Referred to the Committee on Interior and Insular Affairs.

By Mr. RANDOLPH (for himself, Mr. MONTOYA, Mr. MUSKIE, and Mr. BURDICK):

S. 467. A bill to extend the Public Works and Economic Development Act of 1965, as amended, for 1 year, and for other purposes. Referred to the Committee on Public Works.

By Mr. THURMOND:

S. 468. A bill to provide an income tax credit for certain expenses incurred in furnishing or obtaining a higher education (including postsecondary trade and vocational schools). Referred to the Committee on Finance.

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

S. 469. A bill for the relief of Solomon Simtob. Referred to the Committee on the Judiciary.

By Mr. WILLIAMS (for himself, Mr. BENNETT, and Mr. TOWER):

S. 470. A bill to amend the Securities Exchange Act of 1934 to regulate the transactions of members of national securities exchanges, to amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define certain duties of persons subject to such acts, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

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

S. 471. A bill to encourage State and local governments to reform their real property tax systems so as to decrease the real property tax burden of low and moderate income individuals who have attained age 65. Referred to the Committee on Finance.

By Mr KENNEDY (for himself, Mr. STEVENS, Mr. BIBLE, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. MAGNUSON, Mr. MOSS, Mr. MUSKIE, and Mr. WILLIAMS):

S. 472. A bill to amend title 13, United States Code, to establish within the Bureau of the Census a Voter Registration Administration to carry out a program of financial assistance to encourage and assist the States and local governments in registering voters. Referred to the Committee on Post Office and Civil Service.

By Mr. McGEE (for himself, Mr. MANSFIELD, Mr. SCOTT of Pennsylvania, Mr. BELLMON, Mr. BENNETT, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. FONG, Mr. HATHAWAY, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. McGOVERN, Mr. METCALF, Mr. MOSS, Mr. MUSKIE, Mr. TAFT, and Mr. PELL):

S.J. Res. 21. A joint resolution to create an Atlantic Union delegation. Referred to the Committee on Foreign Relations.

By Mr. MOSS:

S.J. Res. 22. A joint resolution to authorize the President of the United States to proclaim the full week before Christmas each year as "National Postal Workers Week." Referred to the Committee on the Judiciary.

By Mr. KENNEDY (for himself, Mr. STEVENSON, Mr. RIBICOFF, Mr. McINTYRE, Mr. PELL, Mr. JAVITS, Mr. HATHAWAY, Mr. AIKEN, Mr. BROOKE, Mr. MUSKIE, Mr. WILLIAMS, Mr. CASE, Mr. STAFFORD, Mr. COTTON, Mr. WEICKER, Mr. SYMINGTON, Mr. McGOVERN, Mr. CLARK, Mr. BURDICK, Mr. MONDALE, Mr. NELSON, Mr. BAYH, Mr. PROXMIRE, Mr. ABOUREZK, Mr. PASTORE, Mr. HUMPHREY, Mr. HUGHES, Mr. HART, Mr. MOSS, and Mr. PERCY):

S.J. Res. 23. A joint resolution to authorize the emergency importation of oil into the United States. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND RESOLUTIONS

By Mr. TOWER (for himself, Mr. BEALL, Mr. BENNETT, Mr. BENTSEN, Mr. BIBLE, Mr. CHURCH, Mr. DOMENICI, Mr. DOMINICK, Mr. FANNIN, Mr. GOLDWATER, Mr. GRAVEL, Mr. MUSKIE, Mr. STEVENS, Mr. THURMOND, and Mr. PERCY):

S. 414. A bill to provide increased job training opportunities for people with limited English-speaking ability by establishing a coordinated manpower training program, a teacher training program for instructors of bilingual job training, and a capability to increase the development of instructional materials and methods for bilingual job training. Referred to the Committee on Labor and Public Welfare.

Mr. TOWER. Mr. President, on behalf of myself and Mr. DOMINICK, Mr. BEALL, Mr. BENNETT, Mr. BENTSEN, Mr. BIBLE, Mr. CHURCH, Mr. DOMENICI, Mr. GOLDWATER, Mr. GRAVEL, Mr. MUSKIE, Mr. STEVENS, Mr. THURMOND, Mr. FANNIN, and Mr. PERCY, I am today introducing the Bilingual Job Training Act of 1973.

I introduced this legislation late in the 92d Congress, and since that time it has received encouraging support from all over the country.

The need for this kind of legislation becomes more apparent every day. The Federal Government has, for more than a decade, provided a variety of manpower training services extending from the Manpower Development and Training Act programs for institutional and on-the-job training components to the programs within the basic tenets of the community action philosophy of the anti-poverty program, and to the more private industry-government cooperative venture envisioned in the JOBS program. Some of these programs have produced satisfactory results in terms of providing basic skills to the disadvantaged so that they may be able to become more productive members of our society. Still other programs have for the most part failed to achieve their basic objectives.

In reviewing these programs it has become quite clear that their success in terms of meeting the needs of individuals with limited English-speaking ability has been restricted to a large degree by their basic inability to confront the language problem and the secondary effects that such a problem has on the manpower programs, ther participants, and potential participants.

In counseling, job referral, institutional training, and many other basic ingredients of existing manpower programs, individuals with limited English ability are penalized simply because their primary language is not the primary language of the majority of our citizens. Whether this penalty is imposed in a conscious or unconscious manner does nothing to dispute the fact that a major vacuum exists in our overall strategy in meeting the needs of a large proportion of our economically disadvantaged citizens.

A recent evaluation report on the effects of existing manpower training services on Mexican-Americans in the southwestern part of the United States documents the inability of these programs to adequately meet the needs of the Spanish-speaking American. The report concludes that the failure of many of these programs and their supporting institutions to take into consideration the particular needs of the Spanish-speaking American also has the effect of delimiting his confidence in government programs and naturally, therefore, his individual desires in seeking out this type of government assistance.

A number of vocational training institutions in my State of Texas have successfully launched programs with the goal of providing skills for persons with Spanish-speaking backgrounds. However, almost without exception, the programs are limited to a preliminary basic education program, perhaps followed by a prevocational program.

These programs are aimed at developing enough English language ability to allow the participants to be trained in conventional English language courses, or at best such English language courses supplemented in Spanish. Thus, the participant who is interested in job training is forced into a holding pattern before he is even able to enroll in the training he may desperately need and desire. Naturally, the psychological and economic factors involved result in a high dropout rate.

Job training opportunities are specifically provided in Texas and throughout the southwestern part of the United States by Operation SER, Jobs for Progress, Inc. Through contracts primarily with the Department of Labor, Operation SER has been the most successful program of its kind in providing job opportunities in attractive fields for individuals with Spanish-speaking backgrounds.

I have visited with the leaders of SER

from the cities in Texas where they have ongoing programs and have been very much impressed with their sincerity and ability to obtain results. In fact, the report commissioned by the Department of Labor that I had earlier alluded to in these remarks noted that of all the existing manpower programs, SER has had the most positive impact with the Spanish-speaking communities across the country.

The legislation I am today proposing is intended to draw upon these public and private efforts in order to achieve full employment opportunity for the bilingual American. It is intended to fill a void in our national manpower and employment policies. There is an urgent need for the Congress and the executive branch to give due recognition to this problem and authorize an appropriate remedy to fill this void.

While this legislation would provide assistance for all groups in our society whose primary language is not English, my major concern as a U.S. Senator representing Texas is with our Spanish-speaking population. It should be noted that the average median income of Spanish-speaking families is nearly $3,000 below the average for the rest of our population. In addition, one cannot disregard the fact that the unemployment rate among Spanish-speaking Americans is above the national average, or the fact that approximately one out of every five adults of Spanish origin has completed less than 5 years of schooling compared with only one out of 25 for all others.

The Bilingual Job Training Act of 1973 will provide a measure of the necessary assistance needed to close the statistical gap. Further, it will allow the participant to utilize his cultural experience rather than sacrifice it. Americans of Spanish-speaking origin are singularly uninterested in welfare programs or any other program that fails to take into consideration his or her cultural background and heritage. Programs aimed at meeting the specific problems of employment opportunity would be welcomed by the Spanish-speaking community as a sign that the Federal Government is truly interested in removing the vestiges of second-class citizenry.

The Bilingual Job Training Act is constructed in a manner so that all types of individuals, institutions and organizations may participate. It is flexible in its approach because this type of training is still in its developmental stage with no one set approach preferable to any other. More importantly, the program in my mind should be flexible in order to pay special attention to the individual trainee rather than to a particular method.

BILINGUAL TRAINING GRANTS

Part B of the legislation provides for assistance to States, local educational institutions, and certain private nonprofit organizations to enable them to conduct bilingual training programs primarily in a language other than English. This is the major section of the bill and would receive 65 percent of the funds appropriated.

TEACHER TRAINING

Part C would provide grants to State and educational institutions so that they could provide training for teachers and related educational personnel to enable them to participate in bilingual job training programs. It would also provide inservice and development programs to improve the qualifications of those persons participating in the programs. In my research on this overall problem, I found that this type of training was greatly needed and was not being given enough priority by the Federal Government to have a significant impact.

INSTRUCTIONAL MATERIAL

Part D is intended to provide for the development of instructional materials such as textbooks and audiovisual materials. I believe that this type of research and development is very important if this manpower training effort is to keep up with our complex and changing technology and occupational needs.

Mr. President, this legislation represents an investment in the future of many of our citizens who, through no fault of their own, suffer from a lack of real employment opportunities. At the same time, an effective manpower program directed at the bilingual American will have the effect of reducing welfare dependency and increasing our economic output.

Mr. President, it is my hope that Congress will give this legislation its very careful consideration in the early part of the 93d Congress. I ask unanimous consent that the full text of this measure be printed at this point in the RECORD.

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

S. 414

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

TITLE I—BILINGUAL JOB TRAINING

PART A—GENERAL PROVISIONS

SHORT TITLE

SEC. 101. This act may be cited as the Bilingual Job Training Act of 1973.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

SEC. 102. The Congress hereby finds that one of the most acute problems in the United States is that which involves millions of citizens, both children and adults, whose efforts to profit from job training is severely restricted by their limited English-speaking ability because they come from environments where the dominant language is other than English; that these persons are therefore unable to help to fill the critical need for more and better trained personnel in many vital occupational categories; and that such persons are unable to make their maximum contribution to the Nation's economy and must, in fact, suffer the hardships of unemployment or underemployment. The Congress further finds that there is a critical shortage of instructors possessing both the job knowledge and skills and the dual language capabilities required for adequate instruction of such language-handicapped persons, and a corresponding shortage of instructional materials and of instructional methods and techniques suitable for such instruction.

It is therefore the purpose of this Act to provide for the conduct of job training programs in the combined languages of English and of the person's dominant language and, further, to provide for the development of skilled instructors and of instructional materials and techniques for bilingual job training.

AUTHORIZATION OF APPROPRIATIONS

SEC. 103. There are hereby authorized to be appropriated $20,000,000 for the fiscal year ending June 30, 1974, $40,000,000 for the fiscal year ending June 30, 1975, and $60,000,000 for the fiscal year ending June 30, 1976, for the purpose of making grants in accordance with the provisions of parts B, C, and D of this Act: *Provided*, That 65 per centum shall be for grants pursuant to part B of this Act, 25 per centum shall be for grants pursuant to part C of this Act, and 10 per centum shall be for grants pursuant to part D of this Act.

DEFINITIONS

SEC. 104. For the purpose of this Act—

(a) The term "job training" means training or retraining which is given in schools or classes (including field or laboratory work and remedial or related academic and technical instruction incident thereto) under public supervision and control or under contract with a State board or local education agency or is conducted as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but excluding any program to prepare individuals for employment in occupations which the Commission of Education determines, and specifies by regulation, to be generally considered professional which requires a baccalaureate or higher degree; such term includes guidance and counseling (either individually or through group instruction) in connection with such training or for the purpose of facilitating occupational choices; instruction related to the occupation or occupations to which the students are in training or instruction necessary for students to benefit from such training; the training of persons engaged as, or preparing to become teachers in a job training program; travel of students and job training personnel while engaged in a training program; and the acquisition, maintenance, and repair of instructional supplies, aids, and equipment, but such term does not include the construction, acquisition, or initial equipment of buildings or the acquisition or rental of land.

(b) The term "Secretary" means the Secretary of Labor.

(c) The term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(d) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of an educational program.

(e) The term "high school" does not include any grade beyond grade 12.

(f) The term "post-secondary educational institution" means an institution legally authorized to provide postsecondary education within a State for persons sixteen years of age or older who have graduated from or left elementary or secondary school.

(g) The term "private vocational training institution" means a business or trade school, or technical institute or other technical or vocational school, in any State, which (1) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution, and (2) is legally authorized to

provide, and provides within that State, a program of training designed to fit individuals for useful employment in recognized occupations.

GENERAL RESPONSIBILITIES OF THE SECRETARY OF LABOR

SEC. 105. The Secretary shall, in addition to the specific responsibilities imposed by this Act, (1) develop and disseminate accurate information on the status of bilingual job training in all parts of the Nation, (2) evaluate the impact of such bilingual job training on the shortages of well-trained personnel, the unemployment or underemployment of persons of limited English-speaking ability and the ability of such persons to contribute fully to the Nation's economy, and (3) report his findings annually to the Congress.

PART B—STATE BILINGUAL JOB TRAINING PROGRAMS

AUTHORIZATION OF GRANTS

SEC. 106. From the sums made available for grants under this part pursuant to section 103, the Secretary is authorized to make grants to States, local educational agencies, post-secondary educational institutions, private vocational training institutions, or to such nonprofit organizations especially created to serve a group whose language as commonly used is other than English, in supplying training and employment in recognized occupations and new and emerging occupations, to assist them in conducting bilingual job training programs for persons of all ages in all communities of the States which are designed to insure that job training programs are available to all individuals who desire and need such bilingual job training.

USE OF FEDERAL FUNDS

SEC. 107. Grants under this part may be used, in accordance with applications approved under section 108, for the following purposes:

(a) Bilingual job training programs for high school students which are designed to prepare them for entry into a work situation upon graduation from high school.

(b) Bilingual job training programs for persons who have completed or left elementary or secondary school and who are available for training by a post-secondary educational institution.

(c) Bilingual job training programs for persons who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment.

(d) Training allowances for participants in bilingual job training programs subject to the same conditions and limitations as those set forth in section 2583 of the Manpower Development and Training Act of 1962 as amended by the Manpower Act of 1965.

APPLICATIONS FOR GRANTS AND CONDITIONS FOR APPROVAL

SEC. 108. (a) A grant under this part may be made to State Boards of Vocational Education upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such applications shall—

(1) provide that the activities and services for which assistance under this title is sought will be administered by or under the supervision of the State Board for Vocational Education;

(2) set forth a program for carrying out the purposes set forth in section 107 and provide for such methods of administration as are necessary for the proper and efficient operation of the program

(3) set forth a program of such size, scope, and design as will make a substantial step toward achieving the purpose of this Act;

(4) set forth policies and procedures which assure an equitable distribution of funds for the purposes stated in section 107 and among the various potential applicant agencies within the State;

(5) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title; and

(6) provide for making an annual report and such other reports in such form, and containing such information, as the Secretary may reasonably require to carry out his functions under this Act and to determine the extent to which funds provided under this part have been effective in improving the training opportunities of persons in the area served, and for keeping records and for according such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) A grant under this part may be made directly to a local educational agency or agencies, or to post-secondary educational institutions, or to private vocational training institutions, or to such nonprofit organizations especially created to serve a group whose language as commonly used is other than English, in supplying training and employment in recognized occupations and new and emerging occupations, upon application to the Secretary at such time or times as the Secretary deems necessary, but only if and when the agency of this State which serves the State Board of Vocational Education approves such application in advance. Such application shall conform to the same requirements as those listed under subsection (a) above.

(c) Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulations, be subject to approval in the same manner as original applications.

PAYMENTS

SEC. 109. (a) The Secretary shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant under the application for the purposes set forth therein.

(b) Payments under this part may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayment or underpayment.

PART C—TEACHER TRAINING PROGRAM

AUTHORIZATION OF GRANTS

SEC. 110. From the sums made available for grants under this part pursuant to section 103, the Secretary is authorized to make grants to States or directly to educational institutions, either public or private, to assist them in conducting training for instructors of bilingual job training programs.

USE OF FEDERAL FUNDS

SEC. 111. Grants under this part may be used for the following purposes:

(a) Providing preservice training designed to prepare persons to participate in bilingual job training programs as instructors, aides, or other ancillary education personnel such as counselors, and inservice and development programs designed to enable such persons to continue to improve their qualifications while participating in such programs.

(b) Fellowships or traineeships for persons engaged in such preservice or inservice training.

APPLICATIONS FOR GRANTS AND CONDITIONS FOR APPROVAL

SEC. 112. (a) A grant under this part may be made upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such application shall contain—

(1) a description of the nature, duration, purpose, and plan of the proposed training program;

(2) full information as to the capabilities of the applicant institution to teach the job-skills content of the programs for which persons are being trained, including a listing of the job training courses offered by that institution together with the indication of approval by State agencies and/or accreditation by regional or national accrediting associations;

(3) the qualifications of the principal staff who will be responsible for the training including, specifically, information to show that such principal staff is qualified to teach in the language other than English to be used in the bilingual job training program for which the persons are being trained;

(4) a statement of the minimum qualifications of persons to be enrolled in the training program, a description of the processes to be used in the selection of persons to be trained, and the amounts of fellowships or traineeships to be granted to the persons enrolled;

(5) a justification of the amount of grant funds requested; and

(6) such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this title.

(b) The Secretary may approve applications for grants under this part only if—

(1) the applications meet the requirements set forth in subsection (a);

(2) the Secretary determines that bilingual job training programs requiring the services of the persons to be trained have been or will be actually conducted in the State or States being served and that enrollees will be selected from or for such programs; and

(3) the Secretary determines that the applicant institution actually has on-going job training programs in the field for which persons are being trained; and that the applicant institution can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual job training program for which the persons are being trained.

(c) Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulations, be subject to approval in the same manner as original applications.

PAYMENTS

SEC. 113. (a) The Secretary shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant under the applications for the purposes set forth therein.

(b) Payments under this part may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayment or underpayment.

PART D—DEVELOPMENT OF INSTRUCTIONAL MATERIALS, METHODS, AND TECHNIQUES

AUTHORIZATION OF GRANTS

SEC. 114. From the sums made available for grants under this part pursuant to section 103, the Secretary is authorized to make grants to States, to educational institutions, either public or private, or to other organizations, either profit or nonprofit, to assist them in developing instructional material, methods, or techniques for bilingual job training.

USE OF FEDERAL FUNDS

SEC. 115. Grants under this part may be used for—

(a) research in bilingual job training;

(b) training programs designed to familiarize State agencies and training institutions with research findings and successful pilot and demonstration projects in bilingual job training;

(c) experimental, developmental, and pilot programs and projects designed to test the effectiveness of research findings; and

(d) demonstration and dissemination projects.

APPLICATIONS FOR GRANTS AND CONDITIONS FOR APPROVAL

SEC. 116. (a) A grant under this part may be made upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such applications shall contain—

(1) a description of the nature, duration, purpose, and plan of the project;

(2) the qualifications of the principal staff who will be responsible for the project;

(3) a justification of the amount of grant funds requested; and

(4) such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant.

(b) The Secretary may approve applications for grants under this part only if—

(1) the application meets the requirements set forth in subsection (a);

(2) the program set forth in the application is consistent with criteria established by the Secretary (where feasible, in cooperation with the State educational agency) for the purpose of achieving equitable distribution of assistance under this part within each State.

(c) Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulations, be subject to approval in the same manner as original applications.

PAYMENTS

SEC. 117. (a) The Secretary shall pay to each applicant which has an application approved under this part an amount equal to the total sums expended by the applicant under the application for the purposes set forth therein.

(b) Payments under this part may be made in installments and in advance or by way of reimbursement, with necessary adjustments on account of overpayment or underpayment.

Mr. DOMINICK. Mr. President, I am delighted to join my distinguished colleague, Senator JOHN TOWER, today in introducing the Bilingual Job Training Act of 1973. I associate myself completely with the introductory remarks made by Senator TOWER. I am especially pleased at the broad support we have received from our colleagues on both sides of the aisle.

If we are to achieve equal employment opportunities, it is essential that our national manpower policy recognize the unique need of citizens whose primary language is not English. For example, Spanish-speaking Americans cannot be assisted by Government training programs unless those programs recognize the cultural background of these people. Existing manpower training programs do not recognize the circumstances affecting groups of American people in this particular situation.

There are some exceptions to the foregoing statement. In September 1972 issue of Manpower, the official monthly journal of the Manpower Administration, U.S. Department of Labor, Gloria Stevenson in an article entitled "The Job Corps Learns Spanish," reports that:

During the past two years, the Job Corps has geared four of its national centers to serve the Spanish-speaking, set up three new centers in or near barrios, established a program to serve Puerto Rican youth from New York City, upped its proportion of Spanish-speaking staff members, developed guidelines for bilingual instruction and cultural awareness programs, and strengthened its Spanish language recruitment activities.

During the past two years, in short, the Job Corps has become far more responsive to the unique needs of disadvantaged Spanish-speaking youth.

Spanish-speaking young people—and this term is used here to describe youth descended from Spanish-speaking cultures; they may actually speak English, Spanish, or both—have been enrolling in the Job Corps since it was established in 1965. For several reasons, however, this residential program offering basic education and vocational training to disadvantaged 16 to 21 year-old youth seldom met the needs of Hispanos.

The Job Corps, like most of the Nation's programs and institutions, was developed by and for English-speaking Americans. No program was established for Spanish-speaking youth, and the only centers specifically designated to serve them were five in Puerto Rico, three of which were closed in 1969. Most other centers were ill-prepared for Spanish-speaking participants, and some actually turned away those who could speak no English.

In the same publication appears an excellent article entitled "A Chance To Be," by Patricia Marshall, which describes the outstanding program of Operation SER. If other programs were as effective as Operation SER I fully believe that the numbers on our welfare rolls would be drastically reduced.

I ask unanimous consent that his article be printed in full at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DOMINICK. Mr. President, the bill we introduce today will offer a flexible approach to the problems of bilingual training by allowing participants to make use of their cultural experiences rather than sacrificing them. It would provide for assistance to State and local educational institutions for training of teachers and related educational personnel to participate in bilingual job training programs and provide for development of instructional materials to insure that such training will keep pace with complex and changing technology and occupational needs. The estimated cost for the first year is $20 million.

I shall urge my colleagues on the Labor and Public Welfare Committee to hold hearings on this bill at the earliest opportunity.

EXHIBIT 1

A CHANCE TO BE—OPERATION SER OFFERS ARRAY OF SERVICES IN 29 COMMUNITIES

(By Patricia Marshall)

Mexican Americans living on the East side of San Jose, Calif., call their part of town "Sal Si Puedes." It means: "Get out if you can."

What they are trying to escape is their own poverty. The East side, which is largely Mexican American, has the worst housing, the lowest incomes, and the highest unemployment in San Jose. Large numbers of its residents have severe educational deficiencies and inadequate urban work skills. Problems in English language usage are widespread. This is especially true of the many families who worked as farm laborers until orchards and farmlands in Santa Clara County were taken over by industry, suburban sprawls of single-family homes, and agribusinesses run with labor-saving machinery.

Illiteracy—both in Spanish and English, as they say on the East side—is common.

Operation SER also is in San Jose's eastern sector. This is the local office of a national manpower effort directed by and for Spanish-speaking Americans. SER's name has an encouraging sound to people in the barrios—the Mexican American neighborhoods. In Spanish, "ser" is the verb "to be." Used as an acronym, the letters are spelled out as Service, Employment, and Redevelopment.

More importantly, SER offices in 29 cities offer disadvantaged Spanish Americans a host of vital services which open up pathways to education and employment. All SER offices have a bilingual staff, and all build programs around certain basic services: Counseling, vocational training, and employment assistance. Typically, local SER's also offer basic adult education and preparation for a high school equivalency certificate. A great many now are adopting English as a second language training.

But there is no national formula for SER. Instead, it shapes programs around local needs and resources.

TIES WITH PUBLIC AGENCIES

In each State, SER has an informal working agreement with the State employment service. It also works closely with other public and private agencies. These relationships serve the dual purpose of connecting Spanish-speaking communities to help that is locally available and sensitizing old-line agencies to the special needs of the Spanish-speaking.

In San Jose, SER considers its education classes one of the most important aids it has to offer people on the East side. A firm base of education is vital, this SER has found, for the hard-core unemployed to survive in the job mainstream. Without it, such persons cannot function either in vocational training or at work. Today's jobs in San Jose are sophisticated. They are in electronics, auto plants, and other durable goods manufacturing. The local economy no longer rests largely on food processing plants and similar agriculture-based industries on which many low-skilled and poorly educated Chicanos used to depend for a living.

People going into SER training in San Jose first go through orientation and counseling sessions. Then they are placed in either educational classes or vocational training.

San Jose's SER offers education on a number of levels: First, English as a second language training for persons with poor English skills; next, adult education, which is basic English and mathematics supplemented by a number of electives—driver education, naturalization information for permanent U.S. residents who are not citizens, consumer education, and information on medical clinics and other community resources. At the third educational level are studies leading to a high school equivalency certificate.

When people complete their educational classes, they are ready for the next critical step. SER helps them get a job, enter vocational training (a functional level of ninth grade is required for such training), or go to college.

A downtown office has a staff of job development and placement specialists. They keep tabs on employer needs throughout the city and county and line up job openings for all trainees. A number of large employers, such as Westinghouse and Travelers Insurance, regularly seek job applicants from SER.

The staff also serves monthly about 150 "walk-ins"—most of them Mexican American, and all of them people who simply want help finding a job. In addition, staff recruiters seek out people in the barrios who need work and match them with job openings on file at SER.

Those who opt for SER vocational training (including people who do not first require

educational classwork) choose from one of three skills—welding, bilingual secretary, and accounting clerk. All are skills in demand in the San Jose area.

SER continues counseling and other supportive help during training, then finds jobs for its graduates. Once at work these persons are followed up by SER counselors at regular intervals for a year. During these followups, counselors help to iron out problems that might hurt a worker's chances of staying on the job.

For persons who choose college, SER provides information on schools and sources of financial aid. Most of the college-bound enter California State University in San Jose or go to one of the many other nearby schools in the California State system.

San Jose's SER is the only one in the Nation operating a live-in center for school dropouts. Funded with a $170,000 Model Cities grant, the center houses young men from 16 to 20 years old who have little to show for the years they were in school. Many who dropped out in the 11th grade, for example, function at only a fifth grade level.

They are poor. About 40 percent come to the center needing shoes and other ordinary articles of clothing. They come from troubled backgrounds. Nearly two-thirds are referred to the center by the California Youth Authority.

The center offers a stable environment where youth can build a constructive self-image, learn to rein in antisocial behavior, and work toward a high school equivalency certificate in individually programed studies. Half of each resident's monthly $60 stipend is put in the bank to give him financial security when he leaves the center for college or a job.

Such services from SER help San Jose Eastsiders overcome personal obstacles standing between them and good jobs. But not all employment problems of Mexican Americans are born in the barrio. There are many institutional blocks to jobs, and SER works hard to remove them. The San Jose SER helped spur the adoption of a Santa Clara plan for equal employment opportunity in federally assisted construction in the area and also helped get an affirmative action plan for minority employment from the city.

OFFICES OPEN IN TWENTY-NINE CITIES

SER takes much of the credit for opening up county employment as well. It was instrumental in getting county adoption of an equal employment policy which aims to correct the disparity between the number of Chicanos on the county payroll (6½ percent before the policy went into effect) and the number of Chicanos in the county (about 20 percent). To underwrite its plan, the county hired a former SER staff member to be director of minority recruitment.

The 29 cities with local SER offices—10 of them opened last spring and still are in early stages of programing—are located in the West and Southwest and as far East as Detroit. After shaping program plans to fit their community situations, local SER's are funded by Jobs for Progress, Inc., the national office of SER located in Los Angeles. This is a nonprofit corporation set up by two large Mexican American organizations—the League of United Latin American Citizens (LULAC) and the American G.I. Forum.

Jobs for Progress contracts with the U.S. Department of Labor's Manpower Administration for most SER funds. In the 1971–72 fiscal year, funding for SER regular programs from this source totaled $9.5 million. In addition, the Manpower Administration funded Project Detour, a pretrial intervention program for first-time offenders operated by the San Antonio SER, at $500,000 for 18 months. The regional Manpower Administration also funded a SER-operated New Careers program in Los Angeles County for $500,000.

Small amounts of program funds come from other Federal sources, including a $100,000 grant last fiscal year from the U.S. Office of Economic Opportunity for a SER office in Washington, D.C. to serve as a liaison between SER and all Federal agencies.

As a national manpower effort for Spanish-speaking Americans, SER has come a long way since 1965, when it was born as a job placement service for people in the Houston and Corpus Christi barrios. At that time, Department of Defense officials noticed that not many Chicanos were applying for jobs in plants with Government contracts. They suggested to LULAC that it let the Mexican American community know that jobs were available and that Government contractors had a legal obligation to provide equal employment opportunity.

The first SER offices, like those of today, were located in the heart of the barrios. Manned by bilingual volunteers, these offices soon were swamped with job applicants.

One notable result of this small-scale effort was a decision by the Manpower Administration and the Office of Economic Opportunity to fund SER jointly as an experimental and demonstration project. Still small in scale—funding was about $400,000 to cover 2 years—SER began serving a larger geographic area. Moreover, SER was no longer just a volunteer placement effort. It was now in the manpower business—a program planner, administrator, recruiter, and counselor for low-income people.

SER's success as an experimental project led to its growth and present status as a major effort to draw the Spanish-speaking into the Nation's employment mainstream. It has become, as one Chicano described SER in its early days, "a dynamic engine of change" for Spanish-speaking people.

By now SER has piled up a great amount of expertise in manpower. It has blended its intimate knowledge of the language, culture, and outlook of people in low-income Spanish-speaking communities with manpower program technology and has discovered what works in the barricade what doesn't work—and why.

Its role is not an easy one. As a bridge between two cultures—the Angelo and the Spanish—SER is in the middle. But local SER directors, like Jose Martinez in San Jose, have learned how to function effectively from this position.

STAFF UNDERSTANDS

"SER is one of the few places in the city that consistently has maintained good relations both with poor people and the establishment," Martinez says, "It is hard to keep the respect of both camps. But our staff understands how the system operates. They know its deficiencies and the pressures on it. And, of course, we understand our own people very well.

"We let both segments of the community know our position—and what we can deliver. In working with employers, for example, we present our ideas and point of view. When we find that an employer has set up requirements that are not job-related, we try to change these. But often an employer's requirements are valid, and we don't try to do away with those requirements. We ask him to help us bring our people to this.

"We have never gone to businessmen asking that they do us a favor by hiring some Mexican Americans. And we have never tried to force an employer to open his doors to some Mexican Americans who were not qualified.

"We want our people to be as qualified for their jobs as the people working next to them. If they aren't, an employer who hires only a few as a token, their fellow workers will resent them, and we will have accomplished nothing."

In Corpus Christi, SER director John Bilano has a similar point of view. "Basically, we're here to serve the employers," Bilano says. "Without him, there are no jobs. We don't find jobs for individuals—we can't sell every individual to every employer. We find jobs for people. There's a difference."

Last year the Corpus Christi SER placed more than a thousand people directly on jobs without training. This year it is putting more emphasis on training before placement, but still is trying to place 100 nontrainees a month.

Skill training at this SER also is closely tied to employer needs. For example, before starting a course in air-conditioning and refrigeration mechanics—a skill much in demand in this part of the country—SER staff went to a local refrigeration firm and enlisted its help in developing a job-related curriculum. Del Mar Technical Institute, using this course of studies, does the mechanics' training under contract with SER.

A similar arrangement was worked out for SER welder training. SER graduate welders find a ready market for their skills at IHC Holland-Le Tourneau Marine Corporation at Port Ingleside. The firm, which is building giant platforms for offshore oil drilling, needs 260 welders for each rig. However, its welders must pass American Bureau of Shipping tests. SER training focuses on test requirements—and on the jobs at Holland-Le Tourneau, where regular welders get up to $4.00 an hour plus fringe benefits. To facilitate SER training, the company contributed much of the needed equipment.

John Bilano likes to put such accomplishments in perspective. "Remember, $1.25 an hour is still the minimum wage in Texas for many occupations. A job paying $1.60 an hour is a good job here. A job paying as much as $2.50 an hour is a breakthrough for many Mexican Americans—they haven't had jobs like that before. At $3.30 and above, you're out of the world in our part of town."

BARRIO LOCATION HELPS

In SER's part of town, houses are old and small. Many badly need repair. There are no sidewalks or gutters along the streets; instead, there are reed-filled, open ditches with standing water and mosquitoes. Still, along with the evident poverty there are signs that people are trying to create a better environment. There are canaries singing from cages hung on little front porches and there is hibiscus putting forth blossoms.

Bilano knows that it takes more than a barrio location to make a manpower program relevant to barrio people. But the location helps.

Sensitivity helps, too. "Most of SER's staff was raised in some barrio," Bilano says. "We understand the adults who come to SER for help. Many of them feel they have nowhere else to go. SER is their last hope. But if we demean them in any way, or if there is any hostility shown toward them, they will leave no matter how badly they need us."

Nor do young people face any communication gaps at SER. As for those who are school dropouts, Bilano himself was one. He got his high school equivalency certificate in the Navy, and under the G.I. bill went to Texas A. and I. University where he got a master's degree in administration. He has been a local school teacher and director of Federal programs for the school district.

Bilano says the Mexican American school dropout rate runs about 80 percent in the area. "You might think that those who graduate could get decent jobs," he said. "They are the elite. But they also are unskilled. Very few took any vocational courses in high school because they were too busy just getting through the required subjects. Then, when they graduate, they have to compete for jobs with dropouts. And when you compete with dropouts, wages drop."

In addition to its courses in welding and air-conditioning and refrigeration mechanics, the Corpus Christi SER offers a course in

auto mechanics and on-the-job training in 13 occupations at the U.S. Army Aeronautical Depot Maintenance Center (ARADMAC). Its offerings at ARADMAC include training as printer, upholsterer, machinist, spray painter, and aircraft sheetmetal worker, with SER paying trainee stipends. Since ARADMAC is committed to train but not to hire when the training ends, SER is responsible for placing graduates in jobs or in regular apprenticeship programs in the city.

SER plans to add legal secretary training and placement to its list of offerings. Other opportunities at SER stem from its use by large U.S. firms seeking to hire Spanish-speaking employees. This year SER recruited workers for Dupont, United Airlines, the U.S. Food and Drug Administration, the Federal Bureau of Investigation, and the National Opinion Research Center. It also recruited students for Humble Oil and Refining Company's summer jobs program and for Harvard University.

The Corpus Christi SER recently discontinued its adult basic education classes, which were run by the school system, because they did not produce results to satisfy Bilano.

"The schools did not worry about the finished product and blamed the students when the students failed to learn," Bilano said. "Our view is that the students are there because they have a problem. It's up to the teacher to teach them. If the students fail to learn, it's not they who must go—it's the teacher. The teaching must be on a performance basis." Bilano says that in the future he hopes to offer adult basic education under SER administration. Until then, persons needing adult education are referred to a learning center run by the Corpus Christi Manpower Area Planning Council.

Moving North with SER to Tucson, one finds that basic education, high school equivalency instruction, and English as second language classes have an important place in trainees' preparation for work. Of the 118 persons now enrolled in the Tucson SER programs, 70 percent have a functional level from fifth to seventh grade. This does not reflect a failure on the trainees' part to go higher in school, however, because 70 percent attended nine or more grades.

"DIFFERENT WAY OF THINKING"

Nearly a third of the trainees had little English capability when they came to SER. To meet their needs, SER runs two English as a second language (ESL) classes under the direction of Mrs. Graciela Revilla, who has taught the subject for 26 years in this country and in Cuba and has developed teaching materials with a manpower and job-oriented slant.

"We teach not only language, but culture and a different way of thinking and functioning," Mrs. Revilla says. "But these are proud people, and we emphasize that we are not asking them to renounce their identity. Instead, they are adding to their knowledge."

The SER center is located in the heart of Tucson's poverty. Around it are little frame and adobe homes, some of them with goats and chickens in their front yards. Downtown Tucson is visible on the horizon, but it seems very far away. In this location, SER finds that many people come in who are looking for work rather than training. Nearly 20 persons are placed directly in jobs each month.

Three Arizona State Employment Service specialists are stationed at SER to do placements for trainees and walk-ins. They use a microfilm job reader to get daily job listings from Phoenix of all openings listed with the employment service anywhere in the State. These specialists also check the eligibility of persons entering SER training classes.

SER training—other than ESL—is provided by contractors. The Saguaro Trade School has some of the trainees in its 24-week air-conditioning and refrigeration mechanics' course. The Tucson Skill Center has others in its 12-week nurse aides' training and in a 14-week course to train ward clerks.

According to SER director Ernest Urias, Hughes Aircraft plans to start on-the-job training of electronics assemblers in October and wants SER to do its employee recruitment and pre-job orientation. Entry wages will be $3.02 an hour, with 20 persons to be hired each month for the next 14 months.

A second SER in Arizona is located in Glendale, on the fringes of Phoenix. It serves people in a suburban barrio and also reaches out to people living in little towns like El Mirage and Surprise.

The Glendale SER offers many routes to well-paid, steady jobs. It contracts with the Maricopa County Skills Center and with private technical schools to train workers in meatcutting, refrigeration mechanics, medical secretarial services, computer technology, cosmetology, and other skills. In the construction trades, it has a pre-apprenticeship program at the skills center which is linked with apprenticeship opportunities available through the Phoenix Urban League.

Other opportunities are available through SER referral to business firms which prefer to do their own training. Mountain Bell Telephone Company, for example, has hired 25 Mexican Americans through SER and trained them as construction linemen or operators.

Like other SER's across the country, the one in Glendale emphasizes training and placements in occupations that are "nontraditional" in the Spanish-speaking community. Glendale director Jess Moreno points out that SER is making breakthroughs for Chicanos in occupations where workers are in demand. Rapid growth in the Phoenix area is creating a great need for construction workers, he reports, and there are a number of new clinics and hospitals going up which will need medical secretaries. Farmwork and cannery work—traditional Chicano employment—are not enjoying such a boom.

At the national SER office in Los Angeles, Jobs for Progress, Inc., measures the progress local SER's make—or fail to make—by comparing data on their performance with national and local goals.

PLACEMENT MEASURED

"Among the many items we measure is trainee placement," reports Robert Cuellar, the national SER's deputy director for planning, evaluation, and management information systems. "At no time do we allow placements to get below 75 percent of completions at any SER office. If placements go below that, we have an identifiable problem and we act on it.

"We measure retention rates of trainees after they have been on the job 1 month, 3 months, and again after 6 months. Our rate is now over 80 percent for persons who have worked 6 months.

"We measure the dropout rate of trainees. Nationally, this is now about 11 percent.

"We also know that on the average, former SER trainees gained more than $3,000 in wages on their first job over their earnings when they came to SER."

In addition to evaluating and monitoring local projects, Jobs for Progress provides training and technical assistance to these SER's and does program-oriented research.

It is a businesslike system with a social goal. Richardo Zazueta, national SER director, says it also represents the first time the Spanish-speaking have learned to use "the system" in their on behalf.

"Today the Spanish-speaking must achieve equity in the society if they are to survive," Zazueta says.

"We remember the truth of the Spanish saying: 'Camarón que se duerme se lo lleva la corriente.'"

It means: The shrimp that sleeps get carried away with the current.

By Mr. GOLDWATER:

S. 415. A bill for the relief of Jack and Barbara Collins. Referred to the Committee on the Judiciary.

HOW A TAXPAYER CAN LOSE HIS REFUND BECAUSE OF TAXES HE NEVER OWED

Mr. GOLDWATER. Mr. President, I am introducing a private relief bill today to overturn a shocking injustice which has been caused to an Arizona family because of a technicality in the tax laws. I am offering this measure not only to provide some small degree of vindication to the family which has suffered so much, but to highlight the tragic situations that can occur under the existing tax structure in the hope that the Congress might be alerted to enacting a general amendment to the tax laws which will prevent this from ever occurring again.

Mr. President, the situation which I am going to describe is one where a successful businessman literally lost his business, was evicted from his home, and was compelled to leave the country in the course of a tax claim which the Internal Revenue Service brought against him. It is a case where the taxpayer was eventually found to owe the Government nothing at all, but actually to have overpaid his taxes by several thousands of dollars. However, after suffering great humiliation and the total disruption of his own and his family's normal life, the taxpayer was told that he cannot receive a refund because of a technicality in the law.

What happened, as I have been told it by third parties, is this. In early 1966, the Internal Revenue Service began an audit of the personal income tax return of Mr. and Mrs. Jack Collins of Phoenix, Ariz. During the latter part of 1965, before a formal tax deficiency was asserted, word had already began to get around the community that Government agents were making inquiries regarding the taxpayer's alleged tax debts. Then, when the Government did initiate its claims, it also filed liens of record against various properties owned by the taxpayer. As a result of this combination of events, the financial condition of Mr. Collins became extremely distressed.

Indeed, Mr. President, I am informed by an accountant, who was aware of Mr. Collins' situation at the time, that the filing of these liens totally cut off all of Mr. Collins' borrowing ability, making it impossible for him to earn a living. In fact, Mr. Collins' credit picture suffered so enormously that his accountant of that date, the person who was in possession of records which were necessary to the defense of Mr. Collins' tax case, refused to release any of these records or to cooperate in his defense until arrangements would be made to pay the amounts previously due him and to compensate him for the additional work that would be required to defend the case. This inability to obtain credit even from his personal accountant at a time when he was daily suffering the loss of family properties and during which he was evicted from his home by foreclosure, left Mr. Collins without any opportunity to earn a living in some way that he knew how and compelled him to leave the

United States and start over again in another country in order to support his wife and family.

Incredibly enough, once Mr. Collins, through great personal initiative and labors, had rebuilt himself to the point where he could return to the United States and appeal the huge tax claims against him, the Internal Revenue Service discovered, and I quote from their own report:

Based on additional information submitted during an Appellate hearing in 1971, it was redetermined that the taxpayer's unpaid liability is zero.

Imagine, Mr. President, that after having assessed claims against Mr. Collins covering 4 tax years, 1960, 1961, 1962, and 1963, totaling $144,832 plus interest, the Government suddenly discovered that it had been wrong all the time and Mr. Collins never owned the Government one single penny. In fact, again quoting from the Government report:

It was redetermined that there was an overassessment for 1962 and 1963 of $1,279.44 and $3,056.35, respectively.

In other words, the Government actually owed Mr. Collins more than $4,300 for the tax years involved.

But what do you suppose happened? The Government said it could not pay the refund because there is no authority in the law permitting a refund after the expiration of such a long number of years.

Mr. President, that this kind of treatment of an individual citizen can occur is simply incredible to me and should not be permitted to happen under our form of Government. Here a man and his family have lost their entire business and holdings, lost their home, and literally were forced to leave the country after a false tax assessment and then, when it turns out the assessment was wrong, they are told they are not entitled under our laws to receive a refund of the excess taxes that they have paid to their Government. The refund was initially filed on time, and the only reason it was not paid back is the fact the Government held it up for several years pending the outcome of the erroneous overassessment. Nevertheless, even though the delay resulted from the Government's own action, there is no way this family can be refunded the money it truly overpaid.

Mr. President, since it takes a special law to change this, I am introducing one today. In doing so, I am hopeful the full Congress will recognize the need for changing the tax laws by a general amendment so that no other citizen will ever find himself in this unfortunate condition.

By Mr. ALLEN (for himself, Mr. BAKER, Mr. BUCKLEY, Mr. CANNON, Mr. HELMS, Mr. SCOTT of Virginia, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, and Mr. TOWER):

S. 416. A bill to further the achievement of equal educational opportunities. Referred to the Committee on Labor and Public Welfare.

EDUCATIONAL OPPORTUNITIES ACT OF 1973

Mr. ALLEN. Mr. President, I introduce for appropriate reference, on behalf of myself, Mr. BAKER, Mr. BUCKLEY, Mr. CANNON, Mr. HELMS, Mr. SCOTT of Virginia, Mr. SPARKMAN, Mr. STENNIS, Mr. TALMADGE, Mr. THURMOND, and Mr. TOWER, a bill designed to further the achievement of equal educational opportunities. If this language sounds familiar, it is. It is the title of the Equal Educational Opportunities Act of 1972 (H.R. 13915, 92d Congress), killed by a Senate filibuster during the waning days of the last Congress. The bill is identical to H.R. 13915 as it passed the House. The reasons for reintroducing it are closely related to the reasons why it was killed by filibuster.

Briefly, the main thrust of the bill is to authorize Federal Courts and the Attorney General of the United States to eliminate de facto segregated schools, and secondarily to provide statutory criteria for the formulation of remedies applicable to both de jure and de facto segregation cases. The bill creates a statutory cause of action for denial of equal educational opportunities where de facto segregation exists as distinguished from causes of action based on the constitutional ground of denial of equal protection of the laws where school segregation has been declared de jure.

I might add parenthetically, the distinction has been made so often here on the floor of the Senate that so-called de jure segregation is of the type said to exist in Alabama and other Southern States, whereas de facto segregation is the segregation said to exist in areas outside the South that come about by circuitous patterns of residence, and that has been protected and fostered and defended and encouraged by rulings of the Supreme Court and by actions of the Congress.

If I may judge from past actions, the liberal Members of Congress may never agree to let Federal judges desegregate schools in their own States. So, prospects of passage of this bill are perhaps indeed slim.

Mr. President, it is a fact that beginning with the enactment of the Civil Rights Act of 1964 and up until the present time, a liberal faction in Congress has time and again combined successfully to defeat congressional efforts to permit Federal Courts and the Attorney General of the United States to desegregate de facto segregated public schools located in areas outside of the South.

They have said, in effect, that Federal courts and the Executive may do what they please to eliminate segregation in southern schools, but that the Attorney General of the United States and U.S. district court judges must keep their hands out of the de facto segregated school mess in their own school systems.

The validity of this charge can be demonstrated. It will be recalled that in title IV of the Civil Rights Act of 1964 the term "desegregation" is defined as follows:

Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome *racial imbalance*. (Emphasis supplied.)

The term "racial imbalance" has a commonsense meaning and connotation—everyone knows what it means. Nevertheless, certain members of the liberal faction sought to create a "legislative history" by which "racial balance" was transformed into a cryptic term meaning "de facto segregation."

Even the U.S. Supreme Court went along with this charade.

I say even the U.S. Supreme Court, but certainly the U.S. Supreme Court went along with this charade.

In construing title VI of the 1964 Civil Rights Act, which prohibits transportation of students to achieve a racial balance, Chief Justice Burger stated:

The legislative history of Title VI indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called *'de facto* segregation,' where imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities.

In other words, protecting de facto segregation and saying Congress was not trying to reach that in this enactment.

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 17–18, (1971). Emphasis added.)

Mr. President, in subsequent congressional efforts to limit the use of Federal funds to compel massive busing and cross busing of students in all sections of the Nation, the probusing liberal faction in Congress insisted on qualifying the limitations by inserting the term "to achieve racial balance" or the term, "except as required by the Constitution." The purpose of such qualification was to exclude interference by Federal Courts and the Federal Executive in de facto segregated school problems. They torpedoed the Whitten amendments by this device and in the last session of Congress they succeeded in torpedoing many of the provisions of the Emergency School Aid Act Public Law 92–318) which were intended to provide a measure of relief from Court orders which required massive busing and cross busing in all regions of the Nation. Of course, the same probusing faction killed the Equal Educational Opportunities Act in the last session of Congress by filibustering it to death.

Some of the very Senators who have decried the use of filibustering by other Senators were in the forefront of the filibuster which resulted in killing the Equal Educational Opportunities Act in the last session.

But the duplicity does not end with the liberal faction making it clear that the 14th amendment does not protect against de facto segregation. It goes further—de facto school segregation is cloaked with congressional approval. In every instance where the term "racial balance" has been inserted in desegregation laws, it is used as a term meaning de facto segregation. The legal effect is to make it clear that Congress does not approve of Federal intervention to eliminate de facto segregation.

Mr. President, I want to digress for a moment to explore the implications of

legislation by which Congress provides that the U.S. Constitution is not offended by de facto segregated schools. The Supreme Court has acknowledged that Congress has made it clear that civil rights legislation must not be construed by the Court so as to create a cause of action for elimination of de facto segregation in schools on either statutory or constitutional grounds. In this and in similar cases, Congress has exercised its constitutional powers under the 14th amendment to say what rights are excluded from protection of the amendment and what rights Congress will enforce by statute.

Yet, we are constantly treated to a barrage of arguments that Congress may only expand the protections of the 14th amendment and may not, in any way, restrict the rights to be protected. The paradox is that the liberal faction which promotes this position turns right around and supports legislation to exclude geographically dictated segregation from protection of the amendment.

Mr. President, the lame justification offered by liberals in opposition to Federal intervention in de facto school segregation in their own States is that it is the cause of segregation that really matters and not the effects of segregated education. Thus, we hear from one side of the mouths of liberal Januses loud denunciations of any suggestion that Congress has the power to legislate even the outer limits to discretionary equity power of Federal judges to require excessive busing and cross busing in the formulation of desegregation decrees in the South. Out of the other side of these same mouths, we hear a firm insistence that Congress has not only the power, but also a duty and a responsibility to prevent Federal courts and the Federal executive from messing around with de facto segregated schools in their own States.

The argument is reduced to a simple, cynical proposition: Grossly segregated schools in States outside the South are constitutional and lawful, as recognized by laws of Congress, but any deviation from precise racial ratios in schools in the South is unlawful. Consequently, it is argued, Federal judges should have unlimited discretionary power to eliminate segregated schools in the South by any means they may choose and without limitation on the exercise of their discretion.

Mr. President, this bill, if enacted, will demolish the dual standards which have been erected on the artificial de facto-de jure distinction by creating a statutory cause of action in de facto segregation situations. The term "segregation" is defined in language intended to reach de facto school segregation. The definition reads:

> The term "segregation" means the operation of a school system in which students *are wholly or substantially separated* among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin. (Emphasis supplied.)

This definition encompasses racially imbalanced schools without regard to the causes of the imbalance. In addition, "deliberate segregation" is made unlawful and a ground for instituting action in U.S. district courts for the denial of equal educational opportunities as distinguished from constitutional causes of action applicable in the South. The meaning of the term "deliberate segregation" is made clear when it is recalled that Federal courts have frequently held that segregated schools which are condoned by school officials when it is within their power to eliminate them, constitute "deliberate segregation." Thus de facto segregation is "deliberate segregation" and de facto segregation is the prime target of the bill. The bill vests jurisdiction in U.S. district courts and it authorizes the Attorney General of the United States to intervene in or to institute on his own initiative actions for denial of equal education opportunities resulting from de facto segregation. It must be obvious that these provisions are not designed for use in the South where U.S. district courts and the Attorney General are already empowered to desegregate schools.

Mr. President, the liberal position on this issue was expressed quite clearly by the distinguished Senator from New York (Mr. JAVITS). In the course of the successful effort to kill the bill by filibuster, the following explanation was offered in debate on October 6, 1972. As I read excerpts from the CONGRESSIONAL RECORD, I trust that Senators will bear in mind that the term "racial balance" means de facto segregation according to rulings of the Supreme Court.

To keep the distinction in mind, I will add the term "de facto segregation" in instances where the terms "racial imbalance" and "racial balance" are used.

I quote now from the argument of the distinguished Senator from New York relating to where they have segregation in the public schools. I will read from his argument:

> Mr. President, finally, I should like to deal with the question of the so-called racial balance.... (*de facto* segregation)
>
> Racial imbalance (*de facto* segregation) is nothing which the United States can redress. Indeed, the two very conservative Judges on the Supreme Court, reading literally the words of the Higher Education Act which deal with racial balance, (*de facto* segregation) have refused to implement that section of the Higher Education Act which froze the proceedings in desegregation cases on the ground that they do not involve racial balance (*de facto* segregation) at all. Racial balance (*de facto* segregation) is an educational concept which relates only to those in charge of education—to wit, State authorities—and has no relation whatever to the power of the Federal Government.
>
> I have said that many times on this floor, and I repeat it, that there is nothing we can or should do about racial balance (*de facto* segregation). That is up to the States in charge of education....

Nothing is being done by States outside the South to do away with de facto segregation:

> I repeat, racial balance (*de facto* segregation) is irrelevant. If one wishes to express it in legal terms, that is *de facto* segregation which the courts, and the law, and the decrees entered in the U.S. Courts do not reach and cannot reach....
>
> No one asks for that, and no U.S. court can or should do it.

Mr. President, I think that expresses the liberal position very well indeed; but for the sake of emphasis, let me read this paragraph again:

> I repeat, racial balance (*de facto* segregation) is irrelevant. If one wishes to express it in legal terms, that is *de facto* segregation which the courts, and the law, and the decrees entered in the U.S. Courts do not reach and cannot reach....

We have come to a sad state of affairs if only de jure desegregation, the southern-type segregation, is the only type segregation that this Congress is empowered to reach.

Mr. President, one result of the liberal success in refusing to accept restrictions on Federal judges in formulating desegregation decrees, and in preventing Federal interference in de facto school segregation cases, is that a considerable number of U.S. district court judges, in many jurisdictions outside of the South have simply resorted to the expedient of making findings that de facto school segregation is in fact de jure segregation. The consequence of a finding of de jure segregation is that Federal court judges are then free to use every desegregation device, including massive busing and cross busing—not to eliminate de facto segregation—but to eliminate de jure segregation in schools. Thus, the perverse obstinacy on the part of liberals has brought down upon the hapless parents and schoolchildren in States outside of the South the same excessive busing and cross busing decrees heretofore imposed only in the South. In short, by the magic of a judicial finding, de facto segregation may easily be transformed into de jure segregation, and the gates are immediately thrown open to abuses of judicial discretion in formulating desegregation decrees.

Mr. President, I believe that the reign of duplicity, double talk, double standards, and hypocrisy is fast coming to an end. I have reintroduced the Equal Educational Opportunities Act for the primary purpose of affording the liberal faction another opportunity to accept responsibility for providing equal educational opportunities for black children in their segregated schools, without regard to the cause of segregation.

At the very least, I trust that the liberals will understand that the very modest limitations in this bill placed on the equity power of Federal judges to order massive busing and cross busing are applicable in their own States. Thus, they will have the opportunity to protect their own constituents from excessive busing and cross busing and at the same time provide equal educational opportunities by statute for all children now locked into their de facto segregated schools.

Mr. President, I have not the faintest idea that the Senate Committee on Labor and Public Welfare will favorably report this or any other bill which authorizes intervention by Federal courts and the Federal executive in segregated schools in States outside the South. For this reason, I plan to introduce a Uni-

form Criteria Act which is aimed specifically at the problem of limiting abuses of power by Federal judges in the formulation of desegregation decrees.

By Mr. SCOTT of Pennsylvania:

S. 417. A bill to amend the act of June 28, 1948, to provide for the addition of certain property in Philadelphia, Pa., to Independence National Historical Park. Referred to the Committee on Interior and Insular Affairs.

Mr. SCOTT of Pennsylvania. Mr. President, the Congress has a long and very creditable record in support of the Independence National Historical Park in Philadelphia. Since its creation in 1948, many subsequent acts of Congress have been approved, all directed toward acquiring additional historical property for the enhancement of the Independence Hall area.

Today I am introducing legislation providing for the addition of certain property in the vicinity of Second and Walnut Streets, behind Philadelphia's famed Bookbinder's Restaurant. The bill authorizes the Secretary of the Interior to acquire approximately 1½ acres of land for use as a public parking facility for visitors to Independence National Historical Park. It is anticipated that no more than $1.2 million will be necessary to acquire this additional property.

In 1971, nearly 2½ million people came to Independence Park, some 80 percent of whom arrived by private car. The area in which the parking facility will be located is currently the site of one of the Nation's most ambitious and careful redevelopment efforts. Society Hill, as it is known, borders on the Delaware River waterfront and extends several blocks west toward the center of town. When the rebuilding effort is complete, the area will be populated by thousands of visitors and residents patronizing the many planned restaurants, shops, museums, hotels, and places of entertainment.

My own involvement in this redevelopment effort is one of which I am most proud. Several years ago, I assisted the city of Philadelphia in obtaining funds for an underground commuter tunnel which will bring visitors within several blocks of the Independence Park area.

President Nixon recently approved my bill allowing a planned waterfront community along the Delaware River at Penn's Landing, in addition to my bill authorizing an increased expenditure for the acquisition of several buildings in the historical area. I am also pleased to have assisted the city in securing a Federal commitment to pay its full share for a "cover" over Interstate 95, along the Delaware River, beneath Penn's Landing. All of these efforts will enhance the beauty and the value of one of Philadelphia's most attractive assets—its waterfront community.

The bill I am introducing today has two purposes. First, it authorizes the Government's acquisition of the property for a parking facility for over 500 motor vehicles, with the facility itself being maintained by the city of Philadelphia. Second, the authorization for the acquisition of this new property is increased by $1.15 million.

Mr. President, with our Nation's bicentennial observance coming upon us, I expect Philadelphia to be the focal point for a great deal of activity. As such, the Independence Park area must be able to meet the challenge. The enactment of this bill will be a step toward that goal. I urge its speedy consideration.

By Mr. BELLMON:

S. 418. A bill to amend the Consolidated Farm and Rural Development Act of 1972. Referred to the Committee on Agriculture and Forestry.

REINSTATEMENT OF EMERGENCY LOAN PROGRAM, FARMERS HOME ADMINISTRATION

Mr. BELLMON. Mr. President, I am introducing today a bill to reinstate the emergency loan program of the Farmers Home Administration of the U.S. Department of Agriculture.

Last summer the Congress passed legislation to broaden our emergency assistance programs in response to the destruction and damage caused by Hurricane Agnes and the Rapid City, S. Dak., flood. The major change was to increase the amount of the disaster loan which could be forgiven to $5,000 with an interest rate on the remaining principal of 1 percent per annum.

When this matter was considered by the Senate Committee on Agriculture and Forestry, there was some uneasiness on the part of the committee members over the size of the forgiveness amount. The committee felt that farmers who suffered natural disasters were entitled to the same treatment from their Government as other citizens received. The committee provided basically that under the emergency loan programs carried out by the Farmers Home Administration the amount of the loan cancellation authorized should not exceed 50 percent of the original principal on loans of less than $10,000 and not more than $5,000 on loans of $10,000 or more. Further, the committee felt that interest rates charged should be those established by the Secretary of the Treasury under the Disaster Relief Act of 1970.

However, the committee also felt very strongly that the cancellation amount and interest rate charges on loans made by FHA under its authority should not be any different than the same benefits applicable to disaster loans made by the Small Business Administration. Therefore, the committee approved provisions requiring that disaster loan borrowers from FHA should receive the same cancellation and interest rate benefits as provided to borrowers under SBA's disaster loan program.

In late December of last year, the administration announced the termination of the FHA emergency loan program primarily, as the press release stated, "to counteract inflationary pressures and to adhere to $250 billion Federal budget." One important element in this decision appears to be that it was felt the cost of the FHA emergency loan program was increasing at too rapid a rate because of the congressional changes in the program.

Mr. President, I have long been a supporter of the emergency loan concept. It is my firm belief, as both a legislator and a farmer, that there is a vital need for such emergency assistance. However, I was disappointed in the action of Congress last year in providing for cancellation of up to $5,000 of every emergency loan. It has been my experience that such Government giveaways are an open invitation to abuse. There is a real need for assistance of a more substantial and responsible nature. Because of the large financial resources required to operate profitably a modern-day family farm many farmers are, so to speak, "at the end of their credit rope." When hit by a natural disaster, they must have a source of emergency credit. My bill would provide just that, by means of fully repayable loans and not handouts.

The bill I am introducing would reinstate the emergency loan program of the Farmers Home Administration by, basically, eliminating the cancellation feature of the present law and setting the interest rate at 5 percent per annum. This would make real estate type loans repayable over a 40-year period and operating loans over a 12-year period. The precipitous manner in which the present emergency loan program as terminated demands that Congress take immediate action. I would hope that if this bill is enacted into law the administration would promptly reimplement the emergency loan program of FHA.

Mr. President, I send the bill to the desk for referral to the appropriate committee, and ask unanimous consent that the text of the bill be printed in full in the CONGRESSIONAL RECORD.

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

S. 418

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

SECTION 1. Sec. 324 (7 U.S.C. 1964) is hereby amended by deleting the figure "3" in the first sentence and substituting therefor the figure "5".

SEC. 2. Sec. 328 (7 U.S.C. ——) is hereby amended by striking subparagraph (a)(1) and renumbering the following subparagraphs.

SEC. 3. Sec 328 (b) and (c) are hereby repealed and the subsequent subsections (d) and (e) are relettered (b) and (c).

By Mr. PEARSON:

S. 419. A bill to establish a National Energy Resources Advisory Board. Referred to the Committee on Commerce.

WE MUST HAVE A NATIONAL ENERGY POLICY

Mr. PEARSON. Mr. President, in the past few weeks, people in my State of Kansas and throughout the Midwest learned through firsthand experience what an energy shortage means in terms of personal hardship and discomfort. Thirty schools were closed in Wichita, large industries were forced to reduce heat in their plants due to inadequate supplies of fuel, and other services were affected. For these people, the energy crisis has begun. If we do not act and act soon to establish a national energy policy, these past weeks may only be the beginning of a long and serious energy crisis for the entire Nation.

Experts on energy production and use now forecast a deepening energy problem through the remainder of this decade and into the next. Yet, in a nation which uses one-third of the entire world's energy production, we do not have an agency at the Federal level of Government responsible for formulating recommendations for a comprehensive national energy policy. The purpose of the legislation I introduce today is to provide the Government of the United States with that badly needed agency.

Let us examine the basic elements of this national energy problem in our high technology, high consumption society. According to one survey—

Domestic energy demand forecasts show a 3.5 percent compounded annual growth rate between 1970 and the year 2000. This represents a threefold increase in energy consumption.

While our demand for energy will continue to increase, our supply of energy-producing resources is fixed. We are utilizing fossil fuels faster than we can discover new sources. We know that at some point in time, we will run out of the fuels we now utilize to meet our energy needs. The crucial question which now remains unanswered is, When will this occur?

We do know that some fuel resources will be exhausted before others. We know that, for economic and ecological reasons, some are more desirable than others. And finally, we know that some will be available in the United States for the foreseeable future while others will not.

The final basic factor to bear in mind is that both our utilization of power and our production of it constitute a complex interrelated system. One element of the system affects all others—we have, in effect, a power production and consumption matrix. In other words, if one energy resource becomes scarce or more expensive, demand for other resources will increase and their depletion will be hastened. Therefore, we must consider the effects on all energy resources as we establish policies for the utilization of the one.

I believe that an examination of our supply of energy resources will indicate why we need to establish a national energy policy. Let us see what is available and what is likely to be available in the future and measure that against our ever-increasing demand for energy. It must be noted at the outset that projects both on the supply and demand sides are not precise. The uncertainties of future mineral discoveries and technological innovations added to the complexities of the energy matrix itself leave room for wide variations in projections of future need and energy supply.

Coal is the main fuel supply for electric power and it continues to be our most abundant domestic fossil fuel with an estimated 390 billion tons available to us under current technical and economic conditions. But surveys indicate that the supply of coal will be exhausted in three to four centuries at current rates of consumption. Of course, consumption may well increase leading to a more rapid depletion of this vital fuel.

We must also recognize two other problems with our heavy utilization of coal as an energy producing fuel. First, as we exhaust the coal seams which are relatively easy to reach and begin to mine more inaccessible deposits, the costs of this fuel may increase. This will have adverse economic impact on our economy for both manufacturers with a large electric power component in their processes and for individual consumers of electricity.

Second, with our increasing recognition of the dangers of air and water pollution, coal may become a less desirable energy resource from an ecological point of view. It is relatively unclean in terms of sulfur emissions. In addition, mining techniques available to us now yield a great deal of water pollution not to mention the ugly scars and ecological damage of strip mining.

We find then, that coal, our most abundant fossil fuel, creates some problems. Perhaps additional research and technological innovation will overcome some of the present problems involved in our heavy reliance on coal, but one point is certain. At some time in the not-too-distant future, our reserves of coal will be exhausted, and before that time comes, our less abundant fuels may well have been used up.

Natural gas is a fuel in high demand and in increasingly short supply. Demand for natural gas tripled in the past 20 years largely because it is a clean and efficient fuel. It supplies approximately one-third of the U.S. energy requirements. But one FPC official estimated that the natural gas supply in the United States will be exhausted by the turn of the century.

Already, gas shortages have begun to occur in my own State of Kansas where some new industries can no longer be assured of a supply of gas in the southeastern part of the State while a number of farmers in the Southwest cannot get gas to run their vital irrigation pumps. The tragic irony of this situation is that some of our largest gas deposits are located near Kansas.

There may be technical developments or new gas sources such as the Alaskan North Slope deposits which will yield adequate supplies of gas. Gasification of coal, for example, a process in which coal is converted into gas, offers one means of supplementing our supply of natural gas, but it also represents a dilemma. If we turn coal into gas, we, of course, deplete our coal supplies at a more rapid rate. But at this time their availability is uncertain. It may well not match the rising demand for this most desirable energy producing fuel.

Petroleum is now the world's key energy resource. Our consumption is increasing at a faster rate than can be supplied by domestic production. Consumption is expected to grow at 4 percent per year. In 1900 the United States obtained 89 percent of its energy from coal and 8 percent from oil. But now, about 43 percent of our energy is derived from oil and 20 percent from coal.

Estimating the availability of oil presents extremely complex problems. Some have estimated that American oil fields, including the new Alaskan find, now have about a 30 to 35 year supply remaining at current consumption levels. In addition, we are exploring new fields, especially offshore, and developing our ability to extract oil from oil shale. But these sources are not ready to come on stream.

Recently, we have increased the oil import quotas and the Interior Department approved the construction of an Alaskan pipeline. While oil exploration is underway around the world from the frozen north to the ocean bottoms, we simply do not know how much is available, where it is located, and what problems its extraction and use may involve.

In addition to uncertainty about available supplies, we are hard pressed to predict demand. Consumption patterns may shift or technologies may change. For example, automobiles are by far the largest consumers of petroleum products. It is possible that we may decrease our dependence on individual passenger cars to move people and rely on forms of transportation which require less oil. Or, automakers may develop new power plans which use fuel more efficiently. A combination of both is possible, even likely.

In any case, our demand for oil will be determined by factors of consumption and technology which we cannot predict at present.

The most recently developed energy resource available to us now is the power of the atom. But that too is not available in unlimited quantities. There is a limited supply of uranium-235, the fuel used by most nuclear reactors. Some have estimated that if our present-day nuclear reactors were used to produce future requirements of electricity, we would use up all uranium-235 available to us in 20 to 30 years.

To be sure, the efficiency of nuclear reactors is improving and breeder reactors promise to provide a means of stretching out our limited supply of uranium. But the future of new reactor technology is uncertain. There are serious ecological and safety problems involved with the use of nuclear energy. And as an energy resource, it will primarily be restricted to producing electricity for some time to come.

The remaining energy resource is an old standby, hydroelectric power. In 1970, hydroelectric plants provided about 16 percent of the electricity we used. By the year 2000, with the increased use of nuclear power sources, hydroelectric power will account for only 5 percent with five-sixths of that west of the Mississippi.

Used for centuries, water power is an important element in our energy matrix. We may be able to augment our hydroelectric power supply by utilizing the power of the ocean tides, but there are few adequate sites in the United States for tidal power stations given our present state of technology.

For the present, we have exhausted the list of energy resources available to us. Others such as geothermal energy, solar power, controlled thermonuclear fusion, fuel cells, and magnetohydrodynamics, are on the drawing boards and in early stages of development. But their tech-

nological and environmental futures are still uncertain. It is most difficult to calculate costs, hazards, and development leadtimes with any accuracy at this time.

Other energy sources may be created from the minds of creative scientists, we do not know at this time, but it is apparent that unless we develop new sources of energy or change our energy consumption patterns, we shall, at some time in the future, exhaust our finite energy resources. It is also clear that we need to plan carefully to conserve our remaining fuels and plan for their replacement with a new generation of energy resources.

We need also to examine the political side of this issue. The United States imports large quantities of energy fuels from abroad. It gets oil from Latin America, Africa, and the Middle East. But it is readily apparent that this Nation cannot afford to become dependent on a foreign source for a basic element of its economy. And that is precisely what may happen in the case of fuels if our domestic supplies become exhausted.

It is not necessary to belabor this point. It is obvious at the same time it is vital. Nations have gone to war over energy resources and have lost wars because not enough fuel was available. We cannot allow our Nation to become dependent on foreign fuel.

With the completion of this brief survey of the components of what some have labeled an energy crisis, we must see where we are to understand what we must do.

We return to two basic facts. The energy resources which now supply the power to run our Nation are finite; their supply is limited. New technologies and developments may change this fact, but we cannot depend on it entirely. Our consumption of energy will continue to increase for the foreseeable future and, furthermore, looking to the poor nations just beginning to develop high energy consuming economies, world energy use will probably rise sharply.

Second, our pattern of energy utilization is a complex matrix with each component on the demand-and-supply sides affecting every other component. As we run short of one fuel or develop a new source, the availability and cost of all other sources are affected.

Given these two basic facts, it is readily apparent that if this Nation is to prevent an energy problem from becoming an energy crisis, we need to establish a national energy resources policy. Our current system of allocating scarce fuel resources is not adequate to prevent future dislocations of great magnitude.

At present, 61 uncoordinated Federal agencies, commissions, and committees of Congress oversee our energy resources in one way or the other.

But this question is too important to be left to the chaos of regulation by bodies created to supervise the energy problems of the past.

Mr. President, we must act now. The energy crisis can be foreseen and forestalled if we act rationally and plan our energy utilization with both availability of supplies and composition of demand. Failure to act rationally and plan now will lead to unavoidable problems in the not too distant future.

With these factors in mind, I introduce today a bill entitled the National Energy Resources Advisory Board Act. The Board created by this act would advise the President and the Congress on the best uses of our scarce energy resources. I am convinced that only careful, comprehensive planning on the national level can prevent a full-scale energy crisis in the future.

The National Energy Resources Advisory Board shall make a full, complete, and continuing investigation of the current and prospective fuel and energy resources and requirements of the United States and present the probable future alternative procedures and methods for meeting anticipated requirements consistent with achieving national goals. It shall submit each year a report to the President and the Congress recommending specific legislative action with regard to coordination of effective and reasonable policies to assure reliable and efficient sources of fuel and energy adequate for balanced economy, a clean environment, and the national security. It shall also report on the extent of investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel, including the adequacy of such investments to provide a clean environment.

This National Energy Resources Advisory Board, as proposed in this bill, would have broad authority and powers to conduct its hearings and investigations. It would be composed of nine members appointed by the President by and with the advice and consent of the Senate from among individuals who by virtue of their service, experience, or education are especially qualified to serve on the Board.

This Board, with its broad mandate to study and evaluate our national energy requirements, is, I must emphasize, an advisory board. It cannot, and should not, be an all powerful agency charged with formulating a national energy policy. That power must be exercised by the President and the Congress.

It can, however, be an agency which gathers and evaluates all of the information needed to make recommendations to the President and the Congress about the best ways to utilize our scarce energy resources. At present, we have no such national body. At present, we are heading inexorably toward a national energy crisis with no comprehensive means for determining how it can be prevented.

We are faced with a complex problem which will plague our Nation for generations. If we fail to act now, if we fail to marshal our capacity to plan for efficient energy utilization and to inquire into new ways to produce and utilize energy, we shall fail ourselves and our children and their children. We shall be responsible for creating an energy crisis from an energy problem.

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

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

S. 419

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 National Energy Resources Advisory Board Act.

ESTABLISHMENT OF BOARD

SEC. 2. (a) There is hereby established, as an independent agency in the executive branch, a National Energy Resources Advisory Board (hereinafter referred to as the "Board").

(b) The Board shall be composed of nine members to be appointed by the President by and with the advice and consent of the Senate from among individuals who by virtue of their service, experience, or education are especially qualified to serve on the Board. The members shall select a Chairman and a Vice Chairman from among their membership. The terms of office of each member of the Board shall be six years except that—

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

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

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

(c) Any vacancy in the Board shall not affect its powers and five members of the Board shall constitute a quorum except that the Chairman may prescribe a lesser number to constitute a quorum for the purpose of conducting hearings.

(d) Members should be chosen from persons who are representative of the fields associated and concerned with fuel and energy use and production, including consumers. Not more than five members of the Board shall be members of the same political party.

ADMINISTRATIVE POWERS

SEC. 3. (a) In order to carry out the provisions of this Act, the Board is authorized to—

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

(2) appoint an administrator to act as executive officer of the Board and compensate such administrator at a rate not to exceed that provided for GS–18 in title 5 of the United States Code;

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

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

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

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

(7) accept voluntary and uncompensated service, notwithstanding the provisions of section 3676 of the Revised Statutes, March 3, 1905;

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

(9) take such actions as may be required for the accomplishment of the objectives of the Board; and

(1) make contracts with public or private nonprofit entities to conduct studies related to the purposes of this Act.

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

(c) Each member of a committee appointed pursuant to clause (4) of subsection (a) of this section who is not an officer or employee of the Federal Government shall be compensated at the rate prescribed for GS–18 under section 5332 of title 5, United States Code, for each day he is engaged in the actual performance of his duties (including traveltime) as a member of a committee. All members shall be reimbursed for travel, subsistence, and necessary expenses incurred in the performance of their duties.

(d) (1) The Board or any duly authorized subcommittee or member thereof may, for the purposes of carrying out the provisions of this Act, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Board or such subcommittee or member may deem advisable. Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Board, and may be served by any person designated by the Chairman or such member.

(2) In the case of contumacy or refusal to obey a subpena issued under paragraph (1) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, such court, upon application made by the Attorney General of the United States the request of the Chairman of the Board, shall have jurisdiction to issue to such person an order requiring such person to appear before the Board of a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of such person to obey any such order of the court may be punished by the court as a contempt thereof.

COMPENSATION

SEC. 4. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(59) Chairman, National Energy Resources Advisory Board."

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

"(95) Members, National Energy Resources Advisory Board (4)."

FUNCTIONS

SEC. 5. (a) It shall be the function of the Board to—

(1) make a full, complete, and continuing investigation (including the holding of public hearings in appropriate parts of the United States) of the current and prospective fuel and energy resources and requirements of the United States and the present and probable future alternative procedures and methods for meeting anticipated requirements, consistent with achieving national goals, including high priorities, national security, and environmental protection;

(2) gather data and information and develop analytical techniques for use in the management, conservation, use, and development of energy resources; and

(3) submit not later than July 1 of each year, to the President and to the Congress, a report—

(A) recommending specific legislative action with regard to coordination of effective and reasonable policies to assure reliable and efficient sources of fuel and energy adequate for a balanced economy, a clean environment, and the national security; and

(B) on the extent of investments by public and private enterprise for the maintenance of reliable, efficient, and adequate sources of energy and fuel, including the adequacy of such investments to provide a clean environment.

(b) In conducting inquiries and compiling the report required under section 5, the Board shall consider—

(1) the proved and predicted availabilities of our national fuel and energy resources in all forms and factors pertinent thereto, as well as worldwide trends in consumption and supply;

(2) projected national requirements for the utilization of these resources for energy production and other purposes, both to meet short-range needs and to provide for long-term future demands;

(3) the interests of the consuming public, including the availability in all regions of the country of an adequate supply of energy and fuel at reasonable prices and including the maintenance of a sound competitive structure in the supply and distribution of energy and fuel to both industry and the public;

(4) technological developments affecting energy and fuel production, distribution, transportation, or transmission, in progress and in prospect, including desirable areas for further exploration and technological research, development, and demonstration;

(5) the environmental effects of energy production;

(6) the effect upon the public and private sectors of the economy of any recommendations made under this Act, and of existing governmental programs and policies now in effect;

(7) the effect of any recommendations made pursuant to this Act on economic concentrations in industry, particularly as those recommendations may affect small business enterprises engaged in the production, processing, and distribution of energy and fuel; and

(8) governmental programs and policies now in operation, their effect upon segments of the fuel and energy industries, and their impact upon related and competing sources of energy and fuel and their interaction with other governmental goals, objectives, and programs.

APPROPRIATIONS

SEC. 6. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

By Mr. HATFIELD:

S. 422. A bill to authorize the issuance of $25 gold pieces bearing the seal or symbol of the American Revolution Bicentennial Commission. Referred to the Committee on Banking, Housing and Urban Affairs.

AMERICAN REVOLUTION BICENTENNIAL COMMISSION GOLD COINS

Mr. HATFIELD. Mr. President, I am pleased today to introduce legislation which would authorize the Secretary of the Treasury to issue a $25 gold coin in recognition of the 200th anniversary of the American Revolution.

As I indicated in remarks to the Senate on Tuesday of this week, the United States is virtually unique among the world's democracies and economic giants in disallowing its people the right to freely participate in the gold market. Since our Government will not pay claims against it in gold and there are no reserve requirements on our currency, there can be little economic justification for maintaining this prohibition any longer.

The gold coin which I propose will thus have a dual objective: To honor our bicentennial, and to take an important step toward the relief of our citizens from unfair restrictions against the private ownership of gold.

Mr. President, I ask unanimous consent that the text of my 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. 422

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any other provision of law, the Secretary of the Treasury shall coin in such quantity as he determines to be sufficient to meet the demands of qualified purchasers as provided in subsection (b), but in no case more than 60,000,000 twenty-five dollar gold pieces, each of which shall contain two parts gold and one part such other metal or alloy as the Secretary determines to be appropriate. Each such gold piece shall bear the seal or symbol of the American Revolution Bicentennial Commission and such other emblems, devices, and inscriptions as the Secretary of the Treasury deems appropriate.

(b) The twenty-five dollar gold pieces coined pursuant to this Act shall be offered for sale to the general public, and the Secretary is authorized, by regulation, to limit the number of gold pieces which any one person may purchase.

(c) The twenty-five dollar gold pieces coined and issued pursuant to this Act shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues.

By Mr. RIBICOFF (for himself, Mr. KENNEDY, Mr. MAGNUSON, Mr. MCINTYRE, Mr. STEVENS, Mr. HATHAWAY, Mr. NELSON, Mr. CANNON, Mr. MCGOVERN, Mr. HUMPHREY, Mr. STEVENSON, Mr. MCGEE, Mr. ABOUREZK, Mr. MONDALE, Mr. RANDOLPH, Mr. WILLIAMS, Mr. PASTORE, Mr. CHILES, Mr. HART, Mr. PELL, Mr. CRANSTON, Mr. HUGHES, Mr. TALMADGE, and Mr. MUSKIE):

S. 423. A bill to establish a Department of Health. Referred simultaneously to the Committee on Government Operations and the Committee on Labor and Public Welfare by unanimous consent; and when reported by one committee, the bill be referred to the other.

Mr. RIBICOFF. Mr. President, today I am introducing legislation to create a separate, Cabinet-level Department of Health and establish coordinated long-term planning of Federal health policy. The new Department would assume all the health responsibilities of the present Department of Health, Education, and Welfare as well as other health programs now scattered among 23 Federal departments and agencies.

This legislation is especially critical as Congress comes to grips with the problem of national health insurance. It is one thing to pass a bill establishing a national health insurance program. But

it is quite another thing to implement such legislation. All too often Congress establishes a new program only to ignore the procedural and administrative steps necessary to put that program into effect.

Any form of national health insurance will require substantial expenditures of Federal funds and thousands of new employees. We need to move carefully in this area, not only to insure that adequate health care is available as a matter of right to all Americans but also to guarantee that we develop the structure and institutions necessary to provide this care efficiently and effectively.

Whether or not health insurance legislation passes in this session of Congress or not, there is a great need to coordinate our Federal health policies. Just recently I released a GAO report which highlighted the failure of government at all levels to coordinate hospital construction, thereby causing medical facilities to be built where they are not needed and not fully utilized. Bad planning results directly in higher prices to the consumer of health care who must absorb the cost of unused beds and underutilized special services.

The Department of Health, Education, and Welfare as presently structured is not equal to the task of bringing order to our health policy chaos.

Since its establishment by President Eisenhower in 1953, the Department of Health, Education, and Welfare has grown into a bureaucracy of 110,000 employees with an overall budget of nearly $80 billion, one-third of the entire Federal budget. Over 300 categorical grant programs are operated by the Department including 40 separate Federal health grant programs. HEW will spend over $18 billion in fiscal 1973 on medical and health-related activities.

There is no indication that HEW's growth is slowing. The Department's budget is rising at an annual rate of 14 percent—nearly twice the average rate of increase in the total Federal budget.

HEW, as presently structured, is unwieldy, unmanageable, and therefore unresponsive to both the executive and the legislative branches. No Secretary can know what is going on in such a huge department, much less maintain control of the operation and policymaking apparatus of such a bureaucracy.

As a former Secretary of Health, Education, and Welfare, I am convinced that health policy can be more rationally developed and the health programs of our Nation better handled if they are placed under the jurisdiction of one agency of manageable size, a Department of Health. At present a sizable portion of the $25 billion we are spending throughout the Federal Government for medical and health related activities is being lost through inefficiency, lack of coordination, and overlapping of programs.

As a result of the scattering of programs and the lack of a centralized health policy mechanism, the only place in the Federal Government where health priorities can be set is in the Office of Management and Budget when the budget is being developed. Major policy decisions affecting the Federal Government's health policy should be made by experts in the health field, not by OMB employees who cannot be expected to formulate national health priorities, much less understand the intricacies and interrelationships of the myriad health programs now in existence.

The lack of coordination of medical programs at the Federal level has concerned me for some time. In 1968 my Government Operations Subcommittee on Executive Reorganization held hearings on the Federal role in health.

The subcommittee found that Federal health programs are run by a cumbersome, disjointed bureaucracy with agencies, whose priorities are not related to health, making decisions that affect the health of the population. Interagency coordination was found to be a hit-and-miss proposition. Most agencies have little understanding of similar programs in other agencies or act as if they are unaware that such programs exist.

One of the most basic findings of the subcommittee was that there is no national health policy to guide Federal health programs and expenditures. No central body or group exists within the executive branch that is responsible for developing Federal health policy and evaluating Federal performance in light of that policy.

HEW's response to my 1968 letter of inquiry regarding implementation and formulation of national health policy supported the subcommittee's findings by noting:

> Up to and including the present (1968) there has never been a formulation of national health policy, as such. In addition, no specific mechanism has been set up to carry out this function. As a consequence, the national health policy is a more or less amorphous set of health goals, which are derived by various means and groups within the Federal structure.

The situation has changed little since that time.

President Nixon has recognized the need to reorganize the Department of Health, Education, and Welfare as part of a major restructuring of the executive branch. His proposals deserve our careful examination since such far-reaching and long-term recommendations do not come before us very often.

Under the President's proposals however, HEW would expand into an even larger agency, the Department of Human Resources. This department would add many programs from the Departments of Labor, Agriculture, Housing and Urban Development, and OEO to the already overextended Department of Health, Education, and Welfare. The President has in fact already tried to implement his legislative recommendations on an administrative basis by appointing the Secretary of Health, Education and Welfare as his Counselor for Human Resources.

I believe we should examine alternatives to the President's reorganization proposal. In that spirit I introduced legislation in April 1971 to create a separate Department of Education. Today, in the same spirit, I am introducing a bill to create a Department of Health.

This bill is not complicated. First, it establishes a separate Department of Health to serve as a focal point within the Federal Government for defining health policy and administering Federal health programs.

The new cabinet-level department would be administered by a Secretary of Health appointed by the President, with the advice and consent of the Senate.

The Secretary would be responsible for all health programs now administered by the Secretary of Health, Education and Welfare, including medicare and medicaid, and any new program of national health insurance.

In addition the President would be empowered to transfer additional functions to the new Department within 180 days if the Director of the Office of Management and Budget determines that the function relates to health matters.

This legislation would transfer to the new Department of Health all HEW programs. Other programs would be transferred only upon recommendation. I do not envision the transfer of such programs as the Veterans Administration's Department of Medicine and Surgery. Senator CRANSTON and I have talked about this issue and we agree that the VA programs can best operate as they presently do—under VA direction.

This legislation would also establish a 19-member National Advisory Commission on Health Planning composed of persons qualified to assess the health programs of the United States including practicing physicians, scientists, medical experts and consumers. Nine members would be appointed by the President, five members by the President pro tempore of the Senate and five members by the Speaker of the House.

The Commission would be directed to conduct a study of the various programs and activities of the Department of Health and submit a study to the President and Congress within a year with recommendations for an effective structure for the Department.

More significantly the Commission would conduct a year-long study of the various health-related programs of each agency of the Federal Government outside HEW and would submit an evaluation of these programs and recommendations regarding which programs should be transferred to the new department.

In addition to these studies, the Commission would conduct a 2-year study and submit to Congress and the President a detailed national health plan for meeting current and future health needs for the United States for the next 10 years.

This national health goals plan would be the first attempt made by the Federal Government to coordinate and plan in order to meet the health care needs of the Nation. It is an indispensable first step toward enactment of a major national health insurance plan.

The national health goals plan would set forth national goals and priorities for making comprehensive health care and treatment available at reasonable cost to every person in the United States. The plan would provide for the effective coordination and application of all health-related activities at the regional,

State and local levels and provide for encouraging cooperative efforts among governmental and nongovernmental agencies concerned with health services, facilities, and manpower.

An appropriation of $5 million would be authorized for the Commission to carry out its functions.

The uncertain status of health in the Federal Government must be ended. Responsibilities should be focused in one department and health policy must be developed and coordinated by those who are knowledgeable in the health field. This legislation will move us toward that goal.

I ask unanimous consent that the bill be simultaneously referred to the Committee on Government Operations and the Committee on Labor and Public Welfare, and when it has been reported from one committee it be referred to the other committee.

The PRESIDING OFFICER (Mr. HATHAWAY). Without objection, it is so ordered. The bill will be received and so referred.

Mr. RIBICOFF. Mr. President, I ask unanimous consent that a description of the bill together with certain statistical data be printed at this point in the RECORD.

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

DESCRIPTION OF DEPARTMENT OF HEALTH BILL

1. Creation of Cabinet-level Department of Health with Secretary appointed by President.

(Effective date of bill is 90 days after enactment or sooner if President so promulgates in Federal Register.)

(a) All health related activities in HEW would be immediately transferred to the new Department.

(b) Within 180 days of enactment the President could transfer health-related programs in other agencies to HEW if OMB finds them to be health-related.

2. The bill simultaneously creates a 19-member National Advisory Commission on Health Planning, five appointed by Senate President pro tem, five by House Speaker, and nine by President (four of which have to be consumers.)

(a) Commission makes one-year study of programs in new Department and recommends plans for more efficient management structure of Department.

(b) Commission simultaneously makes one-year study of various health-related programs throughout government and recommends which programs should be transferred to the Secretary.

(c) Commission simultaneously makes two-years study of current and future health needs of the nation and submits to Congress and President a national health plan for next ten years setting forth

(1) national goals and priorities for making comprehensive high quality health care or treatment available at reasonable cost to any person in U.S.

(2) recommendations for action to carry out the plan

(3) encourage coordination among governmental and nongovernmental groups connected with health services.

Commission is authorized $5 million.

STATISTICAL DATA ON HEALTH

OVERALL FEDERAL GOVERNMENT

Federal government health effort in fiscal 1973 is $25 billion scattered throughout 23 departments and agencies. Only coordination, if any, is through OMB which does not have health expertise.

HEW OVERALL

Overall HEW budget in fiscal 1973 is $79 billion—one third of the entire Federal budget.

HEW budget growing at annual rate of 14%—nearly twice the average rate of increase in the total federal budget.

HEW has 108,000 employees.

HEW administers 250 categorical grant programs.

Congress, not knowing what programs exist in HEW adds more programs constantly but provides no appropriations. Thus, an "expectations gap" is growing. In 1964 the difference between HEW authorizations was $200 million. In the current year the gap is $6 billion. And by the close of the current session of Congress the gap may be $9 billion.

HEW HEALTH

Health budget in HEW is $18 billion ($13.5 billion for Medicare and Medicaid and $4.5 billion for other health programs).

Over 40 separate federal health grant programs exist in HEW.

57,500 employees are involved in HEW health-related activities, 8,300 of which are involved in Medicare.

Mr. KENNEDY. Mr. President, I have joined in the introduction of the legislation which has been outlined by the distinguished Senator from Connecticut (Mr. RIBICOFF). He possesses unique background and experience as the former Secretary of Health, Education, and Welfare. No one in the Senate has been more concerned about problems of the health of the American people than has the Senator from Connecticut. Since he left that job he has seen what all of us have noticed, and that is the tremendous growth in the number of health programs, the tremendous increase in cost—$100 million by 1974 and $200 million by 1980, so that at the present rate it would be three times the national defense budget if the present trend continues. There is no indication from the administration that we will get a handle on the health question unless we pass the Health Security Act.

This bill is to create a Department of Health as a Cabinet level department of the Government. I believe it long, tragically long, overdue.

Now as you know, this country is in the throes of a desperately serious health-care crisis. This crisis is one of the quality of health care, it is one of the cost of health care and it is one of the availability of health care. In short, far too many Americans are not getting the care they need and the care to which, as citizens of this great Nation, they should be entitled. And one of the reasons for this is that the administration of health services in this country is totally inefficient.

Almost every major industrialized country in the world today has either a separate, self-contained department of health or a department which combines just health and welfare. Only America combines the responsibility of health, education, and welfare into a single department.

Today HEW is unmanageable. It now has over 100,000 employees in sections and agencies and offices spread miles apart; and almost 60,000 of these employees are somehow involved in health programs. However, health has consistently been given short shrift as contrasted to education and welfare programs.

In 1960, HEW had 100 programs. Now it has at least 300 separate programs in seven competing agencies. In 1971, the Social Security Administration obtained 72.1 percent of the Department's revenues, NIH got 2.6 percent, HSMHA got 2.6 percent, FDA got 0.14 percent, and the environmental health services, 0.28 percent. I personally do not think that this represents a big enough share of the cake for health and I am also convinced that even the slice that health did get was not distributed as equitably and as sensibly as it should have been.

The reason for this is that the health care system in this country has grown in a totally haphazard way. One program has been piled on top of the others over the years with no overall effort to ensure rationality, with no coherent overview, no binding philosophy, no strategy of development.

It is obvious that the bureaucratic and geographic entanglements and discrepancies within the health services can only detract from the efficient administration of health care in this country. How much better could all Americans be treated if all health programs were the responsibility of just one organization.

Over the last 6 years, there have been several reorganizations of HEW. In 1967, in 1968, and again in 1971 the services of the Department were rearranged, desks were moved, people shifted their files along corridors, up and down floors, carpets changed offices, new titles were stuck on doors. And with what result? Absolutely none, so far as the improvement of health care administration was concerned. The only effect was to further lower the morale and efficiency of the dedicated civil servants who are desperately trying to cope with the bureaucratic tentacles that are HEW today.

And there are no grounds to hope that the administration's new proposals for reorganization in this year, 1973, will have any better effect. How demoralizing it must be to have virtually all of the key health positions at HEW vacant at the present time.

I have recited again and again the defects in our Nation's health care system—the fact that in this country, as in no other industrialized nation, health care today is the privilege of the rich, not the right of all; the enormous, indeed catastrophic escalation of health care costs; the utter inadequacy of the private health insurance carriers—organizations dedicated to profit, not to healing—at providing protection for our citizens; the total inability of medicare and medicaid to protect the elderly and the poor against financial ruin in case of accident or illness; the drastic shortages of doctors, dentists, and nurses over huge sections of the country, particularly in rural areas and in the inner cities—the list of defects is, unfortunately, endless.

Now not all of these shortcomings would instantly be made good by setting

up a separate Department of Health; as you know, Mr. President, there are several other reforms, such as national health insurance and health maintenance organizations support legislation which I consider vital changes if this Nation's health is to be improved. But what is also, to my mind, quite certain, is that without the comprehensive rationalization that can be provided only by regrouping all health programs under one single department, none of the other reforms that we are able to introduce will function as well as they should. Obviously we should not further dilute the Government's ability to effectively administer health programs by making HEW substantially bigger as the President proposes when he suggests the creation of a Department of Human Resources.

In this country today there is no such thing as a government spokesman for health. In Mr. Nixon's new cabinet there is no man who regards himself responsible for this country's sick, who considers it his overall duty to lower the appalling incidence of infant mortality in this Nation, who recognizes that his job, no one else's—and all of his job, not just part of it, is to insure that America develops and develops now a system of health care as good or better than those which have existed for years in most of the world's industrialized countries and which should also have existed here, a system of health care of which we can justly be proud, rather than one we are forced to be ashamed of. Until we have such a man, a man who does not need to play off in his own mind and heart the competing interests of welfare and education against those of health, until then we cannot even hope for the health care that we all deserve. That is why, Mr. President, this bill is so essential.

Mr. President, as was the case last year, I understand that this bill will be referred to the Government Operations Committee and to the Senate Labor Committee. I want to announce at this point that, as chairman of the Health Subcommittee of the Labor Committee, I consider this bill to be of the highest importance.

And I plan to arrange for public hearings on this bill in the very near future. The purpose of the hearings will be to develop a complete public record regarding the need for a Department of Health and to make whatever changes may be necessary as a result of the testimony which will be taken. After that, I intend to work as hard as I can to assure that the full Senate has an opportunity to vote on the bill.

Finally, Mr. President, I want to briefly take time to draw my colleagues' attention to one specific concern which was raised by some groups and individuals and particularly brought to my attention by Senator CRANSTON at the time the bill was introduced in the 92d Congress. There was concern that certain provisions in the bill could lead to a radical restructuring of the health and medical programs of the Veterans' Administration. I do not believe that such a concern is valid, nor was it intended or ever envisioned that any VA health program would be transferred to the new Department of Health.

The important point is that I for one certainly did not intend for any provision of this bill to propose the dismemberment of the VA medical care system. And the hearings which my subcommittee will hold will provide an ample opportunity for all of those who are concerned in this respect to come before the committee and to testify to that concern. If on the basis of that testimony the committee decides that the bill should be clarified in that regard, it will be clarified.

Mr. President, this is an excellent bill. I again want to pay tribute to my friend and colleague, ABE RIBICOFF, who is its principal sponsor. We believe this bill will pass in this Congress.

By Mr. JACKSON (for himself, Mr. METCALF, Mr. PASTORE, Mr. BENNETT, Mr. MOSS, Mr. CHURCH, Mr. GURNEY, Mr. INOUYE, Mr. HUMPHREY, Mr. TUNNEY, and Mr. HASKELL):

S. 424. A bill to provide for the management, protection, and development of the national resource lands, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

NATIONAL RESOURCE LANDS MANAGEMENT ACT OF 1973

Mr. JACKSON. Mr. President, I introduce for myself and several of my colleagues, the National Resource Lands Management Act of 1973.

The purpose of the National Resource Lands Management Act of 1973 is to provide the first comprehensive statement of congressional goals, objectives, and management guidelines for the use and management of 450 million acres of federally owned lands administered by the Bureau of Land Management in the Department of the Interior. This measure designates these lands as "national resource lands" in order to signify their importance to the Nation's natural resource base.

The bill establishes as national policy the need to preserve and protect the quality of the national resource lands and their numerous values to assure their continued enjoyment by present and future generations. It emphasizes throughout the importance of nonquantifiable as well as quantifiable values to the national interest by providing numerous assurances that scientific, scenic, recreational, historical, and archeological values; natural areas, and fish and wildlife habitats will be afforded ample protection and significant consideration in the national resource land management process.

Mr. President, various entities within the Federal Government have attempted to develop the planning and management capabilities necessary to protect the public domain and insure its continued enjoyment by present and future generations. However, their efforts have frequently been impeded by the vast number of outmoded public land laws which developed over a period in American history when disposal and development of the public domain was the dominant theme. In 1964, Congress recognized a need to review and reassess the body of law governing the public lands. Thus, on September 19, 1964, the Public Land Law Review Commission was created by enactment of Public Law 88–606. In establishing the Commission, Congress expressed its view that—

> Because the public land laws of the United States have developed over a long period of years through a series of Acts of Congress which are not fully correlated with each other and because those laws, or some of them, may be inadequate to meet the current and future needs of the American people and because administration of the public lands and the laws relating thereto has been divided among several agencies of the Federal Government, it is necessary to have a comprehensive review of those laws and the rules and regulations promulgated thereunder and to determine whether and to what extent revisions thereof are necessary.

After 5 years of extensive investigations, the Commission completed its review and submitted its final report to Congress on June 20, 1970. The report contains 137 specific recommendations designed to improve the Federal Government's custodianship of the public domain lands. Principal among these recommendations is the Commission's view that—

> The policy of large-scale disposal of public lands reflected by the majority of statutes in force today (should) be revised and that future disposal should be of only those lands that will achieve maximum benefit for the general public in non-Federal ownership, while retaining in Federal ownership those whose values must be preserved so that they may be used and enjoyed by all Americans.

In addition, the Commission emphasized a need to develop "a clear set of goals for the management and use of public lands, particularly for lands administered by the Bureau of Land Management." The Commission's report stated specifically that—

> A congressional statement of policy goals and objectives for the management and use of pulbic lands is needed to give focus and direction to the planning process.

Support for this view is widespread. During the 92d Congress, the Committee on Interior and Insular Affairs considered four different measures concerning management policy for the public domain lands, including one proposal submitted by the administration. Testimony received throughout 3 days of hearings on these measures consistently emphasized the need for a basic organic act to provide the Bureau of Land Management with the kind of management authority it needs to successfully administer and protect the public domain lands.

With the urging of the President and the support of a majority of its members, the committee favorably reported S. 2401, the National Resource Lands Management Act of 1972, to the Senate last September. However, the heavy schedule of business on the floor prevented the Senate from acting on this measure during the 92d Congress.

Mr. President, I urge that the 93d Congress give early and favorable consideration to the National Resource Lands Management Act of 1973. In so doing, we will fulfill a long-standing need to improve our ability to manage and pro-

tect the environment and to insure that our valuable and unique natural resources will be available for the use and enjoyment of generations to come.

Mr. President, I ask unanimous consent that a summary of the major provisions and the text of the National Resource Lands Management Act of 1973 be printed at this point in the RECORD.

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

MAJOR PROVISIONS OF THE NATIONAL RESOURCE LANDS MANAGEMENT ACT OF 1973

Goals, Objectives and Guidelines: The measure directs that the national resource lands be managed under principles of multiple use and sustained yield in a manner which will protect the environmental quality of the lands to assure their continued value for present and future generations.

The bill directs the Secretary of the Interior to inventory the national resource lands and to develop and maintain comprehensive land use plans for them. These inventories and plans would provide the basis for land management and would give priority to identification and protection of areas of critical environmental concern. The Secretary would be directed to coordinate the inventory, planning and management of the national resource lands with resource data and land use plans for State and private lands such as would be developed under the Land Use Policy and Planning Assistance Act of 1972 (S. 632), which passed the Senate on September 19, 1972, but died in the House, and has been reintroduced in the 93d Congress as S. 268.

The National Resource Lands Management Act of 1973 contains guidelines for the Secretary to follow in developing land use plans and in managing the national resource lands in accordance with such plans. Guidelines established by the act include requirements that the land use plans (1) be developed using a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and social sciences; (2) consider the requirements of State or Federal pollution control laws; and (3) weigh long-term benefits against more immediate local or individual benefits.

Further provisions also include requirements for land reclamation where surface disturbance will occur; and authority to suspend uses which lead to violations of environmental protection laws. Management programs must consider environmental, recreational, scenic and resource values. They must also be designed to assure payment of fair market value by users of national resource lands.

Transfer out of Federal Ownership: The measure recognizes that while most of the national resource lands will remain in Federal ownership, some lands may be more valuable for use in non-Federal ownership. It authorizes transfers out of Federal ownership only if the Secretary, after preparation of the land use plan, determines that disposal of the land will not cause needless degradation of environment and (1) that the tract is isolated and difficult to manage, or (2) having been acquired for a specific purpose is no longer required for any federal purpose, or (3) disposal of the tract will serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource lands and which outweigh all public objectives and values. All sales would be at fair market value and would be conducted by competitive bidding, with minor exceptions.

Annual reports of disposals would be furnished to the Congress. With limited exceptions, all minerals would be reserved to the United States. Sales would be required to conform with State and local land use plans and zoning.

Management Authority: The bill provides specific authority to enforce regulations adopted for the purpose of protecting national resource lands. At the present time the Bureau of Land Management is the only Federal land management agency that does not have such authority. Further provisions authorize the Secretary to acquire lands needed for proper management of the national resource lands, including lands needed to provide access by the public to those lands. All acquisitions would have to be consistent with the land use plans. To facilitate land acquisitions and exchanges, the bill provides for payment of cash to equalize values of the lands exchanged.

Intergovernmental Coordination and Public Participation: The bill further directs the Secretary to establish procedures and make provision for participation by Federal, State and local government agencies and the general public in formulation of standards and guidelines used in the preparation of land use plans and in land management actions.

S. 424

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Resource Lands Management Act of 1973".

SEC. 2. DEFINITIONS.—As used in this Act:

(a) "The Secretary" means the Secretary of the Interior.

(b) "National resource lands" means all lands and interests in lands (including the renewable and nonrenewable resources thereof) now or hereafter administered by the Secretary through the Bureau of Land Management, except the Outer Continental Shelf.

(c) "Multiple use" means the management of the national resource lands and their various quantifiable and nonquantifiable resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of resource uses that take into account the long-term needs of future generations for recreation, scenic values and nonrenewable resources and the achievement of diversity and balance for renewable resources; and harmonious and coordinated management of the various resources without permanent impairment of the quality of the land or the environment, with consideration being given to the relative values of the resources and to the ecological relationships involved and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) "Sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of land without permanent impairment of the quality of the land or its environmental values.

(e) "Areas of critical environmental concern" means areas within the national resource lands where uncontrolled use or development could result in irreversible damage to important historic, cultural, or scenic values, or natural systems or processes, or life and safety as a result of natural hazards.

SEC. 3. DECLARATION OF POLICY.—(a) Congress hereby declares that—

(1) the national resource lands are a vital national asset containing a wide variety of natural resource values;

(2) sound ecological management of these lands is vital to maintenance of a livable environment and essential to the well-being of the American people; and

(3) the national interest will best be served by retaining the national resource lands in Federal ownership unless, as a result of the land use planning process provided for in this Act, the Secretary determines that disposal of particular tracts of national resource lands will achieve a greater benefit for the general public than the retention thereof and is consistent with the purposes, terms, and conditions of this Act.

(b) Congress hereby directs that the Secretary shall manage the national resource lands under principles of multiple use and sustained yield in a manner which will, using all practicable means and measures, protect the environmental quality of such lands to assure their continued value for present and future generations; protect the quality of scientific, scenic, historical, and archeological values; preserve and protect certain areas in their natural condition; provide habitat for fish and wildlife; provide for outdoor recreation; balance various demands on such lands; assure payment of fair market value by users of such lands; and provide maximum opportunity for the public to participate in decisionmaking concerning such lands.

SEC. 4. INVENTORY.—The Secretary shall prepare and maintain on a continuing basis an inventory of all national resource lands, and their resource and other values (including outdoor recreation and scenic values) giving priority to areas of critical environmental concern. This inventory shall reflect changes in conditions and in identifications of resource and other values. Such inventory shall include identification of boundaries for all units of the national resource lands. The Secretary shall provide adequate and appropriate means of public identification of such boundaries, including signs and maps. Wherever possible data from such inventory shall be made available to State and local governments for purposes of planning and regulating the uses of non-Federal lands in proximity to national resource lands.

SEC. 5. LAND USE PLANS.—(a) The Secretary shall with public participation develop, maintain, and, when appropriate, revise land use plans for the national resource lands consistent with the terms and conditions of this Act and coordinated so far as he finds feasible and proper, or as may be required by the enactment of a National Land Use Policy or other law, with the land use plans, including the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 901), of State and local governments and other Federal agencies.

(b) In the development and maintenance of land use plans, the Secretary shall:

(1) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and social sciences;

(2) give priority to the designation of areas of critical environmental concern;

(3) rely, to the extent it is available, on the inventory of the national resource lands, their resources, and other values.

(4) consider all present and potential uses of the lands;

(5) consider the relative scarcity of the values involved and the availability of alternative means, materials, techniques, and sites for realization of those values;

(6) weigh long-term public benefits, including those of outdoor recreation and scenic values, against short-term local or individual benefits; and

(7) consider the requirements of applicable pollution control laws including State or Federal air or water quality standards and implementation plans.

(c) Any classification of national resource lands in effect on the date of enactment of this Act is subject to review in the land use planning process and such lands are subject to inclusion in land use plans pursuant to this section.

SEC. 6. MANAGEMENT.—(a) The Secretary shall manage the national resource lands in accordance with the policies and procedures of this Act and with any land use plans developed pursuant to section 5 of this Act which he has prepared except to the extent that other applicable law provides otherwise. Such management shall include:

(1) requiring land reclamation as a condition of use, and requiring performance bonds guaranteeing such reclamation of any person permitted to engage in extractive or other activity likely to entail significant disturbance to or alteration of the land;

(2) inserting in permits, licenses, or other authorizations to use, occupy, or develop the national resource lands provision authorizing revocation or suspension upon violation of any regulations issued by the Secretary under this Act or upon violation of any applicable State or Federal air or water quality standard and implementation plans; and

(3) the prompt development of regulations for the protection of areas of critical environmental concern.

SEC. 7. SALE OF LAND.—(a) Except as otherwise provided by law, and subject to the requirements of section 3 of this Act, the Secretary is authorized to sell national resource lands. The national resource lands may be sold only if the Secretary, in accordance with the guidelines he has established for sale of national resource lands and after preparation pursuant to section 5 of this Act of a land use plan which includes any tract of such lands identified for sale, determines that the sale of such tract will not cause needless degradation of the environment; and that—

(1) such tract is isolated land difficult to manage as part of the national resource lands and is not suitable for management by another Federal agency; or

(2) having been acquired for a specific purpose, such tract is no longer required for that or any other Federal purpose; or

(3) sale of such tract will serve important public objectives which cannot be achieved prudently and feasibly on land other than national resource lands and which outweigh all public objectives and values, including recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Sales of national resource lands under this Act shall be at not less than the appraised fair market value.

(c) The Secretary shall determine and establish the size of tracts to be sold on the basis of the land use capabilities and development requirements of the lands.

(d) Sales of land under this Act shall be conducted under competitive bidding procedures to be established by the Secretary, except that where he determines it necessary and proper (1) to assure fair distribution among purchasers of national resource lands, or (2) to recognize equitable considerations or public policies, including but not limited to a preference right to users, he is authorized to sell national resource lands without competitive bidding, or with modified competitive bidding.

(e) Until the Secretary has accepted an offer to purchase, he may refuse to accept any offer or may withdraw any land from sale under this Act when he determines that consummation of the sale would not be in the public interest.

(f) Not later than 120 days after the close of each fiscal year the Secretary shall report to Congress all sales or exchanges of national resource lands and their related resources conducted by him during such fiscal year together with the reasons therefor.

SEC. 8. CONDITIONS IN CONVEYANCES.—(a) All conveyances of title issued by the Secretary under this Act shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe: *Provided*, That, where prospecting, mining, or removing minerals reserved to the United States would interfere with or preclude the appropriate use or development of such lands, the Secretary may enter into covenants which provide that such activities shall not be pursued for a specified period or, where necessary, convey minerals in the conveyance of title.

(b) The Secretary shall insert in any patent or other documents of conveyance the issues under this Act such terms, covenants, and conditions as he deems necessary to insure proper land use, environmental integrity, and protection of the public interest. In the event any area which the Secretary has indentified as an area of critical environmental concern is conveyed out of Federal ownership, the Secretary shall provide for the continued protection of such area in the patent or other document of conveyance: The Secretary shall not make sales of land under this Act which would not be in conformity with State and local land use plans, programs, zoning, and regulations. At least ninety days prior to offering land for sale under this Act, the Secretary shall notify the Governor of the State within which such land is located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such land is located, in order to afford the appropriate body the opportunity of zoning or otherwise regulating, or changing or amending existing zoning or other regulations concerning, the use of such land prior to such sale.

SEC. 9. ACQUISITION OF LAND.—(a) The Secretary is authorized to acquire by purchase, exchange, donation, or otherwise lands or interests therein needed for the management of the national resource lands including, but not limited to, lands needed to provide access by the general public to national resource lands. Such acquisitions shall be consistent with such land use plans as may apply to the area involved.

(b) Purchase designed primarily to provide outdoor recreation opportunities shall be made by the Secretary with funds appropriated from the Land and Water Conservation Fund.

(c) In exercising the exchange authority granted by subsection (a) of this section, the Secretary map accept title to any non-Federal land or interests therein and in exchange therefor he may convey to the grantor of such land or interests any national resource lands or interests therein which, under the terms and conditions of this Act, he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land to be acquired. The values of the lands so exchanged either shall be equal, or if they are not equal, the value shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require. When a land use plan which is applicable to any tract which is to be included in a proposed exchange under this Act has been prepared, such exchange shall be consistent with such plan.

(d) Lands acquired by exchange under this section within the boundaries of the national forest system may be transferred to the Secretary of Agriculture for administration as a part of, and in accordance with laws, rules, and regulations applicable to, the national forest system.

SEC. 10. USE OF LANDS.—The use, occupancy, or development of any portion of the national resource lands contrary to any regulation of the Secretary issued pursuant to and in conformity with this Act or contrary to any order issued pursuant to any such regulations is unlawful and prohibited.

SEC. 11. ENFORCEMENT AUTHORITY.—(a) Violations of regulations which may be adopted for the purpose of protecting the national resource lands, other public property, and the public health, safety, and welfare and are identified in said regulations by the Secretary as being subject to the sanctions provided for by this section shall be deemed to be a misdemeanor and shall be punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both. Any person charged with the violation of such regulations may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401 of title 18, United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States or in a district court of the United States territory for an injunction or other appropriate order to prevent any person from utilizing the national resource lands in violation of regulations issued under this Act.

(c) The Secretary may designate and authorize employees as special officers who may make arrests or serve citations for acts committed on the national resource lands which are in violation of regulations identified pursuant to subsection (a) of this section.

(d) Upon the sworn information by a competent person, any United States commissioner, magistrate, or court of competent jurisdiction may issue process for the arrest of any person charged with the violation of law or the designated regulations. Nothing herein shall be construed as preventing the arrest by any officer of the United States, without process, of any person taken in the act of violating the law or the designated regulations.

SEC. 12. STATE'S RIGHTS NOT CURTAILED.—(a) Nothing in this Act shall be construed as a limitation upon any State criminal statute, nor on the police power of the respective States.

(b) Nothing in this Act shall be construed to derogate the authority of a local police officer in the performance of his duties.

SEC. 13. FEDERAL RIGHTS NOT CURTAILED.—Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States, or—

(a) as affecting in any way any law governing appropriations or use of, or Federal right to, water on national resource lands;

(b) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(c) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(d) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or *regulatory* functions in relation thereof; or

(e) as modifying the terms of any interstate compact.

SEC. 14. VALID EXISTING RIGHTS—All actions by the Secretary under this Act shall be subject to valid existing rights. The Secretary shall not impair or diminish any valid existing rights except under due process and upon payment of just compensation.

SEC. 15. PUBLIC PARTICIPATION.—(a) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local

governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria in the preparation and execution of plans and programs and in the management of the national resource lands.

SEC. 16. RULES AND REGULATIONS.—(a) The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act. The promulgation of such rules and regulations shall be governed by the Administrative Procedure Act (5 U.S.C. 553).

(b) Such rules and regulations shall include:

(1) criteria and standards for the preparation and execution of plans and programs for, and for the management, sale, conveyance, and acquisition of, national resource lands which shall embody all pertinent factors including, but not limited to environmental, recreational, scenic, and resource values, and;

(2) procedures including public hearings, to give the Federal, State, and local governments and the public adequate notice and opportunity to comment upon such rules and regulations and significant actions of the Secretary of the Interior or any agency under his jurisdiction thereof concerning the national resource lands.

SEC. 17. APPROPRIATIONS.—There is hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

SEC. 18. DIRECTOR.—Appointments made on or after the date of the enactment of this Act to the Office of the Director of the Bureau of Land Management, within the Department of the Interior, shall be made by the President, by and with the advice and consent of the Senate. The Director shall have a broad background and experience in public land and natural resource management.

By Mr. JACKSON (for himself, Mr. MANSFIELD, Mr. METCALF, Mr. MOSS, and Mr. BUCKLEY):

S. 425. A bill to provide for the cooperation between the Secretary of the Interior and the States with respect to the regulation of surface mining operations, and the acquisition and reclamation of abandoned mines, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

SURFACE MINING RECLAMATION ACT OF 1973

Mr. JACKSON. Mr. President, I introduce for appropriate reference the Surface Mining Reclamation Act of 1973, a bill to establish an environmentally strong and administratively realistic program for the regulation of surface mining activities and the reclamation of mined lands.

Over the past year and a half surface mining has become a national issue and its regulation a national priority. Unregulated surface mining activities have imposed large social and environmental costs on the public at large in many areas of the country in the form of unreclaimed lands, water pollution, erosion, floods, slope failures, loss of fish and wildlife resources, and a decline in natural beauty. Uncontrolled surface mining in many regions has effected a stark, unjustifiable, and intolerable degradation in the quality of life in local communities. These are costs which the Nation cannot continue to tolerate.

Mr. President, the measure I introduce today attempts to provide realistic procedures and methods to counteract the environmental abuses of surface mining. The proposal also embodies the recognition that surface mining is a vitally important activity and that the Nation's dependence on its products—for steel, electrical energy, synthetic gas, and liquids—places significant constraints on the formulation of Federal and State surface mining and reclamation policies.

A WORKING DOCUMENT TO BE CONSIDERED IN EARLY HEARINGS

The Surface Mining Reclamation Act of 1973 is not a polished, final form legislative proposal. Instead, I regard it as a "working document" to enable the Senate to begin the lawmaking process on surface mining which the Nation properly and expectantly awaits.

Congress is already acquainted with the issues. Last year, the House passed one surface mining and reclamation proposal (H.R. 6482); the Senate Committee on Interior and Insular Affairs reported another (S. 630), and I introduced a third in the form of an amendment in the nature of a substitute to S. 630. The bill I introduce today is virtually identical to that amendment. Lengthy hearings have already been held. In field trips and field hearings, the Mining, Minerals, and Fuels Subcommittee of the Senate Interior Committee heard the voices of those who will feel the full force of surface mining legislation—the individual mine operators upon whom rests the final responsibility for meeting the procedural and substantive requirements of the legislation; reclamation experts who must render the landscape whole again; mineworkers who depend upon the activities regulated by the legislation for their livelihood; local citizens who must live upon the land mining had disturbed; and consumers who depend upon the produce of the mining.

Upon this legacy of work left by the 92d Congress, this Congress should be able to proceed expeditiously in considering surface mining legislation. I, certainly, will do everything I can to insure early enactment of a surface mining and reclamation law. The full committee of the Senate Interior Committee should hold hearings in the latter part of February. As most of the issues have already been drawn, in these hearings I hope the committee can obtain as much information and hard data as possible so that it will be fully aware of all the impacts—environmental, social, and economic—of any and all provisions of the proposal it will subsequently develop and report to the Senate. From the hearings, I hope the committee can move quickly into markup and report a proposal in the spring.

Mr. President, the bill I propose today, as the amendment I introduced late in the 92d Congress, refines policies and concepts developed by the Subcommittee on Minerals, Materials, and Fuels in its work on S. 630 last year. This is true, for example, of those portions of the bill which: First, place the initial and primary responsibility for surface mining control with the States, subject to Federal review and right of preemption if necessary to achieve the requirements of the act; second, establish a $100 million mined lands reclamation fund; and third, apply the requirements of the act to both coal and all other commercial surface mining operations.

The Surface Mining Reclamation Act of 1973 also embodies new policies which were not part of the measure reported by the committee in the 92d Congress. These include:

Providing procedural safeguards to guarantee public notice, and insure the right of public participation.

Placing the burden of proof on the applicant for a surface mining permit to prove he can reclaim the land to socially useful purposes without permanent degradation of the environment and without imposing social costs on society generally.

Providing new tough performance standards which set in qualitative terms the objectives which must be achieved at all stages of the surface mining process and in reclaiming the land.

Requiring an in-depth study to determine the environmental, social, and economic impacts—both positive and negative—of imposing on a national or regional basis outright prohibitions or quantitative prohibitions in the form of slope degree limitations.

Placing administration and enforcement of the act in a new office in the Department of Interior and avoiding conflicts of interest by prohibiting the Office from performing any coal or other mineral "developmental" or "promotional" functions.

Applying the requirements of the act to TVA and other public corporations, agencies, or publicly owned utilities.

Applying the requirements of the act to Federal and Indian lands.

Requiring the consent of the surface owner or a bond sufficient to indemnify him for any damages before a surface mining permit will be granted.

Authorizing reclamation research and demonstration projects.

Protecting parks, public areas, streams, and lakes.

Permitting special exemptions by the President if necessary to deal with national emergency situations.

Insuring that electrical powerplants are not arbitrarily shut down.

Providing a preference right in reclamation contracts for operators and individuals whose operations or employment has been adversely affected by the act.

OBJECTIVES OF SURFACE MINING LEGISLATION

I repeat: The proposal I introduce today is to be regarded as a working document. It has not been the subject of hearings; the administration has not commented upon it; the committee has not considered it. It is, however, important to set forth the general objectives which I believe a sound Federal policy for surface mining operations must achieve.

First, surface mining operations must be prohibited in any area where the damages are irreparable, or where full reclamation of the lands involved is physically impossible.

Second, a uniform basis of Federal requirements applicable throughout the country which will establish a national standard for control of surface mining and thereby mitigate the economic inequities which occur when State regulatory efforts are widely divergent; and

which will also protect the broader national interests where States are unable or unwilling to act effectively to control surface mining operations.

Third, the social and environmental costs associated with surface mining operations must be internalized and paid for by the operator as costs which are properly chargeable to the mining and should not be imposed upon present and future generations of society.

Fourth, surface mining operations which are necessary to provide the energy and mineral resources essential to the economic and material well-being of our society must be accompanied by the highest practicable degree of reclamation, which will return the disturbed lands to a condition capable of supporting the possible diversity of uses which are of equal or greater social value than the original uses.

Fifth, the statutory framework, the governmental institutions, and the regulatory structure established to implement the policy must reflect, with the greatest degree of certainty possible, the standards which are to be met, and must also be designed to insure fairness, due process, and flexibility to cope with the unique conditions that are presented in different regions of the country.

CONSTRAINTS ON FEDERAL ACTION

Almost as important as the objectives to be achieved by a sound Federal policy are the constraints on the Federal Government's constitutional authority to develop and implement such a policy. The major limitations which must be recognized in regard to development of a surface mining policy are very real and deserve careful consideration.

First, the Nation is dependent on the energy and mineral products produced in surface mining operations.

At the present time 20 percent of the total energy consumed in the United States is supplied by coal, and half of all the coal is obtained by surface mining. Furthermore, coal supplies the fuel for over half of our electric power production. Surface-minded coal already represents a disproportionately large share of the coal used for electrical generation and the greatest proportion of new surface mining of coal—especially in the West—will be connected with new electric generation capacity. At the same time, the Nation faces serious and growing constraints upon each of the other energy sources for electric power generation which will be practicable at least for the next two decades—hydroelectric, nuclear, gas, or oil. As a result, critical electrical energy shortages already loom as major public crises in a number of regions of the country.

The energy situation is coupled with the national dependence upon supplies of other minerals which are substantially obtained from surface mining, such as copper, phosphate, iron, sand and gravel, stone, clay, and metallurgical coal. The impacts of outright bans, or of arbitrary and inflexible standards which constitute effective bans, upon existing or imminent mining operations could have serious and lasting consequences which were never intended and which, in some instances, may be intolerable.

The problems presented, and the limitations which our dependency upon the products of surface mining impose on policy options are not simply economic. Particularly in the next few years, in the transitional period, they involve our capability to deliver vital social services such as electrical power for homes and schools, materials for transportation systems, and other necessary public requirements.

Second, beyond our physical dependence upon resources now produced in surface mining operations, sudden transitions in regulation, in technology, in mining methods, and in locating new operations in other regions of the country will have severe economic and social repercussions for many industries and communities which are now economically dependent upon surface mining. It is not honest to pretend that all of the jobs lost when surface mines are banned or made economically infeasible by adoption of a new Federal policy will quickly and painlessly be replaced by jobs in other regions or in other lines of work. History shows that regional socioeconomic systems are not that flexible. Transitions are difficult. Jobs will be lost. Mining operations will be closed and creditors may suffer.

It is clear that some dislocations must be sustained if the generally agreed upon objectives of a Federal policy are ever to be implemented and achieved. And it must be recognized that the economic, employment, and social dislocations which major policy changes will impose upon many of the people of coal producing regions are not inconsequential, even when weighed against the short- and long-range environmental benefits to be gained.

Third, the great dissimilarities among the types of mining methods, the equipment used, the physical and chemical properties of the soils encountered, and the climates of the different mining areas of the country make it difficult to develop procedures and specific standards for reclamation which will be generally appropriate. Specifications on slope limitations which may be the minimum necessary to insure stability in some soils will prove to be unnecessarily restrictive, arbitrary, and totally unreasonable in others. Restriction on drainage accumulations which might be suitable in a wet climate may actually reduce the chances for successful revegetation in a drier region. What constitutes the best standard or requirement for earthmoving, revegetation, and water quality control is tremendously variable, and is dependent upon the area, the specific site and the method of operation employed. Insuring the use of the best practices in each situation can only be achieved by establishing goals and performance standards for reclamation and providing enough discretion and latitude to tailor the specific methods to the specific needs to obtain the policy objectives desired.

Fourth, the primary role of the States in regulating and controlling activities within their borders which involve extensive use of State police power authority and major land use planning decisions which will shape the future of the State must be preserved. Surface mining is a form of land use and its regulation and control must be considered within the context of the broad demands and competing requirements upon the State's land resources.

In a constitutional sense, the primary authority and responsibility for the control of surface mining resides in the State. In an administrative sense, the success of effective surface mining control programs will depend on responsible and competent implementation by the States on a day-to-day basis, and in an institutional framework in which the role of surface mining can be evaluated and balanced against other activities subject to State administration, control, and decision.

Whenever possible, therefore, the Federal role should be only a supportive role, assisting the States in establishing and implementing effective programs and providing for those national concerns which cannot be handled at the level of State government.

This review of constraints on Federal action which must be considered in connection with the development and adoption of a Federal surface mining policy is not intended as an argument to move slowly or to defer adoption of a policy and strong Federal legislation. They are, however, constraints which must be considered and dealt with in a purposeful and intelligent manner.

INTERAGENCY STUDY OF SLOPE LIMITATIONS

I have stated on numerous occasions that an interagency, multidiscipline study which would draw together and analyze diverse and scattered data on surface mining and its effects is needed to understand these constraints and to fully realize their magnitude. Therefore, in section 215 of the amendment I introduced last year, the Chairman of the Council on Environmental Quality was directed to lead a task force of representatives from those agencies possessing relevant expertise in a study of the various types of slope limitations on surface mining which have been suggested by witnesses, or are being employed in State laws or by public agencies such as the Tennessee Valley Authority, or were incorporated in last year's House-passed bill. The study was to consider all the environmental, social, and economic effects—both beneficial and adverse—of imposing such limitations. The study requirement was based on the belief that, before we can adopt slope limitations, we must know if they make sense. And if they do, we must know what are the adverse effects of such limitations so that we can discover and employ means to minimize those effects.

On November 2, 1972, I wrote to Mr. Russell Train, Chairman of the Council on Environmental Quality, and asked him to undertake direction of the study even though we had not provided him with the statutory mandate or funding to do so. He gracefully accepted. A study group, composed of representatives of the Council on Environmental Quality;

the Departments of the Interior, Agriculture, and Commerce; the Environmental Protection Agency; the Federal Power Commission; the Atomic Energy Commission; the Tennessee Valley Authority; and the Appalachian Regional Commission, has now been at work for over 2 months. I have been assured by Chairman Train that substantial results will be available by mid or late February and be presented in the Senate Interior Committee hearings on my proposal. This study will hopefully provide a good deal of the information which I have suggested we must seek in the committee hearings. Once the results of the study have been exposed to the criticism of the mining industry, the environmentalists, and the general public in the hearings, it will provide a good foundation upon which to judge and refine the "working document" I am introducing today.

Mr. President, I ask unanimous consent that my letter to Mr. Train of November 2, 1972, be printed in the RECORD at this point.

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

NOVEMBER 2, 1972.

Hon. RUSSELL E. TRAIN,
Chairman, Council on Environmental Quality, Washington, D.C.

DEAR CHAIRMAN TRAIN: As you know, the 92nd Congress devoted a great deal of time and effort towards the development of Federal legislation to regulate surface mining activities and to minimize the effects of these activities on the environment. Unfortunately, Congress did not take final action on pending measures to regulate surface mining prior to adjournment of the 92nd Congress.

As Chairman of the Senate Interior and Insular Affairs Committee, I intend to make every effort to see that strong and effective legislation is developed to deal with the adverse environmental and social consequences of surface mining activities early in the next session of the Congress.

While a great deal is currently known about the adverse environmental impacts of many surface and underground mining practices, very little is known about the transitional problems and the short and long term economic consequences of the various surface mining regulatory proposals which have been advanced. For example, many of the bills introduced in the 92nd Congress proposed various forms of prohibition and "slope" degree limitations on surface mining and reclamation activities. To a major extent, the debate over Federal surface mining legislation has narrowed to the question of what the impact of imposing various forms of slope degree limitations would be in terms of improving the quality of the environment, as well as in terms of the future availability of mineral and coal production to meet essential national requirements for energy and materials. The ultimate effects that the proposed bans and slope degree restrictions might have on the availability of mineable coal reserves, on environmental improvement, on electrical power reliability, and on the social and economic conditions of local communities have not been clearly defined by the testimony received in Congressional hearings or in information currently available from the Federal agencies. In my view, this is extremely unfortunate. Detailed information on these and other questions is needed to enable the Congress to develop a regulatory framework which will protect the environment and serve the interests of the public.

As you may know, on October 6, 1972, I introduced an amendment in the nature of a substitute (Amendment No. 1713) to S. 630, the Surface Mining Reclamation Act of 1972. Section 217 of my amendment authorized and directed the Council on Environmental Quality to conduct a detailed study of the impacts—social, economic, and environmental—of imposing bans and prohibiting surface mining through the use of slope limitations. I am enclosing a copy of the amendment, together with my introductory remarks for your ready reference.

In order to explore and better understand the extent of current knowledge, the availability of information and the state of the art of regulating surface mining activities I request that the Council organize an interagency task force to explore these subjects in anticipation of further congressional action on surface mining legislation. In view of the limited time available, I do not anticipate that the task force would be able to develop the detailed and precise information contemplated in section 217. I do, however, feel that a very important purpose would be served if the task force and the Council could identify existing sources of data and review the state of knowledge of mining technology and reclamation and provide the Committee with tentative answers to the questions set forth in section 217 of my amendment.

I would appreciate it if this report were available to the Committee no later than February 1, 1973.

Sincerely yours,

HENRY M. JACKSON,
Chairman.

MAJOR PROVISIONS

Mr. JACKSON. Mr. President, the bill I propose today is designed to achieve the objectives which I feel Federal surface mining and reclamation must achieve. It is also designed to approach rationally the very real constraints which do exist.

The Surface Mining Reclamation Act of 1973 draws heavily upon subcommittee work in the 92d Congress, S. 630 and other Federal surface mining legislative proposals, and the provisions of the better State laws, such as that of Pennsylvania, and reflects further analysis of issues raised by experts on surface mining in industry, environmental groups, Federal agencies, and State regulatory agencies.

The major provisions of my bill are as follows:

First, the Secretary of the Interior is authorized and directed to promulgate regulations covering surface mining of coal within 90 days of the date of enactment and for all other minerals subject to the act within 12 months of the date of enactment. Appropriate administrative procedures including public notice, public hearings, and administrative and judicial review are provided for.

Second, a new office of the Department of the Interior, which must remain separate from the Department's promotional and developmental responsibilities regarding minerals, is established to administer the act.

Third, each State is required to promulgate and implement a State program for the regulation and control of surface mining which meets the requirements of the act and which provides for the establishment and enforcement of permit systems for surface mining and reclamation operations for coal and for other minerals. Procedures for Federal review and approval are provided including review by other Federal agencies and public hearings if requested.

Fourth, if a State fails to submit a State program covering surface mining of coal within 12 months of the promulgation of Federal regulations covering coal or a program covering surface mining of other minerals within 12 months of the promulgation of Federal regulations covering other minerals, or if a State fails to enforce an approved State program, the Secretary is authorized to promulgate and implement a Federal program for the regulation of surface mining within that State, and to enforce the Federal program.

Fifth, a moratorium is imposed on opening new surface mining operations for coal or significantly increasing existing operations until a State program has been approved as meeting the requirements of this act and a permit is obtained from the State. The Secretary is provided latitude, however, to approve new or expanded operations in certain instances where critical public services such as providing needed electrical power are involved.

The moratorium is designed to prevent new starts or accelerated operations until such time as the State assumes responsibility for a strong, properly staffed regulatory program which, at a minimum, meets the requirements of this act. The moratorium also serves as an incentive for the surface mining industry to support early development of State programs which meet the act's requirements.

Sixth, applicants for permits for surface mining operations are required to prepare a reclamation plan to accompany permit applications. The application must set forth in detail the methods which will be used to reclaim the mined area and meet the requirements of the act. Applicants are also required to post a performance bond adequate to insure the completion of the reclamation. Public notice of applications is required and the reclamation plan and other information must be made available to the public. A public hearing is required on an application if it is requested by persons having a valid legal interest, and the right of appeal of the regulatory authority's decision to a court of competent jurisdiction is granted.

The burden of proof in determining ability to reclaim surface mined areas in a manner that meets the requirements of the act is placed upon the permit applicant.

Seventh, release of all or part of a performance bond is contingent upon the regulatory authority's finding that reclamation has been accomplished in compliance with the act.

Eighth, the regulations which are promulgated by a State or by the Secretary must, at a minimum, require every permittee to meet certain criteria and performance standards in reclaiming the surface mining area. Principally, he must return all surface areas to a condition at least fully capable of supporting the uses which it was capable of supporting prior to any mining. Other criteria cover soil stability, preventing erosion, revege-

tation, protection of offsite areas, protection of the quality of surface and ground waters, handling of debris, use of explosives, and other aspects of the mining and reclamation process.

In general, grading to approximate original contour is required. Latitude is given to cover those situations in which the regulatory authority determines some other type of reclamation would be preferable to improve the utility of the reclaimed lands or because of unique circumstances at the site. Prior to the consideration of any exceptions to the general performance standard the Reclamation Plan and its justification must be presented in detail by the applicant and approved by the regulatory authority in the permit application review process.

Ninth, a modified set of criteria are provided in section 212(c) to recognize the kinds of operations, such as some open pit mines and rock quarries, in which large amounts of mineral resources other than coal are removed from a relatively small area over an extended period of time and where all of the reclamation criteria and standards are physically impracticable or impossible of achievement. These alternative criteria would only apply where there is no domestic alternative source of an essential resource which can be mined by other than the open-pit method. The best possible reclamation would, however, be required and public health and safety and air and water quality would be protected.

Tenth, the Secretary is authorized to make grants to the States to assist in a program of identifying and designating specific areas of the State as unsuitable for surface mining operations.

Eleventh, the Council on Environmental Quality is authorized and directed to conduct a detailed study—which I have noted has already been initiated—of the impacts—social, economic, and environmental—of imposing general bans or slope degree limitations on surface mining and reclamation operations. The purpose of the study is to develop information necessary to achieve a knowledgeable understanding of the effects—both positive and negative—of imposing bans and prohibiting surface mining through the use of arbitrary slope limitations.

Twelfth, an "Abandoned Mine Reclamation Fund" is created in the Treasury with an initial appropriations authorization of $100 million. The Secretary is authorized to acquire, by purchase or donation, lands or interest in lands which have been affected by abandoned surface mining operations and not reclaimed. He is authorized to reclaim the lands and dispose of them pursuant to the provisions of the Surplus Property Act and to return the proceeds to the Fund. The Secretary is also empowered to make grants to the States for the purpose of acquiring and reclaiming abandoned surface-mined lands.

Numerous changes have been suggested by Senator FANNIN, other Members of the Senate, and various groups to which I have circulated the draft bill. However, rather than attempting to incorporate even the most meritorious of the proposed changes at this time, I have suggested that, as my bill is only a "working document," submission of the proposed amendments in the February hearings would guarantee their full consideration. The few differences between the bill I introduce today and my amendment of last year are to simply clean up the text or clarify meaning.

Mr. President, we face the challenge of successfully regulating surface mining if we are ever to deal simultaneously and effectively with two of our most critical problems: Our so-called energy crisis and "environmental crisis." I believe the bill I introduce today is a first step toward accepting and meeting that challenge.

I ask unanimous consent that the Surface Mining Reclamation Act of 1973, together with a section-by-section analysis, be printed at this point in the RECORD for the information of Members of the Senate.

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

S. 425

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 "Surface Mining Reclamation Act of 1973".

TITLE I—STATEMENT OF FINDINGS AND POLICY

SEC. 101. The Congress finds and declares that—

(1) extraction of minerals by mining operations is a significant and essential activity which contribues to the economic, social, and material well-being of the Nation;

(2) many unregulated mining operations result in disturbances of surface areas that burden and adversely affect commerce and the public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitat, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources;

(3) effective regulation of mining operations by the States and by the Federal Government in accordance with the requirements of this Act is an appropriate and necessary means to prevent the adverse social, economic, and environmental effects of mining operations; and

(4) because of the diversity of terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States in the proper exercise of their police power authority.

SEC. 102. It is the purpose of this Act to establish a nationwide program to prevent the adverse effects to society and the environment resulting from surface mining operations; to assure that surface mining operations are so conducted as to prevent lasting degradation to land and waters; to assure that adequate measures are undertaken to reclaim surface areas as contemporaneously as possible with the surface mining operations; to assist the States in developing and implementing such a program; and, wherever necessary, to exercise the full reach of Federal constitutional powers to insure the protection of the public interest through the effective control of surface mining operations.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

SEC. 201. GRANT OF AUTHORITY PROMULGATION OF FEDERAL REGULATIONS.—(a) Within ninety days after the date of enactment of this Act, the Secretary, in accordance with the requirements and the procedures of this Act, shall develop and publish in the Federal Register regulations covering surface mining and reclamation operations for coal, and shall set forth in reasonable detail those actions which a State must take to develop a State Program and otherwise meet the requirements of this Act.

(b) Not later than twelve calendar months following the date of the enactment of this Act, the Secretary, in accordance with the requirements of this Act and procedures set forth in this section, shall develop and publish in the Federal Register regulations covering surface mining and reclamation operations for other minerals, and shall set forth in reasonable detail those actions which a State must take to develop a State Program and otherwise meet the requirements of this Act.

(c) Such regulations for coal and for other minerals shall not become effective until the Secretary has first published the proposed regulations in the Federal Register and afforded interested persons and State and local governments a period of not less than thirty days after publication to submit written comments. Except as provided in subsection (d) of this section, the Secretary shall, upon the expiration of such period and after consideration of all written comments and relevant matter presented, promulgate the regulations with such modifications as he may deem appropriate.

(d) On or before the last day of any period fixed for the submission of written comments under subsection (c) of this section, any interested person or any State and local government may file with the Secretary written objections to a proposed regulation, stating the grounds therefor and requesting a public hearing by the Secretary on such objections. Within fifteen days after the period for filing such objections has expired, the Secretary shall publish in the Federal Register a notice specfiying the proposed regulation to which objections have been filed and for which a public hearing has been requested, and the date (which date shall be no later than thirty days after the date of publication of the notice pursuant to this subsection), time, and place of such public hearing wherein statements concerning the proposed regulation and objections thereto shall be received. To the extent possible, hearings pursuant to this section shall be held in the States and regions affected.

(e) Within sixty days after completion of any hearings, the Secretary shall issue a report setting forth his findings of fact and views on such objections and shall promulgate the regulations with such modifications as may be required. The regulations shall be effective thirty days after their publication in the Federal Register.

(f) The Administrative Procedure Act shall be applicable to the administration of this Act: *Provided,* That whenever procedures provided for in this Act are in conflict with the Administrative Procedure Act, the provisions of this Act shall prevail.

SEC. 202. OFFICE OF LAND USE POLICY, RECLAMATION, AND ENFORCEMENT.—(a) There is hereby established in the Department of the Interior the Office of Land Use Policy, Reclamation, and Enforcement.

(b) The Office shall have a Director who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate pro-

vided for level V of the Executive Schedule pay rates (5 U.S.C. 5315), and such other employees as may be required. The Director shall have the responsibilities provided for under this Act and such duties and responsibilities as the Secretary of the Interior may assign. Employees of the Office shall be recruited on the basis of their professional competence and capacity to administer objectively the provisions of this Act. Employees may be recruited from the United States Geological Survey, the Bureau of Mines, the Bureau of Land Management, and other departments and agencies of the Federal Government which have expertise pertinent to the responsibilities of the Office. No existing legal authority in the Department of the Interior which has as its purpose promoting the development or use of coal or other mineral resources, shall be transferred to the Office.

(c) The Secretary, acting through the Office, shall—

(1) administer the State grant-in-aid program for the development of State programs for surface mining and reclamation operations provided for in title IV of this Act;

(2) administer the grant-in-aid program to the States for the purchase and reclamation of abandoned and unreclaimed mined areas pursuant to title III of this Act;

(3) administer the grant-in-aid programs to the States for the development of State land use planning processes and the designation of land areas unsuitable for surface mining operations pursuant to section 215 of this Act;

(4) administer the surface mining and reclamation research and demonstration project authority provided for in section 404 of this Act;

(5) develop and administer any Federal programs for surface mining and reclamation operations which may be required pursuant to this title and review State programs for surface mining and reclamation operations pursuant to this title;

(6) consult with other agencies of the Federal Government having expertise in the control and reclamation of surface mining operations or responsibilities for the administration of land use planning assistance programs and assist States, local governments, and other eligible agencies in the coordination of such programs;

(7) maintain a continuing study of the land resources of the United States and their use;

(8) cooperate with the States in the development of standard methods and classifications for the collection of land use data and in the establishment of effective procedures for the exchange and dissemination of land use data;

(9) develop and maintain a Federal Land Use Information and Data Center and make the information maintained at the Data Center available to the public and to Federal, regional, State, and local agencies conducting or concerned with land use planning and agencies concerned with surface mining and reclamation operations;

(10) assist the States in the development of State Programs for surface mining and reclamation operations and State land use planning processes which meet the requirements of this Act and, at the same time, reflect local requirements and local environmental conditions; and

(11) assist the States in developing objective scientific criteria and appropriate procedures and institutions for determining those areas of a State to be designated unsuitable for all or certain types of mining and for development of the State land use planning process pursuant to section—.

SEC. 203. SURFACE MINING OPERATIONS NOT SUBJECT TO THIS ACT.—(a) The provisions of this Act shall not apply to any of the following activities:

(1) foundation excavations for the purpose of constructing buildings and other structures;

(2) excavations by an agency of Federal, State, or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel, and other materials for use in connection with any public project if the Federal, State, or local government requires reclamation of the area affected;

(3) the extraction of minerals by a landowner for his own noncommercial use from land owned or leased by him;

(4) the extraction of minerals for commercial purposes and the removal of overburden in total amounts of less than one thousand tons in any one location (which may not exceed two acres) in any one calendar year;

(5) the extraction of minerals for the purpose of taking samples for quality testing, for assaying, or other purposes associated with mineral exploration in amounts of less than two hundred and forty tons in any one location (which may not exceed one acre);

(6) archeological excavations; and

(7) such other surface mining operations which the Secretary determines to be of an infrequent nature and which involve only minor surface disturbances.

(b) In promulgating regulations to implement this section the Secretary shall consider the nature of the class, type, or types of activities involved; their magnitude (in tons and acres); their potential for adverse environmental impact; and whether the class, type, or types of activities are already subject to an existing regulatory system by State or local government or an agency of the Federal Government.

SEC. 204. STATE AUTHORITY; STATE PROGRAMS.—(a) A State, to be eligible to receive financial assistance provided for under titles III and IV of this Act and to be eligible to assume full control over surface mining and reclamation operations on lands within such State, shall—

(1) have appropriate legal authority under State law to regulate surface mining and reclamation operations in accordance with the requirements of this Act;

(2) provide sanctions under State law for violations of State laws, regulations, or conditions of permits concerning surface mining and reclamation operations which meet the requirements of this Act, such sanctions to include civil and criminal actions, forfeiture of bonds, withholding of permits, and the issuance of cease and desist orders by the State regulatory authority or its inspectors;

(3) have available sufficient administrative and technical personnel, adequate interdisciplinary expertise, and sufficient financial resources to enable the State to regulate surface mining and reclamation operations in accordance with the requirements of this Act; and

(4) submit to the Secretary for approval in accordance with the requirements of this Act—

(A) a State program which provides for the effective implementation, maintenance, and enforcement of a permit system for the regulation of surface mining and reclamation operations for coal on lands within such State; and

(B) a State program which provides for the effective implementation, maintenance, and enforcement of a permit system for the regulation of surface mining and reclamation operations for other minerals on lands within such State.

(b) The Secretary shall not approve any State program submitted by a State pursuant to this section until:

(1) he has solicited the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State Program; and

(2) he has provided an opportunity for a public hearing on the State Program within the State.

(c) The Secretary shall, within four calendar months following the submission of any State Program, approve or disapprove such State Program or any portion thereof. The Secretary shall approve a State Program if he determines that the State Program meets the requirements of this Act.

(d) If the Secretary disapproves any proposed State Program, he shall notify the State in writing of his decision and set forth in detail the reasons therefor. The State shall have sixty days in which to resubmit a revised State Program.

SEC. 205. FEDERAL PROGRAMS.—(a) The Secretary shall prepare and, subject to the provisions of this section, promulgate and implement a Federal Program for a State if such State:

(1) fails to submit a State Program covering surface mining and reclamation operations for coal within twelve months of the promulgation of the Federal regulations for such operations;

(2) fails to submit a State Program for surface mining and reclamation operations for other minerals within twelve months of the promulgation of Federal regulations for such operations;

(3) fails to resubmit an acceptable State Program within sixty days of disapproval of a proposed State Program: *Provided*, That the Secretary shall not implement a Federal Program prior to the expiration of the initial period allowed for submission of a State Program as provided for in clauses (1) and (2) of this subsection; or

(4) fails to enforce its approved State Program as provided for in this Act.

Promulgation and implementation of a Federal Program vests the Secretary with the full authority provided for in this Act for the regulation and control of surface mining and reclamation operations taking place on lands within any State not in compliance with this Act. After promulgation and implementation of a Federal Program the Secretary shall be the regulatory authority. In promulgating and implementing a Federal Program for a particular State the Secretary shall take into consideration the nature of that State's terrain, climate, biological, chemical, and other relevant physical conditions.

(b) Prior to promulgation and implementation of any proposed Federal Program, the Secretary shall give adequate public notice and hold a public hearing in the affected State.

(c) Permits issued pursuant to an approved State Program shall be valid but reviewable under a Federal Program. Immediately following promulgation of a Federal Program, the Secretary shall undertake to review such permits to determine that the requirements of this Act are not violated. If the Secretary determines any permit to have been granted contrary to the requirements of this Act, he shall so advise the permittee and provide him a reasonable opportunity for submission of a new application and reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Federal Program.

(d)(1) If a State submits a proposed State Program to the Secretary after a Federal Program has been promulgated and implemented pursuant to this section, and if the Secretary approves the State Program, the Federal Program shall cease to be effective within thirty days after such approval.

(2) Whenever a Federal Program is promulgated for a State pursuant to this Act, any statutes or regulations of such State which are in effect to regulate surface mining and reclamation operations subject to

this Act shall, insofar as they interfere with the achievement of the purposes and the requirements of this Act and the Federal Program, be preempted and superseded by the Federal Program.

SEC. 206. MORATORIUM ON SURFACE MINING OPERATIONS FOR COAL PENDING STATE COMPLIANCE.—After the date of enactment of this Act, no person shall open or develop any new or previously mined and abandoned site for surface mining operations for coal on lands within any State, and no person shall significantly increase or accelerate existing surface mining operations for coal on lands within any State unless such person has first obtained a permit issued by the State regulatory authority pursuant to a State Program approved in accordance with the provisions of this Act: *Provided*, That the Secretary may approve such new or expanded surface mining operations if he finds: (1) that such operations are the only practicable source of a coal supply to support initial or continued operation of a thermal electric powerplant, metallurgical process, or other activity impressed with a public interest and having regional or national importance; and (2) firm plans for, and substantial legal and financial commitments in, such operations were made prior to the date of enactment of this Act; and (3) the provisions for reclamation to be done in connection with such operations offer very reasonable assurance that such reclamation can be made compatible with the requirements of this Act.

SEC. 207. PERMITS.—(a) After the expiration of the twelve-calendar-month period following the date of promulgation of the Federal regulations no person shall engage in or carry out on lands within any State any surface mining operations for coal, unless such person has first obtained a permit issued by such State pursuant to an approved State Program or by the Secretary pursuant to a Federal Program.

(b) On and after the expiration of the twenty-four-calendar-month period following the date of the enactment of this Act, no person shall engage in or carry out on lands within any State any surface mining operations for other minerals, unless such person has first obtained a permit issued by such State pursuant to an approved State Program or by the Secretary pursuant to a Federal Program.

(c) The term of any permit for surface mining and reclamation operations issued pursuant to this Act shall not exceed five years and shall carry with it a right of renewal if the permittee can demonstrate compliance with the requirements of the approved State Program or a Federal Program for the State within which the operations are conducted and the capability to implement the Reclamation Plan applicable to the operations covered by the permit. Prior to approving the renewal of any permit the regulatory authority shall review the permit and the surface mining and reclamation operations and may require such new conditions and requirements as are necessary to reflect changing circumstances.

(d) A permit shall terminate if the permittee has not commenced actual mineral production on the surface mining and reclamation operations covered by such permit within three years of the issuance of the permit.

SEC. 208. PERMIT APPLICATION REQUIREMENTS: INFORMATION, PERFORMANCE BOND, INSURANCE, AND RECLAMATION PLANS.—(a) Each application for a permit under a State Program or Federal Program pursuant to the provisions of this Act shall include as a minimum the following information—

(1) the names and addresses of (A) the permit applicant; (B) every legal owner of the property (surface and mineral) to be mined; (C) the holders of any leasehold interest in the property; (D) any purchaser of the property under a real estate contract; (E) the operator if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) the names and addresses of the owners of all surface area within five hundred feet of any part of the proposed site of the surface mining and reclamation operations;

(3) a statement of any current or previous mining permits in the State held by the applicant and the permit numbers;

(4) the names and addresses of every officer, partner, director, or person performing a similar function;

(5) a statement of whether the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant, has ever held a Federal or State mining permit which has been suspended or revoked or has ever had a mining bond or similar security deposited in lieu of bond forfeited;

(6) such maps and topographical information, including the location of underground mining activities in the area, as the regulatory authority may require;

(7) a copy of the applicant's advertisement of the ownership, location, and boundaries of the proposed site of the surface mining and reclamation operations, such advertisement shall be placed in a newspaper of general circulation in the locality of the proposed site at least once a week for four successive weeks; and

(8) such other information as the regulatory authority may require.

(b) Each applicant for a permit shall file with the regulatory authority as part of the permit application a performance bond on a form prescribed and furnished by the regulatory authority, payable to the United States or to the State and conditioned upon the faithful compliance with the requirements of this Act. The amount of the bond required for each permit shall equal the estimated costs of reclamation by a third party: *Provided*, That the amount of each bond may be adjusted if it is determined to be inadequate.

(c) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought, or evidence that the applicant has satisfied other State or Federal self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface mining and reclamation operations and entitled to compensation under the applicable provisions of State law. Such policy shall be for the term of the permit plus not less than eighteen months thereafter.

(d) Each applicant for a permit shall be required to submit to the regulatory authority as part of the permit application a Reclamation Plan which shall meet the requirements of this Act.

SEC. 209. PERMIT APPLICATION APPROVAL PROCEDURES.—(a) The regulatory authority shall notify the applicant for a permit within a period of time established by law or regulation whether the application has been approved or disapproved. If approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified that the permit or any portion thereof has been denied, the applicant may request a hearing on the reasons for said disapproval. A hearing shall be held, within thirty days of the request. Within thirty days after the hearing the regulatory authority shall issue and furnish the applicant the written decision of the regulatory authority granting or denying the permit in whole or in part and stating the reasons therefor.

(b) Each applicant for a permit shall have the responsibility of demonstrating to the satisfaction of the regulatory authority that reclamation as required pursuant to this Act can and will be accomplished under the Reclamation Plan contained in the permit application.

(c) Any person having a valid legal interest which will be affected by the proposed surface mining and reclamation operations or any Federal, State, or local governmental agency having responsibilities affected by the proposed operations shall have the right to file written objections to any permit application within thirty days after the last publication of the advertisement pursuant to clause 208(a)(7). If written objections are filed, the regulatory authority shall hold a public hearing in the locality of the proposed surface mining and reclamation operations within thirty days of the receipt of such objections and after appropriate notice and publication of the date, time, and location of such hearing.

(d) A person having a valid legal interest which will be affected by the proposed surface mining and reclamation operations who has participated in the administrative procedures as an applicant, protestant, or objector, and who is aggrieved by the decision of the regulatory authority shall have the right of appeal for review by a court of competent jurisdiction in accordance with State or Federal law.

SEC. 210. RELEASE OF PERFORMANCE BONDS.—(a) The permittee may file a request with the regulatory authority for the release of the performance bond.

(b) The regulatory authority may release in whole or in part said bond if the authority is satisfied that reclamation covered by the bond or portion thereof has been accomplished as required by this Act: *Provided, however*, That—

(1) no bond shall be fully released until all reclamation requirements of this Act are fully met, and

(2) an inspection and evaluation of the affected surface mining and reclamation operations is made by the regulatory authority or its authorized representative prior to the release.

(c) If the regulatory authority disapproves the application for release of the bond or portion thereof, the authority shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release. The permittee shall be afforded a reasonable period of time to take such corrective actions.

(d) If requested by any person having a valid legal interest which will be affected by the failure of the permittee to have complied with the requirements of this Act, the regulatory authority shall, within 30 days after appropriate public notice, hold a public hearing on the surface mining and reclamation operations covered by a performance bond. Such hearing shall be held after the release of 50 per centum or more and prior to the release of 90 per centum of such bond.

SEC. 211. REVISION AND REVOCATION OF PERMITS.—(a) Once granted a permit may not be revoked unless: (1) the regulatory authority gives the permittee prior notice of violation of the provisions of the permit, the State program or Federal program, or this Act and affords a reasonable period of time of not less than fifteen days or more than one year within which to take corrective action; and (2) the regulatory authority determines, after a public hearing, if requested by the permittee, that the permittee remains in violation. The regulatory authority shall issue and furnish the permittee a written

decision either affirming or rescinding the revocation and stating the reasons therefor.

(b) (1) During the term of the permit the permittee may submit an application, together with a revised reclamation plan, to the regulatory autohrity for a revision of the permit.

(2) An application for a revision of a permit shall not be approved unless the regulatory authority is fully satisfied that reclamation as required pursuant to this Act can and shall be accomplished under the revised reclamation plan. The revision shall be approved or disapproved within a period of time established by the State or Federal program. The regulatory authority shall establish guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply: *Provided*, That any revisions which propose a substantial change in the intended future use of the land or significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for a new permit.

(c) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this Act shall be made without the written approval of the regulatory authority.

SEC. 212. CRITERIA FOR SURFACE MINING AND RECLAMATION OPERATIONS.—(a) Each Reclamation Plan submitted as a part of a permit application pursuant to an approved State Program or a Federal Program under the provisions of this Act shall include a statement of:

(1) the condition of the land to be covered by the permit prior to any mining including:

(A) the uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining;

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(2) the use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses;

(3) the engineering techniques proposed to be used and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan for backfilling, soil stabilization, and compacting, grading, and revegetation; an estimate of the cost per acre of the reclamation, including a statement as to how the permittee plans to comply with the requirements set out in subsection (b) of this section;

(4) the steps to be taken to insure that the surface mining and reclamation operations comply with all applicable air and water quality laws and regulations and any applicable health and safety standards;

(5) the consideration which has been given to insuring that the Reclamation Plan is consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies;

(6) the consideration which has been given to insuring the maximum effective recovery of the mineral resource;

(7) a time schedule for the completion of all stages of reclamation;

(8) the consideration which has been given to making the surface mining and reclamation operations consistent with all applicable State and local land use plans and programs and zoning and other land use laws, ordinances, and regulations;

(9) all lands, interests in lands, or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit: *Provided*, That any information required by this section which is not on public file pursuant to State law shall be held in confidence by the regulatory authority; and

(10) the results of test borings which the applicant has made at the area to be covered by the permit, including the location of subsurface water, and an analysis of the chemical properties including acid forming properties of the mineral and overburden: *Provided*, That this information shall not be publicly disclosed by the regulatory authority.

(b) Each State program and each Federal program shall include regulations which at a minimum require each permittee to:

(1) return all surface areas to a condition at least fully capable of supporting the uses which they were capable of supporting prior to any mining, which condition, however, shall not present any hazard to public health or safety;

(2) insure that backfilling, compacting, and grading shall be accomplished to achieve the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated: *Provided*, That alternative grading plans, including terracing, retention of stable highways or spoilbanks, or water impoundments may be permitted when they (i) are specifically proposed in the reclamation plan for the purpose of achieving an environmentally sound condition and a desirable use for the reclaimed area, and (ii) are approved by the regulatory authority in advance of mining pursuant to the approval of the permit;

(3) insure that any highwalls, terraces, and spoil remaining at the conclusion of reclamation are stable, taking into consideration all of the physical, climatological, and other characteristics of the site;

(4) stabilize and protect all surface areas affected by the mining and reclamation operations to prevent immediate and permanent erosion and attendant air and water pollution, such stabilization and reclamation to include soil compaction, where advisable, and establishment of a stable and self-regenerating vegetative cover which, where advisable, shall be comprised of native vegetation;

(5) segregate and preserve topsoil and use the best available other soil material from the mining cycle to cover spoil material unless the permit applicant provides evidence in the reclamation plan sufficient to satisfy the regulatory authority that another method of soil conservation would be superior for revegetation purposes;

(6) insure that offsite areas are protected from slides or damage occurring during the surface mining and reclamation operations and that no part of the operations or waste accumulations are located outside the permit area, and that any damage is contained within the permit area;

(7) maintain the quality of water in surface and ground water systems both during and after surface mining and reclamation operations by:

(A) avoiding acid mine drainage by (i) preventing or retaining drainage from acid producing deposits, or (ii) treating drainage to acceptable standards of acidity and iron content before releasing it to water courses;

(B) conducting surface mining operations so as to minimize the contribution of silt to runoff from the disturbed area;

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells to prevent acid drainage to ground and surface waters; and

(D) such other actions as the regulatory authority may prescribe;

(8) insure the control of surface operations incident to underground mining for the purpose of protecting the surface area, controlling mine refuse, and providing for the proper sealing of shafts, tunnels, and entryways and the filling of exploratory holes no longer necessary for mining;

(9) insure that all debris, acid forming materials, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface waters;

(10) insure that explosives are used only in accordance with existing State and Federal law and the regulations promulgated by the regulatory authority which, at a minimum, shall provide for:

(A) sufficient notice to local governments and individuals which would be affected by the use of such explosives;

(B) specific procedures for the protection of dwellings, other buildings and property; and

(C) specific limitations based upon the physical conditions of the site, so as to prevent injury to persons and damage to property outside of the permit area, including underground mining operations in the same vicinity;

(11) insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as possible with the surface mining operations; and

(12) meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this Act, taking into consideration the physical, climatological, and other characteristics of the site, and to insure the maximum effective recovery of the mineral resources.

(c) With respect to surface mining operations for other minerals in which (1) the amount of mineral removed is very large in proportion to the surface area distributed; and (2) the surface mining operations take place on the same site for an extended period of time; and (3) there is no practicable method to return the area to conditions approximating original contour; and (4) there is no practicable alternative domestic source of the mineral resource, the regulatory authority may propose and the Secretary may promulgate alternative regulations to those provided for in clauses (1), (2), (4), and (5) of subsection 212(b) for reclamation which, at a minimum, will:

(1) insure that all remaining slopes of highwalls and spoil will be permanently stable;

(2) insure that water and air quality standards applicable to the area to be covered by a permit will be observed;

(3) insure that public health and safety will be protected; and

(4) provide for the maximum practicable reclamation of the area to be covered by a permit to minimize adverse environmental impacts of the mining and to optimize the social, ecological, and environmental utility of the area.

SEC. 213. INSPECTIONS.—(a) The Secretary shall cause to be made such inspections of any surface mining and reclamation operations as are necessary to evaluate the administration of State Programs, or to develop or enforce any Federal Program, and for such purposes authorized representatives of the Secretary shall have a reasonable right of entry to any surface mining and reclamation operations.

(b) For the purpose of developing or assisting in the development, administration, and enforcement of any State or Federal Program under this Act or in the administration and enforcement of any permit under this Act, or of determining whether any person is in violation of any requirement of this Act—

(1) the regulatory authority shall require each permittee to (A) establish and maintain appropriate records, (B) make reports, (C) install, use, and maintain any necessary monitoring equipment, and (D) provide such other information relative to surface mining and reclamation operations as the regulatory

authority deems reasonable and necessary; and

(2) the authorized representatives of the regulatory authority, upon presentation of appropriate credentials (A) shall have a right of entry to, upon or through any surface mining and reclamation operations or any premises in which any records required to be maintained under paragraph (1) of this subsection are located; and (B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method of operation required under this Act.

(c) The inspections by the regulatory authority shall (i) occur on an irregular basis averaging not less than one inspection per month for the surface mining and reclamation operations for coal covered by each permit and biannually for surface mining and reclamation operations for other minerals covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees; and (iii) include the filing of inspection reports adequate to carry out the purposes of this Act.

(d) Permits issued under State Programs or Federal Programs and the permittees' Reclamation Plans shall be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which surface mining and reclamation operations under such permits will be conducted.

(e) Each permittee shall conspicuously maintain at the entrances to the surface mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the permittee and the permit number of the permit which covers such operations.

(f) Any records, reports, or information obtained under this section by the regulatory authority which are not within the exceptions of the Freedom of Information Act (5 U.S.C. 552) shall be available to the public.

SEC. 214. FEDERAL ENFORCEMENT.—(a) Whenever, on the basis of any information available to him, the Secretary finds that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary shall notify the State regulatory authority in the State in which such violation exists. If such State authority fails within ten days after notification to take appropriate action to cause said violation to be corrected or to show good cause for such failure, the Secretary shall issue an order requiring such person to comply with the provision or permit condition.

(b) When, on the basis of Federal inspection, the Secretary determines that any person is in violation of any requirement of this Act or any permit condition required by this Act, the Secretary or his inspectors may immediately order a cessation of surface mining and reclamation operations or the portion thereof relevant to the violation and provide such person a reasonable time to correct the violation: *Provided*, That such person shall be entitled to a hearing concerning such an order of cessation within three days of the issuance of the order. If such person shall fail to obey the order so issued, the Secretary shall immediately institute civil or criminal actions in accordance with this Act.

(c) Whenever the Secretary finds that violations of an approved State Program appear to result from a failure of the State to enforce such State Program effectively, he shall so notify the State. If the Secretary finds that such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Secretary that it will enforce such State Program, the Secretary shall enforce any permit condition required under this Act with respect to any person by issuing an order to comply with such permit condition or by bringing a civil or criminal action, or both, pursuant to this section.

(d) Any order issued under this section shall take effect immediately. A copy of any order issued under this section shall be sent to the State regulatory authority in the State in which the violation occurs. Each order shall set forth with reasonable specificity the nature of the violation and establish a reasonable time for compliance taking into account the seriousness of the violation, any irreparable harmful effects upon the environment, and any good faith efforts to comply with applicable requirements. In any case in which an order or notice under this section is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(e) At the request of the Secretary, the Attorney General may institute a civil action in a district court of the United States for a restraining order or injunction or other appropriate remedy to enforce the purposes and the provisions of this Act.

(f) (1) If any person shall fail to comply with any Federal Program, any provision of this Act, or any permit condition required by this Act, for a period of fifteen days after notice of such failure, such person shall be liable for a civil penalty of not more than $1,000 for each and every day of the continuance of such failure. The Secretary may assess and collect any such penalty.

(2) Any person who knowingly and willfully violates a Federal Program, any provision of this Act, or any permit condition required by this Act, or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly and willfully falsifies, tampers with, or knowingly and willfully renders inaccurate any monitoring device or method required to be maintained under this Act, shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(g) Wherever a corporation or other entity violates a Federal Program any provision of this Act, or any permit condition required by this Act; any director, officer, or agent of such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (f) of this section.

(h) The penalties prescribed in this section shall be in addition to any other remedies afforded by this Act or by any other law or regulation.

SEC. 215. DESIGNATION OF LAND AREAS UNSUITABLE FOR SURFACE MINING.—(a) (1) The Secretary is authorized to make annual grants to each State for the purpose of assisting in the development of a State land use planning process capable of making objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of a State are unsuitable for all or certain types of surface mining operations.

(2) An area may be designated unsuitable for all or certain types of surface mining operations if—

(A) reclamation pursuant to the requirements of this Act is not physically or economically possible;

(B) surface mining operations or other major uses in a particular area would be incompatible with Federal, State, or local plans to achieve essential government objectives; or

(C) the area is an area of critical environmental concern.

(3) To be eligible for grants under this section a State must demonstrate it has developed or is developing a land use planning process which includes—

(A) a State land use planning and coordination agency;

(B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the State to support and permit reclamation of surface mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface mining operations; and

(D) proper notice, opportunities for public participation, and measures to protect the legal interests of affected property owners in all aspects of the State planning process.

(4) Grants made pursuant to this section shall not exceed 80 per centum of the cost of developing and managing a State land use planning process in the first and second years and 60 per centum thereafter.

(5) In making grants pursuant to this section the Secretary shall consider the present and projected levels of surface mining operations, the need for areawide planning, and the size of the State.

(6) For each fiscal year following the enactment of this Act, there are authorized to be appropriated to the Secretary for grants to the States not more than $25,000,000 annually to carry out the purposes of this section.

(7) For purposes of this section the term "areas of critical environmental concern" means an area on lands within any State where uncontrolled or unplanned development—mining, or otherwise—could result in irreversible damage to important historic, cultural, environmental or esthetic values, or natural systems or processes, which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance.

(b) The Secretary is authorized and directed to conduct a review of the Federal lands and to determine, pursuant to the criteria set forth in clause (2) of subsection (a) of this section, whether there are areas on Federal lands which are unsuitable for all or certain types of surface mining operations. When the Secretary determines an area on Federal lands to be unsuitable for all or certain types of surface mining operations he may withdraw such area or he may condition any mineral leasing or mineral entries in a manner so as to limit surface mining operations on such area.

(c) No permit application shall be approved for surface mining operations—

(1) on any land which is within one hundred feet of primary or secondary roads or lakes, streams, or tidal waters to which the public has access and use; or

(2) if the surface mining operations will adversely affect any publicly owned park unless screening and other measures, approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, are used, and the permit application shall so provide.

SEC. 216. FEDERAL LANDS AND INDIAN LANDS.—(a) The Secretary shall promulgate and implement a Federal Lands Program which shall be applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal lands and Indian lands. The Federal Lands Program shall, at a minimum, incorporate all of the requirements of this Act and shall take into consideration the diverse physical, climatological, and other unique characteristics of the Federal and Indian lands in question.

(b) The requirements of this Act and the Federal Lands Program shall be incorporated by reference or otherwise in any Federal mineral lease, permit, or contract issued by the Secretary which may involve surface mining and reclamation operations. Incorporation of such requirements shall not, however, limit in any way the authority of the Secretary to subsequently issue new regulations, revise the Federal Lands Program to deal with changing conditions or changed

technology, and to require the lease, permit, or contract holder to conform any surface mining and reclamation operations to the requirements of this Act and the regulations issued pursuant to this Act.

(c) The Secretary may enter into agreements with a State or with a number of States to provide for a joint Federal-State Program covering a permit or permits for surface mining and reclamation operations on land areas which contain lands within any State and Federal and Indian lands which are interspersed or checkerboarded and which should, for conservation and administrative purposes, be regulated as a single management unit. To implement a joint Federal-State program the Secretary may enter into agreements with the States, may delegate authority to the States, or may accept a delegation of authority from the States for the purpose of avoiding duality of administration of a single permit for surface mining and reclamation operations.

(d) Except as specifically provided in subsection (c) this section shall not be construed as authorizing the Secretary to delegate to the States any authority or jurisdiction to regulate or administer surface mining and reclamation operations or other activities taking place on the Federal lands or Indian lands or to delegate to the States trustee responsibilities toward Indians and Indian lands.

SEC. 217. STUDY OF SLOPE LIMITATIONS.—(a) The Chairman of the Council on Environmental Quality is directed to conduct and to coordinate an in depth, interagency study to determine the advisability and the impacts of imposing, or failing to impose, for regional or nationwide application specific slope limitations as a means of regulating surface mining and reclamation operations for coal. The Secretaries of the Departments of the Interior, Agriculture, and Commerce, the Administrator of the Environmental Protection Agency, and the Chairman of the Federal Power Commission with the assistance of the heads of such other Federal agencies of State governments as the Chairman of the Council on Environmental Quality deems necessary or appropriate, shall participate in the study.

(b) The Chairman shall, at a minimum, examine in detail the impacts of imposing—

(1) a prohibition on the permanent disposition of spoil on slopes with a grade exceeding ten, fourteen, and eighteen degrees from the horizontal;

(2) a total prohibition of surface mining operations on slopes with a grade exceeding twenty, twenty-six, thirty-two, and thirty-eight degrees from the horizontal;

(3) a total prohibition upon all surface mining operations, or specific types of surface mining operations such as auger or contour mining; and

(4) a requirement that the steepest contour of the highwall after terracing shall not exceed a slope with a grade of twenty-five, thirty-five, and forty-five degrees from the horizontal.

(c) In assessing the impact of imposing the limitations and prohibitions set forth in clauses (1) through (4) of subsection (b) and with respect to each of the specified slope grade limitations contained therein, the Chairman shall determine the probable effect of each on—

(1) the total available domestic supply of coal resources which could be mined with existing technology and projected new technologies:

(A) by using underground and surface mining operations, and

(B) by using underground mining operations only;

(2) electrical power production system reliability and electrical powerplant coal supply in each of the regions of the country used by the Federal Power Commission in projecting supply and demand for electrical power;

(3) other major sectors of the economy using coal such as the metallurgical industry; and

(4) employment, local tax base, and levels of local government services in States and counties in which currently exist substantial surface mining operations.

(d) In studying the impact of imposing each of the limitations and prohibitions set forth in subsection (b) the Chairman shall also determine the impact of the proposed constraints on—

(1) improving the environment of the regions affected;

(2) improving the living conditions in the regions affected;

(3) improving water quality; and

(4) reducing the external social and environmental costs associated with surface mining operations.

(e) The study, together with specific legislative recommendations, shall be submitted to the President and the Congress no later than one year from the date of enactment of this Act.

(f) A second study of the impact of the prohibitions and limitations set forth in subsection (b), and the potential impacts thereof set forth in subsections (c) and (d), as applied to surface mining and reclamation operations for other minerals shall be conducted in the manner prescribed in subsection (b). Such study, together with legislative recommendations, shall be submitted to the President and the Congress not later than two years from the date of enactment of this Act.

(g) The Chairman of the Council on Environmental Quality is authorized to utilize independent consultants and contractors to undertake studies and to develop any background information or supplemental reports necessary to the preparation of the studies required by this section.

(h) There are hereby authorized to be appropriated to the Council on Environmental Quality $2,000,000 for the purposes set forth in this section.

SEC. 218. PUBLIC AGENCIES, PUBLIC UTILITIES, AND PUBLIC CORPORATIONS.—Any agency, unit or instrumentality of Federal, State, or local government, including any publicly owned utility or publicly owned corporation of Federal, State, or local government, which proposes to engage in surface mining operations which are subject to the requirements of this Act shall comply with the provisions of title II of this Act.

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

SEC. 301. ABANDONED MINE RECLAMATION FUND.—(a) There is hereby created in the Treasury of the United States a fund to be known as the Abandoned Mine Reclamation Fund.

(b) There is authorized to be appropriated to the Fund initially the sum of $100,000,000 and such other sums as the Congress may thereafter authorize to be appropriated.

(c) The following other moneys shall be deposited in the Fund—

(1) moneys derived from the sale, lease, or rental of land reclaimed pursuant to this title;

(2) moneys derived from any user charge imposed on or for land reclaimed pursuant to this title, after expenditures for maintenance have been deducted; and

(3) miscellaneous receipts accruing to the Secretary through the administration of this Act which are not otherwise encumbered.

(d) Moneys in the Fund subject to annual appropriation by the Congress, may be expended by the Secretary for the purposes of this title.

SEC. 302. ACQUISITION AND RECLAMATION OF ABANDONED AND UNRECLAIMED MINED AREAS.—(a) The Congress hereby declares that the acquisition of any interest in land or mineral rights in order to construct, operate, or manage reclamation facilities and projects constitutes acquisition for a public use or purpose, notwithstanding that the Secretary plans to hold the interest in land or mineral rights so acquired as an open space or for recreation, or to resell the land following completion of the reclamation facility or project.

(b) The Secretary may acquire by purchase, donation, or otherwise, land or any interest therein which has been affected by surface mining operations prior to the enactment of this Act and has not been returned to productive or useful purposes. Prior to making any acquisition of land under this section, the Secretary shall make a thorough study with respect to those tracts of land which are available for acquisition under this section and based upon those findings he shall select lands for purchase according to the priorities established in subsection (i). Title to all lands or interests therein acquired shall be taken in the name of the United States, but no deed shall be accepted or purchase price paid until the validity of the title is approved by the Attorney General. The price paid for land under this section shall take into account the unrestored condition of the land.

(c) For the purposes of this title, when the Secretary seeks to acquire an interest in land or mineral right and cannot negotiate an agreement with the person holding title to such interest or right he shall request the Attorney General to file a condemnation suit and take such interest or right, following a tender of just compensation as awarded by a jury to such persons: *Provided, however,* That when the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingly serious threats to life, safety, or health, or to property, the Secretary may take such interest or rights immediately upon payment by the United States either to such person or into a court of competent jurisdiction of such amount as the Secretary shall estimate to be the fair market value of such interest or rights; except that the Secretary shall also pay to such person any further amount that may be subsequently awarded by a jury, with interest from the date of the taking.

(d) For the purposes of this title, when the Secretary takes action to acquire an interest in land or mineral rights and cannot determine which person or persons hold title to such interest or rights, the Secretary shall request the Attorney General to file a condemnation suit, and give notice, and may take such interest or rights immediately upon payment into court of such amount as the Secretary shall estimate to be the fair market value of such interest or rights. If a person or persons establish title to such interest or rights within six years from the time of their taking, the court shall transfer the payment to such person or persons and the Secretary shall pay any further amount that may be agreed to pursuant to negotiations or awarded by a jury subsequent to the time of taking. If no person or persons establish title to the interest or rights within six years from the time of such taking, the payment shall revert to the Secretary and be deposited in the Fund.

(e) States are encouraged to acquire abandoned and unreclaimed mined lands within their boundaries and to donate such lands to the Secretary to be reclaimed under appropriate Federal regulations. The Secretary is authorized to make grants on a

matching basis to States in such amounts as he deems appropriate for the purpose of carrying out the provisions of this title but in no event shall any grant exceed 90 per centum of the cost of acquisition of the lands for which the grant is made. When a State has made any such land available to the Federal Government under this title, such State shall have a preference right to purchase such lands after reclamation at fair market value less the State portion of the original acquisition price.

(f) The Secretary shall prepare specifications for the reclamation of lands acquired under this title. In preparing specifications, the Secretary shall utilize the specialized knowledge or experience of any Federal department or agency which can assist him in the development or implementation of the reclamation program required under this title.

(g) The Secretary shall reclaim the lands acquired under this title in accordance with the specifications prepared therefor pursuant to subsection (f) of this section as moneys become available to the Fund.

(h) Administration of all lands reclaimed under this title shall be in the Secretary until disposed of by him as set forth in this title.

(i) In selecting lands to be acquired pursuant to this title and in formulating regulations for the making of grants to the States to acquire lands pursuant to this title, the Secretary shall give priority (1) to lands which, in their unreclaimed state, he deems to have the greatest adverse effect on the environment or constitute the greatest threat to life, health, or safety and (2) to lands which he deems suitable for public recreational use. The Secretary shall direct that the latter lands, once acquired, shall be reclaimed and put to use for recreational purposes. Revenue derived from such lands, once reclaimed and put to recreational use, shall be used first to insure proper maintenance of such lands and facilities thereon, and any remaining moneys shall be deposited in the Fund.

(j) Where land reclaimed pursuant to this title is deemed to be suitable for industrial, commercial, residential, or private recreational development, the Secretary may sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

(k) The Secretary shall hold a public hearing, with the appropriate notice, in the county or counties or the appropriate subdivisions of the State in which lands acquired to be reclaimed pursuant to this title are located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

SEC. 401. DEFINITIONS.—For the purpose of this Act, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam;

(3) "Office" means the Office of Land Use Policy, Reclamation, and Enforcement established pursuant to section 202;

(4) "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States, or between a State and any other place outside thereof, or between points in the same State which directly or indirectly affect interstate commerce;

(5) "surface mining operations" means—

(A) activities conducted on the surface of lands in connection with a surface mine or surface operations incident to an underground mine, the products of which enter commerce or the operations of which directly or indirectly affect commerce. Such activities include excavation for the purpose of obtaining coal or other minerals, by contour, strip, auger or open pit mining, dredging, quarrying, in situ distillation or retorting and leaching; and the cleaning, concentrating, or other processing or preparation (excluding refining and smeltering), and loading for interstate commerce of crude minerals at or near the mine site. Such activities do not include the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting; and

(B) the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include land affected by mineral exploration operations which substantially disturb the natural land surface, and any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(6) "surface mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations;

(7) "lands within any State" or "lands within such State" means all lands within a State other than Federal lands and Indian lands;

(8) "Federal lands" means any land owned by the United States without regard to how the United States acquired ownership of the land and without regard to the agency having responsibility for management thereof, except Indian lands;

(9) "Indian lands" means all lands included within Indian reservations, or lands held by the United States in trust for Indians, including restricted allotted lands over which the Secretary exercises supervisory control;

(10) "State Program" means a program established by a State pursuant to section 204 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is relevant, on lands within a State in accord with the requirements of this Act and regulations issued by the Secretary pursuant to this Act;

(11) "Federal Program" means a program established by the Secretary pursuant to section 205 to regulate surface mining and reclamation operations for coal or for other minerals, whichever is relevant, on lands within a State in accordance with the requirements of this Act;

(12) "Federal Lands Program" means a program established by the Secretary pursuant to section 216 to regulate surface mining and reclamation operations on Federal lands and Indian lands;

(13) "Reclamation Plan" means a plan submitted by an applicant for a permit under a State Program or Federal Program which sets forth a plan for reclamation of the proposed surface mining operations pursuant to section 212;

(14) "State regulatory authority" means the department or agency in each State which has primary responsibility at the State level for administering this Act;

(15) "regulatory authority" means the State regulatory authority where the State is administering this Act under an approved State Program or the Secretary where the Secretary is administering this Act under a Federal Program;

(16) "person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization;

(17) "permit" means a permit to conduct surface mining and reclamation operations issued by the State regulatory authority pursuant to a State Program or by the Secretary pursuant to a Federal Program;

(18) "permit applicant" or "applicant" means a person applying for a permit;

(19) "permittee" means a person holding a permit;

(20) "Fund" means the Abandoned Mine Reclamation Fund established pursuant to section 301;

(21) "other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form;

(22) "backfilling to approximate original contour" means that part of the reclamation process achieved by grading from a point at or above the top of the highwall to a point at or below the toe of the spoil bank in which the maximum slope shall not exceed the original average slope from the horizontal by more than five degrees, and no depressions capable of collecting water shall be permitted except where the retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes; and

(23) "terracing" means grading to the extent necessary to insure that the steepest contour of any remaining highwall is permanently stable and will not erode, and grading to the extent necessary to insure that the table portion of the restored area shall not have depressions which hold water, except where the retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

SEC. 402. ADVISORY COMMITTEES.—(a) The Secretary shall appoint a National Advisory Committee for surface mining and reclamation operations for coal and a National Advisory Committee for surface mining and reclamation operations for other minerals. Each Advisory Committee shall consist of not more than seven members and shall have a balanced representation of Federal, State, and local officials, and persons qualified by experience or affiliation to present the viewpoint of operators of surface mining operations, of consumers, and of conservation and other public interest groups, to advise him in carrying out the provisions of this Act. The Secretary shall designate the chairman of each Advisory Committee.

(b) Members of each Advisory Committee other than employees of Federal, State, and local governments, while performing Advisory Committee business, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceed $100 per day, including traveltime. While serving away from their homes or regular places of business, members may be paid travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons intermittently employed.

SEC. 403. GRANTS TO THE STATES.—(a) The Secretary is authorized to make annual grants to any State for the purpose of assisting such State in developing, administering, and enforcing State Programs under this Act: *Provided*, That such grants shall not exceed 80 per centum of the total costs incurred during the first year; 70 per centum of the total costs incurred during the second and third years; and 60 per centum each year thereafter.

(b) The Secretary is authorized to cooperate with and provide assistance to any State for the purpose of assisting it in the

development, administration, and enforcement of its State Programs. Such cooperation and assistance shall include—

(1) technical assistance and training, including provision of necessary curricular and instruction materials, in the development, administration, and enforcement of the State Programs; and

(2) assistance in preparing and maintaining a continuing inventory of information on surface mining and reclamation operations for each State for the purposes of evaluating the effectiveness of the State Programs. Such assistance shall include all Federal departments and agencies making available data relevant to surface mining and reclamation operations and to the development, administration, and enforcement of State Programs concerning such operations.

SEC. 404. RESEARCH AND DEMONSTRATION PROJECTS.—(a) The Secretary is authorized to conduct and promote the coordination and acceleration of research, studies, surveys, experiments, and training in carrying out the provisions of this Act. In conducting the activities authorized by this section, the Secretary may enter into contracts with, and make grants to qualified institutions, agencies, organizations, and persons.

(b) The Secretary is authorized to enter into contracts with, and make grants to, the States and their political subdivisions, and other public institutions, agencies, organizations, and persons to carry out demonstration projects involving the reclamation of lands which have been disturbed by surface mining operations. Such demonstration projects may include the use of solid and liquid residues from sewage treatment processes.

(c) There are authorized to be appropriated to the Secretary $5,000,000 annually for the purposes of this section.

SEC. 405. ANNUAL REPORT.—The Secretary shall submit annually to the President and the Congress a report concerning activities conducted by him, the Federal Government, and the States pursuant to this Act. Among other matters, the Secretary shall include in such report recommendations for additional administrative or legislative action as he deems necessary and desirable to accomplish the purposes of this Act.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for administration of this Act and for the purposes of section 403 for the first fiscal year after the enactment of this Act, the sum of $10,000,000; for each of the next two succeeding fiscal years, the sum of $20,000,000; and $30,000,000 for each fiscal year thereafter.

SEC. 407. TEMPORARY SUSPENSION.—(a) The President of the United States is hereby authorized to suspend for a period not to exceed ninety days any requirement of this Act concerning surface mining and reclamation operations when he determines it necessary to do so because of (i) a national emergency, (ii) a critical national or regional electrical power shortage, or (iii) a critical national *fuels* or mineral shortage.

(b) Any action by the President pursuant to subsection (a) shall be based upon findings and recommendations of the Director of the Office of Emergency Preparedness. In preparing findings and recommendations for the President, the Director shall solicit the views of the Secretary of the Interior, the Chairman of the Council on Environmental Quality, and the Chairman of the Federal Power Commission.

(c) Any action taken by the President pursuant to this section shall be followed by a report to the Congress within five days on the nature of the emergency, the action taken, and any legislative recommendations he may deem necessary.

SEC. 408. OTHER FEDERAL LAWS.—(a) Nothing in this Act shall be construed as superseding, amending, modifying, or repealing existing State or Federal law relating to mine health and safety, and air and water quality.

(b) Nothing in this Act shall affect in any way the authority of the Secretary or the heads of other Federal agencies under other provisions of law to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface mining and reclamation operations on lands under their jurisdiction.

(c) To the greatest extent practicable each Federal agency shall cooperate with the Secretary and the States in carrying out the provisions of this Act.

SEC. 409. STATE LAWS.—(a) No State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, shall be superseded by any provision of this Act or any regulation issued pursuant thereto, except insofar as such State law or regulation is inconsistent with the provisions of this Act.

(b) Any provision of any State law or regulation in effect upon the date of enactment of this Act, or which may become effective thereafter, which provides for more stringent land use and environmental controls and regulations of surface mining and reclamation operations than do the provisions of this Act or any regulation issued pursuant thereto shall not be construed to be inconsistent with this Act. Any provision of any State law or regulation in effect on the date of enactment of this Act, or which may become effective thereafter, which provides for the control and regulation of surface mining and reclamation operations for which no provision is contained in this Act shall not be construed to be inconsistent with this Act.

SEC. 410. PROTECTION OF THE SURFACE OWNER.—In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by surface mining operations the application for a permit shall include the following:

(a) the written consent of, or a waiver by, the owner or owners of the surface lands involved to enter and commence surface mining operations on such land, or, in lieu thereof,

(b) the execution of a bond or undertaking to the United States or the State, whichever is applicable, for the use and benefit of the surface owner or owners of the land, to secure the payment of any damages to the surface estate, to the crops, or to the tangible improvements of the surface owner as may be determined by the parties involved or as determined and fixed in an action brought against the permittee or upon the bond in a court of competent jurisdiction. This bond is in addition to the performance bond required for reclamation by this Act.

SEC. 411. (a) In the award of contracts for the reclamation of abandoned and unreclaimed mined areas pursuant to title III and for research and demonstration projects pursuant to section 404 of this Act the Secretary shall develop regulations which will accord a preference to surface mining operators who can demonstrate that their surface mining operations, despite good-faith efforts to comply with the requirements of this Act, have been adversely affected by the regulation of surface mining and reclamation operations pursuant to this Act.

(b) Contracts awarded pursuant to this section shall require the contractor to afford an employment preference to individuals whose employment has been adversely affected by this Act.

SEC. 412. SEVERABILITY.—If any provision of this Act or the applicability thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION-BY-SECTION ANALYSIS OF SURFACE MINING RECLAMATION ACT OF 1973

TITLE I—STATEMENT OF FINDINGS AND PURPOSE

Section 101

This section declares, as Congressional findings that the surface mining of coal and other minerals is a significant activity which contributes to our Nation's economic, social, and material well-being. It serves as a significant source of employment and supplies crucial fuels to meet potentially critical energy shortages, materials for critical metallurgical process, materials for transportation and communication systems, and other necessary public requirements. At the same time surface mining has numerous adverse economic, environmental, and social effects. It destroys or diminishes the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes. It contributes to floods, pollutes the water, destroys fish and wildlife habitat, impairs natural beauty, damages property, degrades the quality of life in local communities, and counteracts governmental programs to conserve soil, water, and other natural resources.

This section concludes, as a Congressional Finding, that effective regulation and in some areas prohibition of surface mining is necessary and appropriate to preserve the benefits, but eliminate the adverse effects of surface mining. A further finding is that such regulation is initially the responsibility of the States. As discussed in the analysis of section 204, the States are better equipped to handle the regulation of surface mining because of their knowledge of and sensitivity to the great diversity of terrain, climate, biologic, chemical and other physical conditions of, and the needs and aspirations of the local citizens and governments in areas where surface mining occurs. Secondly, the States possess the police power, the land use planning authority which is required for a truly effective surface mining regulatory program.

Section 102

However, as section 102 establishes, in its statement of purpose of the Act a nationwide program of regulation of surface mining operations is required and if and when a State manifests a lack of desire or inability to participate in that program and to meet the requirements of the Act, the Federal Government is to exercise the full reach of Federal constitutional powers to insure the effectiveness of that program. The purpose of the program is to prevent the adverse effects to society and the environment resulting from surface mining, to assure no lasting degradation of land and waters from such mining, and to assure that reclamation as required by the Act is undertaken as contemporaneously as possible with the mining.

TITLE II—EXISTING AND PROSPECTIVE SURFACE MINING AND RECLAMATION OPERATIONS

Sec. 201. Grant or Authority: Promulgation of Federal Regulations

This section places authority for the administration of this Act with the Secretary of the Interior. The Secretary's initial responsibilities are to prepare and publish, within 90 days, regulations concerning surface mining and reclamation operations for coal and a detailed description of actions to be taken by a State to develop a State Program to regulate such operations for coal. Within one year, regulations concerning operations for "other minerals" (defined in section 401) and a detailed description of State actions necessary to develop a State Program to regulate such operations for other minerals are to be proposed.

This Act differs from the measure adopted by the House in the 92d Congress in that it requires regulation of surface mining operations for not only coal, but other minerals as well. The surface mining of coal has re-

ceived more national attention and does constitute the most immediate environmental problem. Yet, in many areas of the country, sand and gravel operations, copper mining, phosphate mining, and other surface mining operations impose serious social and environmental costs which also require regulation. To address only coal in Federal legislation could effectively delay consideration of, and action on, the many problems associated with the surface mining of other minerals.

This section also provides procedures for public notice of the proposed regulations and for public hearings, with adequate notice, to be held in the affected States and regions on any proposed regulation to which objections have been filed prior to final promulgation of the regulations.

Throughout the Act are provisions which insure due process—due process not only for surface mine operators, but also for State and local governments, surface owners, persons with valid legal interests, and local citizens. Due process is insured through numerous reporting and notice provisions, burden of proof provisions, public hearing provisions, and administrative and judicial review provisions. The Administrative Procedure Act (APA) is to be applicable to the administration of the Act. However, in several instances, the provisions of the Act depart from or are more specific than the APA. In such cases, the provisions of the Act will prevail.

Sec. 202. Office of Land Use Policy, Reclamation and Enforcement

To insure administration of the program by an independent agency with neither a resource development (the promotion of mining, marketing, or use of minerals) or resource preservation (pollution control, wilderness or wildlife management) bias or mission, this section establishes the Office of Land Use Policy, Reclamation, and Enforcement in the Department of the Interior. This Office will be separate from any of the Department's existing bureaus or agencies. It is intended that the Office exercise independent and objective judgment in implementing the Act.

To insure sufficient authority to administer the Act, the Office will have a Director to be compensated at the rate provided for in level V of the Executive Pay Schedule. Officers and employees of the Office are to be recruited on the basis of their professional competence and capacity to administer the Act objectively. The Act specifically states that there cannot be transferred to the Office any existing legal authority in the Department of the Interior, which has as its purpose, promoting the development or use of coal or other minerals.

The duties of the Secretary, acting through the Office, include: administering the various grant-in-aid programs provided in the Act; administering research and development projects provided in the Act; reviewing State Programs for surface mining and reclamation operations, developing and administering any Federal Programs for surface mining and reclamation operations for States which do not have or are not enforcing State Programs; maintaining a study of and a Data Center or land resources, land use planning, and surface mining and reclamation operations; cooperating with States in dissemination of relevant data and in standardized methods of collecting and classifying such data; and providing technical assistance to the States to enable them to undertake responsibilities provided for in the Act.

It has been argued by some that the Environmental Protection Agency (EPA) should administer any Federal surface mining proposal. However, after careful analysis EPA was rejected as the administering agency in favor of the Office for the following reasons:

(1) As noted in the discussion of Title I, surface mining is an activity critical to the nation's and many local communities' material, economic, and social well-being. Yet, this activity also inflicts heavy environmental and social costs on both the national and local levels. Any regulation of this activity must, of necessity, involve a careful weighing and balancing of social and economic as well as environmental costs and benefits.

The most useful existing mechanism for such a weighing and balancing procedure has been identified by both the Executive Branch and the courts to be the environmental impact statement required by the National Environmental Policy Act of 1969 (P.L. 91–190). However, EPA has been made largely exempt from the environmental impact statement requirement by subsection 511(c) of the Federal Water Pollution Control Act Amendments of 1972.

(2) A prime consideration of this amendment is due process for all concerned parties. Due process, in this case, means wide public participation. The impact statement made decisionmaking open and visible. However, EPA's exemption means that were EPA to write the regulations and administer the Act, decisionmaking need never be exposed to public scrutiny. As some have noted, this could mean that crucial decisions might be made not by EPA at all, but by the Office of Management and Budget.

(3) A proper weighing and balancing of costs and benefits—a careful concern with environmental quality as well as with employment, community stability, and national energy and economic needs—cannot be achieved by a mission-oriented agency. To insure fairness, an agency which is devoted entirely to either developmental or environmental advocacy should not administer the Act. EPA is certainly mission-oriented and certainly has a mandate for environmental advocacy.

(4) The Office, unlike EPA, is in major respects a land use planning agency, A single-minded regulatory program, with its inherent incremental decisionmaking and without a land use planning capability will prove inadequate to the purposes of the Act. Effective regulation of surface mining activities is not possible without long range planning. As recognized in section 215 of the Act, surface mining regulation requires that long term decisions be made as to the uses of the land resource and the development or conservation of our mineral and other natural resources. Regulatory considerations should not be limited to simply determining whether a mineral can be mined and reclamation can be achieved successfully. Also considered should be the uses of the land after reclamation and whether the proposed uses meet State and local needs. EPA has on such land use planning or resource management experience, capability, or expertise.

In fact, in administering its pollution control programs, it has, at times, demonstrated a disdain for proper land use policy by creating incentives to polluters to locate on undeveloped or rural lands. As a recent Interior Committee National Fuels and Energy Study report demonstrated, these incentives helped to create the Four Corners situation . . . huge power complexes and extensive strip mining operations are being located on undeveloped land in the Southwest in part because the coal is located there, but also to avoid Federal and State air quality standards in the Los Angeles region.

On the other hand through the United States Geological Survey, the Bureau of Land Management, and other agencies, the Department of the Interior does have the nucleus of a land use planning and resource management capability.

(5) As the requirements of the Act are applied to the Federal and Indian lands and new authority is provided to insure careful regulation of surface mining and reclamation operations on Federal and Indian lands. EPA has no jurisdiction over such lands or over mining on such lands. To avoid divided administration of the Act, good public policy suggests lodging the entire program in an independent office in the Department of the Interior.

(6) Finally, as legislation recently proposed by the Administration to exempt the water quality permit program from NEPA and as the explanatory language on subsection 511 (c) of the conference report on the Federal Water Pollution Control Act Amendments for 1972 suggest, the Environmental Protection Agency is already administratively overburdened. Whereas the new Office of Regional Planning at the Department of the Interior is already geared up to accept additional land use planning and resource management responsibilities.

For these reasons, an independent office in the Interior Department was chosen as the best entity to administer the Act.

Sec. 203. Surface mining operations not subject to the act

This section provides specific exemptions for certain types of activities which might otherwise be construed to fall within the definition of "surface mining operations" and thus be subject to the Act. Activities specifically excluded are (1) those which should not be included because the scope of their impact is so minor; (2) those which have a few characteristics common to surface mining but which are primarily for other useful and, in some cases, public purposes; and (3) those which do not present the environmental or social costs which regulation under the Act would internalize. Neither the House-passed measure nor the committee-reported bill in the 92d Congress provided this exemption. However, it is apparent that Federal legislation should not, because of ambiguity, address local conditions and the actions of individuals which have no national, State, or regional significance or which present no important questions of Federal or State policy. This exemption is similar to, and in some ways patterned after, the exemption in the Nation's toughest state surface mining law: the Pennsylvania law.

The exempted activities include:

Foundation excavations in construction of buildings and other structures;

Highway and railroad cuts and other excavations for public projects where the Federal, State or local government requires reclamation of the affected areas;

The excavation of minerals by a landowner for his own noncommercial use from land owned or leased by him;

The extraction of minerals or the removal of overburden for commercial purposes in amounts of less than one thousand tons in any one location (of not more than two acres) in any one calendar year—the so-called "pick and shovel" operation;

The extraction of minerals for exploratory, assaying, and quality testing purposes in amounts of less than 240 tons in any location (of not more than one acre); and

Archeological excavations.

The Secretary may identify other activities not subject to the Act and issue regulations further defining the exempted activities taking into consideration their magnitude (in tons and acres), their potential environmental impact, and whether the class, type, or types of activity are already subject to existing Federal, State, or local regulatory systems. In identifying and defining other exempted activities, the Secretary is expected to follow a rule of common sense. The purpose of the Act is to insure that social and environmental costs of surface mining are internalized by reclamation. Any activity which inflicts significant costs and which should be accompanied by reclamation should, of course, not be exempted. On the other hand, individual, non-commercial, ex-

tremely localized, activities which do not cause environmental damage should be exempted not only to insure fairness but also to relieve the administrative burden of the regulatory authorities so that the authorities can concentrate on those activities which truly require careful regulation.

Section 204. State authority; State programs

This section establishes the four prerequisites for any State to obtain financial assistance and to assume full responsibility for all regulation of surface mining and reclamation operations within the State. The State is required to:

Have appropriate legal authority to regulate surface mining and reclamation operations in accord with the Act's requirements;

Provide sanctions, including civil and criminal sanctions, bond forfeitures, and cease and desist orders for violations of State laws, regulations or permit conditions concerning surface mining and reclamation operations which meet the requirements of the Act;

Have sufficient personnel, interdisciplinary expertise and financial resources to enable the States to regulate surface mining and reclamation operations in accord with the Act's requirements; and

Submit to the Secretary for his approval a State Program for the effective implementation and enforcement of a permit system for surface mining and reclamation operations for coal and a second State Program for other minerals, both of which meet the requirements of the Act.

The section also provides time periods and procedures for the Secretary's approval or disapproval of State Programs and for revisions and resubmittals of disapproved State programs. Prior to approving a State Program, the Secretary is directed to hold a public hearing within the State and solicit the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies with relevant expertise.

The final subsection of this section requires the Secretary, when he disapproves a State Program, to notify the affected State and allow the State sixty days to resubmit a revised Program. The notification is to be in writing and is to contain the reasons for disapproval. It is intended that the Secretary's modification be very specific. Only with such specificity will a State know how best to revise its State Program so it will meet with the Secretary's approval.

Sec. 205. Federal programs

This section provides for Federal regulation of surface mining and reclamation operations in any State which proves unwilling or unable to do the job itself. In accord with the purposes and findings in Title I, Federal regulation is to occur only if a particular State wishes to forego or fails to assume primary responsibility for regulating surface mining operations within its boundaries.

The section directs the Secretary to prepare, promulgate, and implement a Federal Program covering surface mining and reclamation operations for either coal or other minerals for any State which (a) fails to submit a State Program for coal or a State Program for other minerals within twelve months of the promulgation of the relevant Federal regulations, (b) fails to resubmit an acceptable revised State Program after the Secretary's disapproval of the original submission, or (c) fails to enforce its approved State Programs.

The Secretary becomes the regulatory authority with full regulatory powers when he promulgates a Federal Program. In preparing and implementing a Federal Program, the Secretary is directed to take into account the affected State's terrain, climate, and other physical conditions. A public hearing must be held in the affected State prior to promulgation of the Federal Program. All State permits remain valid after promulgation of a Federal Program; however, the Secretary is directed to undertake a review of such permits and where such permits fail to meet the requirements of the Act, to afford the permittee reasonable time to conform his operations with those requirements or to submit a new permit application.

The section also provides procedures and timetables for the lifting of the Federal Program in any State when a new State Program receives the Secretary's approval.

The assumption of regulatory authority over surface mining operations in any State by the Secretary through promulagtion of a Federal Program for that State is regarded as a "last resort" measure. It is certainly preferable that the State regulate such operations through State Programs which meet the requirements of the Act. The assumption is that the States, in good faith, will develop such State Programs and make full use of their police powers to implement the Programs. However, if they fail to do so, the purpose of the Act and this section in particular is to insure that the full reach of the Federal constitutional powers will be exercised to achieve the purposes of the Act.

Sec. 206. Moratorium on surface mining operations for coal pending State compliance

This section provides a moratorium on new starts, or the reopening of abandoned mines, or the acceleration of existing activities in or for the surface mining of coal until permits for the surface mining and reclamation of coal are obtained under an approved State Program.

Neither the House-passed measure nor the Committee-reported bill had a comparable provision.

The moratorium has three principal purposes. First, as discussed in the analysis of section 201, although the Act covers the surface mining of all minerals, the surface mining of coal is the most immediate and pressing problem. The severity of the environmental and social costs imposed by the unregulated surface mining of coal is not disputed. Therefore, one purpose of the moratorium is to insure that these costs are not multiplied by new and accelerated operations before the State Programs, provided for in the Act, to regulate surface mining and reclamation operations for coal can take effect.

Second, in the case of a number of Federal laws requiring State regulation of an activity and, in case of a State's failure to regulate, Federal regulation of the same activity, many States have opted for Federal regulation. Although there are valid reasons, particularly financial (let the Federal government "foot the bill"), for the State's decisions to choose Federal regulation, such Federal regulation often works a disservice to all concerned. Federal regulation can never adequately reflect the unique physical, social, and economic conditions of each State, each region, and each locality. Also, Federal regulation is by nature more arbitrary and less flexible. State regulation is favored in the Act precisely because it can and should embody this flexibility and sensitivity to local conditions. Therefore, by the requirement that it be lifted only by an approved State Program, the moratorium serves as an incentive to the States to take the initiative to exercise State responsibility and assure State, rather than Federal, regulation.

Third, the moratorium also serves as an incentive to surface mine operators to support, rather than block, efforts to develop effective State Programs which meet the requirements of the Act.

This moratorium is a tough measure to insure compliance with the Act. However, in recognition of the importance of the moratorium, a carefully worded proviso is included. Two problems with a moratorium have been identified: the problem of assuring a smooth transition, and the problem of avoiding a single-minded sledge-hammer approach in which innocent parties' needs and legitimate expectations concerning essential public services may be defeated. The proviso is designed to correct these problems.

The proviso provides that the Secretary may waive the moratorium for specific operations when he determines that all of the following conditions exist: (1) the operations provide the only practicable source of coal to support regionally or nationally important power generation, metallurgical processing, or other essential activities impressed with a public interest, *and* (2) firm plans and substantial financial and legal commitments were made in and for such operations prior to the enactment of the Act *and* (3) the provisions for reclamation in conjunction with such operations offer every reasonable assurance that such reclamation will be made compatible with the Act's requirements.

Sec. 207 Permits

This section provides a timetable for obtaining permits to conduct surface mining and reclamation operations pursuant to the Act from either the State regulatory authority under a State Program for coal or a State Program for other minerals or the Secretary under a Federal Program for coal or a Federal Program for other minerals. (Hereafter, the words "regulatory authority" will be used to mean the State regulatory authority where the State is administering the Act under either of the two State Programs or the Secretary where the Secretary is administering the Act under either of the two Federal Programs. Furthermore, "State Program" will be used to mean either the State Program for coal or the State Program for other minerals, whichever is relevant, and "Federal Program" will be used to mean either a Federal Program for coal or a Federal Program for other minerals, whichever is relevant.)

Under this section, no person can engage in surface mining operations of coal without a valid permit under an approved State Program or a Federal Program beginning one year from the date of enactment of the Act. Permits for surfacing mining operations for other minerals are required beginning two years after enactment. These deadlines are to provide that States with a reasonable period of time after the Secretary promulgates his regulations to prepare their State Programs. (Federal regulation for coal are due three months after enactment, while Federal regulations for other minerals are due one year after enactment.) Of course, this timetable is partially qualified by the Section 206 moratorium on the surface mining of coal.

Permits are to run for no more than five years and can be renewed, subject to any new conditions or requirements reflecting changing circumstances which the regulatory authority may apply, if the permittee demonstrates compliance with the requirements of an approved State or Federal Program and with his Reclamation Plan (see Sections 208 and 212). The intent of this provision is to avoid the extremes of a too short or a too long permit period. One-year permits tend to limit meaningful public participation because the permit applicant need not disclose to the public any but his most immediate intentions. One-year periods also work against good regulation in that they unnecessarily burden the regulatory authority with paperwork and, worse, they tend to create an atmosphere of incremental decisionmaking without a full understanding of the long-term implications of short-term permit approvals. On the other hand, long-term permits can foreclose public participation during the critical period when mining and reclamation operations are conducted and can bind the regulatory authority, the

permittee, and the public with quickly outdated reclamation standards and techniques. The five-year maximum was chosen not simply because it is a "happy medium," but also because it is the standard time period for reclamation performance bonds.

To assure that no one will be locked into outdated reclamation requirements because of the potential situation in which permits are taken out and renewed without operations being undertaken, this section provides that permits will terminate if permittees have not begun actual mineral production within three years of the issuance of the permits.

Sec. 208 Permit application requirements; Information, performance bond, insurance, reclamation plans

Section 208 describes the four principal submissions necessary to obtain a permit for surface mining and reclamation operations for coal or other minerals under a State Program or a Federal Program: (1) administrative information; (2) a performance bond; (3) a certificate of public liability insurance; and (4) a Reclamation Plan.

Administrative information includes names and addresses of the applicant and its officers, of any property owners or holders of leasehold interest in the property to be mined, and of owners of all surface areas within five hundred feet of the proposed mining and reclamation site; statement of any permits held or bonds posted by the applicant which have been suspended or revoked; maps and topographical information; and a copy of the applicant's advertisement in the local newspaper (which must appear at least once a week for four successive weeks). This last requirement insures public notice, particularly to local governments and citizens, so as to insure a meaningful hearing on the permit application, as required in section 209.

The performance bond must be in an amount sufficient to allow the regulatory authority to contract for all necessary and required reclamation operations by a third-party contractor when and if the permittee defaults on the bond. A proviso establishes that a bond may be adjusted upward at any time if, as a result of experience or changed circumstances, it is determined to be inadequate.

The applicant must submit either a certificate issued by an insurance company certifying that he has a public liability insurance policy for the proposed surface mining and reclamation operations or appropriate evidence that he has satisfied other State or Federal self-insurance requirements which meet the requirements of the regulations promulgated pursuant to the Act.

Finally, the most important submission which an applicant must make is the Reclamation Plan. The Reclamation Plan must establish that reclamation of all affected lands in a manner which will fully meet the detailed requirements set forth in section 212 can and will be accomplished.

Sec. 209. Permit application approval procedures

This section establishes the procedures for obtaining a permit for surface mining or reclamation operations for coal or other minerals under a State Program or Federal Program. It provides (1) time limits for initial approval or disapproval of the permit application by the regulatory authority; (2) a hearing upon the request of an applicant if the permit is disapproved and a time limit thereafter for final approval or disapproval; (3) a public hearing prior to the initial approval or disapproval if written objections are filed by persons having a valid legal interest which will be affected by the proposed surface mining and reclamation operations or Federal, State or local government agencies having responsibilities affected by such operations; and (4) a right of appeal for review by a court of competent jurisdiction for such persons if they participated in the application procedures.

These procedures are designed to insure that the "due process" discussed in the analysis of section 201 is provided to all interested parties: permit, applicants, Federal, State, and local governments, surface owners, and persons with "valid legal interest." Rather than dictate one single national standard of "valid legal interest," the definition is life to the courts. It is hoped that the courts, situated in the region where the proposed operations would occur, will be more sensitive to local conditions and situations in developing that definition. The words "court of competent jurisdiction" also were not lightly chosen. Some have contended that Federal courts should be granted exclusive jurisdiction in order to obtain uniform interpretation of the law and to avoid immediate local pressures—be they developmental or environmental. However, more persuasive were the arguments for allowing State courts to hear suits under the Act, in instances where state law and a state program is involved. Avoidance of burdening too greatly the Federal courts and utilization of the State courts greater knowledge of local conditions and situations were the principal reasons for the decision to use the words "court of competent jurisdiction."

Subsection (d) of this section makes it clear that the burden of proof that reclamation which meets the requirements of the Act can and will be accomplished lies not with the Secretary of the State regulatory authority but with the permit applicant. Two important concerns dictate placing the burden of proof on the permit applicant. First, the applicant either already possesses or is in the best position to obtain any and all information necessary to meet the burden of proof. Secondly, to place the burden of proof upon the regulatory agency would only frustrate the purposes of the Act. Such a step would administratively and financially burden the regulatory authority and could foster either endless delays in processing permit applications or pro forma approval of applicants.

Sec. 210. Release of performance bonds

This section establishes the procedures for release of the performance bond. No bond can be fully released until all reclamation requirements are met and an authorized representative of the regulatory authority inspects the surface mining and reclamation operations covered by the bond. A hearing is also provided for when a request is made by any person having a valid legal interest which would be affected by the failure of the permittee to have compiled with the requirements of the act. The hearing must be scheduled in a manner so as not to unduly burden the permittee with continous hearings when a bond is released in phases, but so as to insure public participation before so much of the bond is released as to make forfeiture of the remainder, rather than full accomplishment of reclamation, inviting. Therefore, the section requires that the hearing be held after 50 percent but before 90 percent of the bond is released.

Sec. 211. Revision and revocation of permits

This section describes procedures and time limits for revision and revocation of permits for surface mining and reclamation operations for coal or other minerals by the regulatory authority.

Requests for revisions of a permit can be made by the permittee. The regulatory authority is to establish guidelines for the scale or extent of a revision request for which all permit application information and procedural requirements, including notice and hearing, will apply. However, (1) any revisions which purpose a substantial change in the intended future use of the land (such as from a residential development to a shopping complex) or significant alterations in the Reclamation Plan (e.g., changes in treatment of surface and ground water) must, at a minimum, be subject to the section 210 notice and hearing requirements, and (2) any extensions to the area covered by the permit, other than incidental boundary revisions (such as additional footage to permit the better siting of an access road), may be accomplished only through application for new permits, not through revision applications.

Revocation procedures include written notice detailing the reasons for revocation, a reasonable time for the permittee to take corrective action, and a hearing, if requested by the permittee. It should be noted that violations of permit conditions, the State Program, or the Federal Program are sufficient to invoke revocation. Consistent with the "due process" concern throughout the Act, revocation is regarded as a last resort, after cease-and-desist orders and other procedures have failed. Minor failures to meet the requirements of the Act, which do not and will not result in any serious adverse environmental, economic, and social impacts should not be cause for revocation. Permits should be revoked only for clear violations which have such impacts.

Finally, no transfer, assignment, or sale of the rights granted under a permit may be made without the written approval of the regulatory authority.

Sec. 212. Criteria for surface mining and reclamation operations

Section 212 is the principal statement of the criteria which would be required to be met by surface mining and reclamation operations. It consists of two sets of requirements. Subsection (a) enumerates the information which, as a minimum, would be required to be set forth in any Reclamation Plan submitted as part of an application for a surface mining permit. Subsection (b) enumerates the minimum requirements which would be required to be placed upon any permittee by regulations promulgated pursuant to this measure.

212(a). This subsection is intended to enumerate the minimum items of information which would be required to be set forth in any Reclamation Plan submitted by an applicant for a permit to conduct surface mining operations. A Reclamation Plan is required by Subsection 208(d) as part of the permit application. The plan is the basis by which the State regulatory authority, or the Secretary in those States which may be under a Federal program, determines the feasibility and adequacy of reclamation which is proposed to be done by the applicant under the terms of his permit. It also provides the before, that information provided in the Reclamation Plan be adequate to judge the probable final results of the surface mining and reclamation proposed in the application. The following specific items of information are enumerated.

212(a)(1). A description of the condition of the land area which will be effected by the proposed mining and reclamation must be provided. This description is intended to include general topography, vegetative cover, and cultural development. If the area has been previously mined, the description should cover both the uses of the land existing at the time of the application and those which existed prior to any mining at the site. The description must also include an evaluation of the capability of the site to support a variety of uses prior to any mining disturbance. This description should give consideration to soil and foundation characteristics, topography, and vegetative cover.

The description is to serve as a benchmark against which the adequacy of reclamation and the degradation resulting from the proposed mining may be measured. It is im-

portant that the potential utility which the land had for a variety of uses be the benchmark rather than any single, possibly low value, use which by circumstances may have existed at the time mining began.

212(a)(2). A similar description is also required of the use to which the land affected by the proposed mining is to be put following reclamation and its capacity to support a variety of alternative uses. The comparison of this description with that required by 212(a)(1) will provide an evaluation of the net impact which the proposed mining and reclamation will have upon the usefulness of the area affected.

212(a)(3). This section requires a general statement of the techniques and equipment which will be used in the mining and reclamation operations. This should be a complete statement adequate to insure that the reclamation proposed to be accomplished is capable of achievement and that the requirements set forth in subsection 212(b) and any regulations promulgated pursuant to that subsection can be complied with.

A cost estimate for the reclamation is also required as a basis for review of the adequacy of the performance bond required by Sec. 208(b).

212(a)(4). The techniques and procedures which will be used by the applicant to insure compliance with all applicable air and water quality laws and regulations must be described in sufficient detail to permit an evaluation of their adequacy and probable effectiveness.

212(a)(5). It is probable that a number of surface mining and reclamation operations, particularly those in the same general locality, will be similar in terms of general problems and technologies. The purpose of this requirement is to insure that Reclamation Plans do not become stereotyped and ignore the unique conditions of specific sites. The Reclamation Plan must set forth a description of the particluar considerations which have been given to the conditions found at each site; for example the effect of precipitation, temperatures, wind, and soil characteristics upon revegetation at the site. Furthermore, there must be a statement of the consideration which has been given to new or alternative reclamation technologies.

212(a)(6). There must be a discussion of the potential recovery of the mineral resources of the site to be mined. To the extent that any portion of the resource will not be recovered, the reasons and justification for non-recovery shall be set forth.

212(a)(7). A time schedule for the completion of the reclamation which is being proposed is to be provided.

212(a)(8). A statement is required demonstrating that the permittee has considered all applicable State and local land use plans, zoning laws, ordinances, and regulations and that the Reclamation Plan is consistent with them.

212(a)(9). A disclosure to the regulatory authority of all rights and interests in lands held by the applicant which are contiguous to the lands covered by the permit application is required. The purpose of this disclosure is to provide the regulatory authority with information on the prospective long-term plans of the applicant in the immediate vicinity. The act would not require public disclosure of this information, however, it does not preclude State law from requiring disclosure of part or all of it.

212(a)(10). A disclosure to the regulatory authority of the results of test borings made by the applicant in the area covered by the permit and the results of chemical analyses of the coal or other minerals and overburden is required. This information is essential for the critical evaluation of the adequacy of the Reclamation Plan by the regulatory authority. Because of its proprietory nature, it is not to be publicly disclosed.

212(b). This subsection sets forth the minimum criteria which must be required by State or Federal Programs regulating surface mining and reclamation operations for coal or other minerals.

212(b)(1). The basic criteria for reclamation is to require all surface areas to be returned to a condition at least fully capable of supporting the uses which they were capable of supporting prior to any mining. In other words, the original utility of the site for a variety of purposes is to be maintained or enhanced. Regardless of the prior condition, the reclaimed area shall not be left in a condition which presents a hazard to public health or safety.

212(b)(2). Reclamation shall require backfilling, compacting and grading to the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated. Alternative grading plans may be proposed as a part of a permit application and may be approved by the regulatory authority in advance of the initiation of mining if they would achieve environmentally sound conditions and desirable uses of the reclaimed area.

This provision of latitude for alternatives to "approximate original contour" reclamation recognizes that in many situations other reclamation objectives may be more desirable from an environmental as well as other standpoints. For example, in areas of meager rainfall grading to provide accumulations of runoff might be the only means of establishing revegetation and might actually result in increased productivity of the area. Although the latitude to approve such alternatives is granted to the regulatory authority, the remaining criteria must be met by the alternative and the procedures for approval of permit applications provide for public scrutiny of the proposal prior to initiation of mining.

212(b)(3). Regardless of the type of reclamation which is proposed (i.e., approximate original contour or alternative such as terracing), all highwalls, terraces, and spoil remaining at the conclusion of reclamation must be stable and remain stable. The requirements for a permanently stable condition, of course, will vary depending upon the characteristics of the materials, the slope, the climate, and the treatments such as compaction and revegetation, proposed.

212(b)(4). All areas affected by the mining and reclamation operations shall be stabilized by means of compaction where advisable and by means of vegetation which will insure prevention of erosion both immediately after the reclamation is completed and permanently in the long term. A stable and self-regenerative vegetative cover is to be established. Whenever possible native vegetation is to be employed.

It is recognized that there are situations (such as heavy clay soils) in which compaction of surface soils may be inadvisable or detrimental to the success of revegetation and should not be required. It is similarly recognized that in some situations nonnative species of vegetation may be required to achieve successful revegetation or they may be preferable to native species for environmental, productive, or esthetic reasons and should be permitted.

212(b)(5). The soil to be removed from the mined area is required to be segregated and preserved so that topsoil and other desirable strata will be available to be used for reclamation purposes.

212(b)(6). Offsite areas must be protected from damages caused by slides which might occur during mining and reclamation operations. Furthermore, all waste accumulations and damages must be contained within the permit area. This provision not only serves to protect landowners not associated with the mining, it also insures that the permit will encompass an area which covers the entire mining activity, including the storage or disposal of spoil and waste. Therefore, the entire activity will be subject to all of the terms of the permit.

212(b)(7). The quality of surface and groundwaters in the area is to be maintained both during and after the term of the mining and reclamation operations. Specifically:

(A) Acid mine drainage must be prevented from entering surface and groundwater sources by preventing the contact of water with acid forming materials, retaining acid waters, or treating acid waters to acceptable standards of acidity and iron content before releasing them to water courses. Whichever means are adopted, the Reclamation Plan must provide for continuation of the protection after the completion of reclamation for so long as may be required.

(B) During the course of mining and reclamation activities at the site, regulations shall insure that effective practices are observed which will minimize the contribution of silt to runoff from the disturbed area. It should be noted that this provision recognized the practical impossibility of preventing any silt runoff during earth moving operations. Reclamation standards require, however, that remaining reclaimed surfaces be graded and otherwise protected to prevent further erosion.

(C) Bore holes, shafts, and wells are to be appropriately treated to prevent acid mine waters from draining out of them or into groundwater bodies by means of them.

(D) The regulatory authority may prescribe other practices or methods to protect water quality.

212(b)(8) Wherever underground mining involves surface operations, regulations must provide for the protection of the surface area involved.

212(b)(9) The disposal of debris from mining and reclamation operations must be done in a manner which will prevent contamination of surface or ground waters.

212(b)(10) Explosives are to be used in conformance with existing State and Federal law. As a minimum, surface mining reclamations shall provide for:

(A) sufficient notice to local government and to individuals in the locality to provide for warning and if necessary for protective measures to avoid injury or property damage from blasting;

(B) procedures for protection of buildings and property in the locality from the effects of blasting;

(C) specific limitations upon the sites and timing of charges, the types of explosives, or other factors which are necessary to protect persons and property in the locality including underground mining operations which might be effected.

212(b)(11) Reclamation efforts are to proceed as contemporaneously as possible with the mining both to avoid the situation where large unreclaimed areas would be permitted to exist for the duration of adjacent mining operations and to provide experience with the results of reclamation procedures and opportunity for improvements as the work progresses.

212(b)(12) Such other regulations may be promulgated as are found to be necessary to achieve the objectives of the measure particularly to insure that where surface disturbance is sustained, the maximum effective recovery of the mineral resource is achieved.

Sec. 212(c) The purpose of this subsection is to recognize that there are types of surface mining which result in disturbances which are for all practical purposes impossible to reclaim in accordance with the requirements of this Act. An example of such mining situations are quarries in which relatively little overburden is removed from a small surface area and then sizeable quantities of stone are removed over extended time periods, often decades. The result of such operations is a large pit without available

materials for backfilling and grading. The extent of surface disturbed by operations of this nature, however, is exceedingly limited in comparison to more conventional strip mining operations.

This subsection establishes special reclamation criteria for surface mining operations for minerals other than coal which meet the following qualifications:

(1) The quantity of material removed in the mining operation is very large in proportion to the surface area disturbed (*i.e.*, the excavation is deep).

(2) The mining operation at the site has an extended life. In other words, the mine resembles an industrial site which remains in operation for many years and is a dependable economic activity in the area.

(3) There is no practicable method to return the area to conditions approximating original contour. If such reclamation is possible, of course, it would be required regardless of the nature of the operation.

(4) Finally, there must be no practicable domestic alternative source of the mineral resource. It is not the purpose of this subsection to perpetuate destructive mining operations where preferable methods are available or where the same mineral can be obtained by more acceptable means elsewhere.

The alternative regulations which are promulgated for surface mining operations which meet all of the above qualifications must at a minimum result in stable surfaces including highwalls and spoil, meet applicable air and water quality standards, protect public health and safety, and require the maximum practicable reclamation of the area in question.

Sec. 213. Inspections

This section establishes the minimum informational requirements which a permittee must fulfill—either through reporting, monitoring, or affording rights of entry to the regulatory authority's inspectors—once a permit is granted.

First, the section directs the Secretary of the Interior to make whatever inspections are necessary to evaluate the administration of State Programs or to develop and enforce any Federal Program. The section provides that authorized representatives of the Secretary are to have a reasonable right of entry to permittee's operations. "Reasonable" is to be interpreted so as not to overly burden the permittee but also provide the inspectors with the best possible opportunities to evaluate the operations in relation to the requirements of the Act.

Second, to insure that the requirements of this Act are met, the regulatory authority must require the permittee to keep records, make reports, install and maintain monitoring equipment, and provide other necessary information which will assist the authority to carry out the purposes of the Act. For example, the permittee might be required to report periodically on acres mined; acres reclaimed; deviations, if any, from the Reclamation Plan and, in particular, its schedule, etc.

Third, the section establishes the right of entry to and inspections of the suface mining and reclamation operations, premises where records are kept, and the records themselves by the regulatory authority. The inspections are to occur on an irregular basis averaging not less than one per month for coal operations and biannually for other mineral operations. They must be conducted without prior notice and inspection reports must be filed upon their conclusion. The "irregular basis" and "without prior notice" requirements are to insure that the permittee is not capable of making merely "cosmetic" or momentary changes in an operation which otherwise would not meet the requirements of the Act because he has been forewarned of an inspection. Inspections are the heart of any regulatory program and when they become either too "friendly" or too "infrequent" the regulatory program inevitably suffers a loss of effectiveness.

Fourth, permits and permittees' Reclamation Plans must be filed on public record with appropriate officials in each county or other appropriate subdivision of the State in which the operations covered by the permits will be conducted. The purpose of this provision is to insure readily accessible information to concerned citizens and affected local governments so that their participation, as provided for throughout the Act will be meaningful and effective.

Finally, each permittee is required to conspicuously maintain at the entrances to his operations a clearly visible sign showing his name, business address, and phone number and his permit number. The purpose of this provision is identical to the one directly above.

Sec. 214. Federal enforcement

This section outlines the Federal sanctions under a Federal program or for violations of the Act under a State Program.

The first two subsections provide for administrative steps for violations of the Act's requirements. When a violation by any person is discovered by Federal inspection, the Secretary or his inspectors may issue an immediate cease and desist order and hold a hearing within three days of the issuance of the order if the person requests it. If a violation is suggested by information other than by inspections, the Secretary notifies the State regulatory authority and allows the State ten days to take appropriate action. If the State fails to take such action the Secretary is to issue an order requiring the person to correct the violation.

Subsection (c) provides for Federal enforcement when the Secretary determines violations of an approved State Program are so widespread as to indicate a failure of the State to enforce its Program. Time limits are provided for the State to take corrective action. A public hearing is also required before Federal enforcement would occur. Under Federal enforcement, the Secretary must enforce all permit conditions required under the Act either by issuing an order for compliance or bringing a civil or criminal action. Of course if the State's unwillingness to enforce its Program continues for any length of time, the Secretary is expected to promulgate and implement a Federal Program pursuant to section 205 rather than to enforce those aspects of the State Program and those requirements of permits issued under the State Program which are required by the Act.

Subsection (d) describes in greater detail the contents of any order issued by the Secretary.

Subsection (e) provides for the institution of civil action for retraining orders, injunctions, or other appropriate remedies, by the Attorney General, at the request of the Secretary of the Interior.

Subsection (f) provides for a civil penalty to be assessed against any person, who fifteen days after notice, continues to fail to comply with the requirements of the Act. The penalty must not exceed $1000 per day. It also provides for a criminal penalty for anyone who knowingly or willfully violates the requirements of the Act. The criminal penalty is to consist of a fine of not more than $10,000 or imprisonment for not more than six months or both.

Subsection (g) provides for application of this section's penalties when the person in violation is a corporation or other entity.

Subsection (h) states that this section's penalties are in addition to any other remedies afforded by the Act or any other law or regulation.

Sec. 215. Designation of land areas unsuitable for surface mining

As discussed in the analysis of section 202, no regulatory program can be truly effective unless it is conducted on a solid base of planning. As surface mining and reclamation operations are so intimately associated with the land resource, the proper planning base for regulation of such operations is land use planning. Therefore, section 215 mandates that each State develop a land use planning process upon which to anchor State Programs to control surface mining and reclamation operations.

In subsection (a) the Secretary is authorized to make annual grants of not more than $25,000,000 to the States to assist them in developing State land use planning processes which will determine which, if any, land areas are unsuitable for all or certain types of surface mining operations. The grants must not exceed 80 per cent of the cost of developing and managing State land use planning processes for the first two years and 60 percent thereafter. Grant funds for the development of State land use planning processes are to be distributed on the basis of the Secretary's appraisal of the present and projected levels of surface mining operations in, the need for areawide planning by, and the size of each State.

Areas may be designated unsuitable for surface mining operations pursuant to a State land use planning process if (1) reclamation as required by the Act is either physically or economically impossible; (2) surface mining operations or other major uses in a particular area would be incompatible with Federal, State, or local plans to achieve essential governmental objectives; or (3) the area is an area of critical environmental concern. "Areas of critical environmental concern" are defined as areas where uncontrolled or unplanned development—mining or otherwise—could result in irreversible damage to important historic, cultural, environmental or esthetic values, or natural systems or processes, which are of more than local significance, or could unreasonably endanger life and property as a result of natural hazards of more than local significance.

Subsection (b) directs the Secretary to review Federal lands to determine whether there are areas on those lands which are unsuitable for all or certain types of surface mining operations. The Secretary may withdraw such areas or he may condition mineral leasing or mineral entries so as to limit surface mining operations on such areas. It is intended that this subsection apply to the fullest extent possible to areas already subject to vested mining rights. However, designation is even more important as a "due process" means of forewarning surface mine operators as to whether they can mine those areas or under what conditions they will be able to mine those areas. This provides the operators with more lead time in planning their operations than they would have if they were first confronted with a bar to mining or conditions on mining at the time their rights otherwise would vest.

Subsection (c) provides a measure of protection to areas of critical significance to the public. First, it provides that no mining is to be conducted within *100 feet of* primary or secondary roads or lakes, streams, and tidal waters which enjoy public access or use. Of course, the regulatory authority must further define "roads", "lakes", "streams", and "tidal waters". It is recognized that, in certain circumstances, surface mine operators have moved and substantially improved secondary roads. It is intended that the regulatory authority will have the flexibility, on a case by case basis, to enter into agreements with permit applicants to undertake such actions.

Second, this subsection bars surface mining operations which will adversely affect publicly-owned parks unless screening or other measures are jointly agreed to by the State regulatory authority or the Secretary and the Federal, State, or local agency with

jurisdiction over the park and are made a condition in the permit.

Sec. 216. Federal land and Indians lands

This section requires the Federal government to "put its own house in order" at the same time that, through this legislation, it places tough requirements on the States.

The Secretary of the Interior is required to promulgate and implement a Federal Lands Program applicable to all surface mining and reclamation operations taking place pursuant to any Federal law on any Federal land and Indian lands. The Federal Lands Program must, at a minimum, simultaneously incorporate all of the Act requirements and also reflect the diversity of various Federal and Indian lands. Thus, the requirements of the Act and the Federal Lands Program are to be incorporated in all Federal mineral leases, permits, or contracts issued by the Secretary involving surface mining and reclamation operations. In short, the Federal Lands Programs would operate in the same manner as State Programs or Federal Programs would operate under the Act.

Subsection (c) of this section provides for joint Federal-State Programs covering permits on land areas which contain State, Indian, and Federal lands either interspersed or checker-boarded within the scope of a single permit or more than one permit for essentially a single operation and which, for conservation and administrative purposes, should be regulated as single management units. The purpose of this provision is to alleviate a significant problem in Western mining. Where Federal and non-Federal lands are checker-boarded, mining operators often find themselves working under two separate permits, two separate bonds, and two entirely different regulatory systems—Federal and State. The joint Federal-State Programs should allow the operator to conduct his operations under a single regulatory system. In order to implement joint Federal-State Programs the Secretary is authorized to enter into agreements with the States, to delegate authority to the States, or to accept a delegation of authority from the States. Except as provided in this subsection, the Secretary is not to delegate to the States his primary authority or jurisdiction to regulate or administer mining or other activities on the Federal lands and Indian lands or to delegate his trustee responsibilities toward Indians and Indian lands.

Sec. 217. Study of slope limitations

This section directs the Chairman of the Council on Environmental Quality to conduct two detailed interagency studies of impacts—social, economic, and environmental—of imposing general bans or slope degree limitations on surface mining operations for coal and other minerals. The purpose of these studies is to develop information necessary to achieve even a rudimentary understanding of the effects—positive and negative—of imposing, or failing to impose, bans or specific slope limitations for regional or nationwide application.

The measure adopted by the House in the 92d Congress does contain several specific slope limitations. After careful consideration of such limitations, it was concluded that no one knew or could adequately guage the potential impacts of applying such inflexible limitations, as the House bill would have, on a nationwide basis. Such arbitrary limitations do not take into account the full diversity of terrain, climate, geography, and other physical and chemical conditions which bear upon mining operations on slopes in various sections of the country. Knowledge of how these limitations would work, given this diversity, is essential. Furthermore, virtually no consideration has been given to the economic and social impacts of such limitations. Therefore, these studies are mandated in order to gain an understanding of such impacts. As the participation of several different Federal departments with pertinent expertise is necessary, the studies are placed in the Executive Office of the President.

Directed to participate in the studies with the Chairman of the CEQ are the Secretaries of the Interior, Agriculture, and Commerce, the Administrator of the Environmental Protection Agency, the Chairman of the Federal Power Commission and such other heads of Federal agencies and agencies of State governments as the Chairman.

Slope limitations which will be studied include prohibitions on the permanent disposition of spoil on slopes with grades of various degrees from the horizontal, a total prohibition of surface mining operations on slopes with grades of various degrees from the horizontal, a total prohibition upon all surface mining operations or specific types of operations such as augur or contour mining, and requirements that the steepest contours of the highways after terracing cannot exceed slopes with grades of various degrees from the horizontal.

The impacts to be studied include the full range of economic effects (effects upon energy supply, metallurgical processes, etc.), social effects (effects on employment, local tax bases, level of local government services, improvements in living conditions, and the quality of life) and environmental effects.

The study of slope limitations on surface mining operations for coal must be submitted to the President and Congress within one year of the date of enactment of the Act. The deadline for the study for other minerals is two years from enactment.

A sum of $2,000,000 is authorized to be appropriated to the CEQ to conduct the studies.

Sec. 218. Public agencies, public utilities, and public corporations

This section, unlike the House-passed measure or the committee-reported bill in the 92d Congress, applies the requirements contained in the Act to public corporations, public agencies, and publicly owned utilities, including, for example, the Tennessee Valley Authority.

TITLE III—ABANDONED AND UNRECLAIMED MINED AREAS

Whereas title II deals with existing or future surface mining operations, title III is addressed to the correction of the worst effects of previous surface mining operations. The increasing national awareness of the need for surface mining regulation has been based upon observation of the past adverse impacts of surface mining. Therefore, to fully correct the adverse effects of surface mining, the Act must be addressed not only to future operations, but to past operations as well. The past surface mining which presents the greatest reclamation problem and to which this title is directed is that associated with lands which were never adequately reclaimed and are now abandoned.

Sec. 301. Abandoned mine reclamation fund

There is created in section 301 an "Abandoned Mine Reclamation Fund." Lodged in the Treasury, the Fund will have an initial appropriations authorization of $100 million. In addition, the Fund will be augmented by moneys derived from the sale, lease, or rental of land reclaimed pursuant to section 302, from any user charge imposed on or for land reclaimed pursuant to section 302, and miscellaneous receipts accruing to the Secretary through the administration of the Act which are not otherwise encumbered.

Sec. 302. Acquisition and reclamation of abandoned and unreclaimed mined areas

This section authorizes the Secretary to use the moneys of the Fund to reclaim abandoned land which has been subjected to the worst ravages of past surface mining activities or has suffered subsidence from past underground mining activities.

Subsection (a) establishes that acquisition of any interest in land or mineral rights for reclamation purposes is a public use or purpose, even if the Secretary plans to hold the reclaimed land as open space or for recreation or to resell it.

Subsection (b) authorizes the Secretary to acquire abandoned and unreclaimed land or any interest therein by purchase, donation or otherwise. Prior to making any acquisition, the Secretary is required to make a thorough study of the available tracts. Based upon the study, the Secretary is to select lands for purchase according to the priorities of subsection (i).

Subsection (c) and (d) establish the procedures for condemnation of abandoned and unreclaimed land for land for which title cannot be established. Immediate taking procedures are authorized when the Secretary determines that time is of the essence because of the likelihood of continuing or increasingly harmful effects upon the environment which would substantially increase the cost or magnitude of reclamation or of continuing or increasingly serious threats to life, safety, or health or to property.

Subsection (e) encourages the States to acquire abandoned and unreclaimed mined lands and donate those lands to the Secretary to be reclaimed pursuant to this title. The encouragement is in the form of grants to the States not to exceed 90 percent of the cost of acquisition of the lands to be acquired. The States are also to have a preference right to purchase the lands they have donated to the Secretary, once they are reclaimed, at fair market value (less the State's portion of the original acquisition price). The States are invited to participate in title III for the same reasons they are given the primary regulatory role in the Act they are more sensitive to local conditions and local needs. Thus, presumably their selection of lands to be acquired would more closely approximate the wishes and priorities of local citizens and governments.

Subsection (f) requires the Secretary, with the assistance of other Federal departments and agencies, to prepare specifications for the reclamation of lands acquired under this title. And subsection (g) requires the Secretary to follow those specifications in reclaiming land with moneys from the fund.

Subsection (h) places administrative responsibility for lands reclaimed under this title with the Secretary until he disposes of the lands.

Subsection (i) establishes the priorities for purchasing and reclaiming abandoned and unreclaimed lands under this title. Priority is to be given (1) to lands which the Secretary believes to have the greatest adverse effect on the environment or constitute the greatest threat to life, health, or safety, and (2) to lands which he finds suitable for public recreational use. The latter lands, once reclaimed must be put to use for recreational purposes.

Where reclaimed land is found by the Secretary to be suitable for industrial, commercial, residential or private recreational development, the Secretary is authorized to sell such land pursuant to the provisions of the Surplus Property Act of 1949, as amended.

Subsection (k) requires the Secretary to hold hearings in the areas in which lands acquired to be reclaimed are located. The hearings are to be held at a time which will give local citizens and governments the maximum opportunity to participate in the decision concerning the use of the lands once reclaimed. These subsections are self-explanatory. Subsection (k) is of particular importance in that the Secretary should take great pains to insure that reclamation is accomplished in a manner that is compatible

with the wishes of local citizens and governments. Direct input of local citizens and governments is necessary to insure this as the Federal Government is too many levels removed to simply divine such wishes without such an input.

TITLE IV—ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

Sec. 401—Definitions

This section contains twenty-three definitions. Of importance to this analysis are "surface mining operations", "lands within any State", "other minerals", "backfilling to approximate contour", and "terracing".

"Surface mining operations" is so defined to include not only traditionally regarded surface mining activities but also surface operations incident to underground mining. Activities included are excavation to obtain coal or other minerals, by contour, strip, augur, or open pit mining, dredging, quarrying, in situ distillation or restoring and leeching; and the cleaning, concentrating, or other processing or preparation (excluding refining and sheltering), and loading for interstate commerce of crude minerals at or near the mine site. Activities not included (other than those excluded by section 203) are the extraction of minerals in a liquid or gaseous state by means of wells or pipes unless the process includes in situ distillation or retorting. "Surface mining operations" also includes all areas (1) upon which occur surface mining activities and surface activities incident to underground mining, or (2) where such activities disturb the natural land surface. It also includes all roads, facilities structures, property, and materials on the surface resulting from or incident to such activities.

"Land within any State" is so defined and used throughout the Act so as to insure that the States, through their State Programs, will not assert any additional authority over Federal lands or Indian lands, other than that authority delegated to them by the Secretary in developing joint Federal-State Programs pursuant to subsection 216(c).

"Other minerals" for which the Secretary must promulgate regulations and the States must develop State programs is defined to include clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Backfilling to approximate contour" is defined so as to give a five degree leeway from the original average slope and so as to bar depressions capable of collecting water except where retention of water is determined by the regulatory authority to be required or desirable for reclamation purposes.

"Terracing" is defined to mean grading to the extent necessary to insure that (1) the steepest contour of any remaining highwall will be permanently stable and will not erode and (2) the table portion of the restored area will have no depressions which hold water, except where water retention is determined by the regulatory authority to be required or desirable for reclamation purposes.

Sec. 402. Advisory committees

This section establishes two National Advisory Committees for surface mining and reclamation operations, one for coal and the other for other minerals. Each Committee will have seven members appointed by the Secretary. The membership should be balanced among Federal, State, and local officials, consumers, and representatives of conservation or other public interest groups.

Sec. 403. Grants to the States

This section contains the administrative provisions for the principal grant program to the States under the Act, the grant program to assist the States to develop, administer and enforce State Programs for the surface mining and reclamation of coal and of other minerals. The grants are not to exceed 80 percent of the total costs incurred during the first year, 70 percent in the second and third years, and 60 percent each year thereafter

The section also directs the Secretary to render training, curriculum, surface mining and reclamation operations inventorying, and technical assistance to the States. All Federal agencies are to make relevant data available to the States.

Sec. 404. Research and demonstration projects

This section authorizes to be appropriated $5,000,000 annually to the Secretary for purposes of conducting and promoting, through contracts or grants, the coordination and acceleration of research, studies, survey, experiments, and training in carrying out the purposes of the Act. In addition, the funds are to be used to contract with or make grants to States and their subdivisions, other public organizations, and persons to carry out demonstration projects for reclaiming lands which have been disturbed by surface mining operations.

Sec. 405. Annual report

The Secretary must report annually to the President and Congress concerning activities conducted by him, the Federal Government, and the States pursuant to the act, and any recommendations he may have for additional administrative or legislative action.

Sec. 406. Authorization of appropriations

Authorized for appropriations for administration of the amendment and for section 403's grants to States is $1,000,000 for the first fiscal year after enactment of the Act; $20,000,000 for the next two succeeding fiscal years, and $30,000,000 for each fiscal year thereafter.

Sec. 407. Temporary suspension

This section grants a critically important authority to the President to temporarily suspend the operations of the Act under emergency conditions. The temporary suspension would be for ninety days. The emergency conditions are a national emergency, a critical national or regional electrical power shortage, or a critical national fuels or mineral shortage.

The President is to make the suspension based upon the findings and recommendations of the Director of the Office of Emergency Preparedness. The Director must solicit the views of the Secretary of the Interior, the Chairman of the Council on Environmental Quality, and the Chairman of the Federal Power Commission.

Any suspension must be followed by a report to the Congress within five days of the suspension order. Congress will then be in a position to take whatever remedial long-term action appears necessary.

Sec. 408. Other Federal laws

This section contains the standard savings clauses concerning existing State or Federal mine health and safety, and air and water quality laws, and the mining responsibilities of the Secretary and heads of other Federal agencies for lands under their jurisdiction.

Sec. 409. State laws

This section contains the standards savings clauses protecting the States' rights to have or develop laws and regulations providing more stringent or different controls of surface mining and reclamation operations.

Sec. 410. Protection of the surface owner

Where the surface owner is not the owner of the mineral estate he is provided the following protection:

(1) The applicant of the permit must include in his application the written consent of, or a waiver by, the owner or owners of the surface lands to be mined; or

(2) The applicant must execute a bond or an undertaking to the United States or the State, whichever is applicable, to secure the payment to the surface owner or owners of any damages to the surface estate, crops, or tangible improvements of the surface owner or owners. This bond is in addition to the performance bond required by the act.

This provision is of special importance in those States where the broad form deeds, often signed before the technology of surface mining existed, have been interpreted to give the mineral rights owners complete rights to fully destroy the surface and thus deprive the surface owner of any use of his property. It is also of particular importance in the State of Montana where the owner of the mineral estate is given the right to condemn the surface estate for mining purposes.

Sec. 411. Preference for persons adversely affected by the act

This section requires the Secretary to develop regulations which will accord a preference in the award of contracts for reclamation pursuant to title III and demonstration projects pursuant to section 404 to surface mining operators and individuals who have been adversely affected by the operation of the Act. The purpose of this section is to alleviate any social dislocations and costs which occur as a result of the application of the Act. In many sections of the country, surface mining operations are of critical importance to the economic and material well being of local communities. Thus any dampening effect the Act may have on such operations may work hardships on local economies and employment. This provision should mitigate those hardships and also insure that the skills and equipment developed and used in surface mining will not be ignored in or lost to the reclamation efforts.

Sec. 412. Severability

This section contains the standards severability clause.

By Mr. ROBERT C. BYRD (for Mr. MAGNUSON) (for himself, Mr. TUNNEY, and Mr. HART):

S. 426. A bill to regulate interstate Commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes. Referred to the Committee on Commerce.

TOXIC SUBSTANCES CONTROL ACT OF 1973

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

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

STATEMENT BY SENATOR MAGNUSON

Mr. President, I am pleased, together with Senator Tunney, to reintroduce the Toxic Substances Control Act. The initial legislation had its genesis in the 92nd Congress. The Committee on Commerce held extensive hearings on the original proposal as well as an amendment which suggested substantial changes to that bill. The final product of the Committee and the Senate represented

what I thought was an extremely workable regulatory system. The House of Representatives disagreed, however, and there was no time in the last session to reach agreement. The bill I introduce today is virtually identical to the bill passed by the Senate last year.

The "consumer pollution" crisis is no less acute today than it was two years ago. Thus, the worth of this legislation has not diminished. If anything, its need is even more acute.

The detergent story is an excellent case in point. Approximately 30 years ago, synthetic detergents were developed as a substitute cleaning agent for soap. A primary ingredient of the first detergents was phosphates which were, and still are, used to soften hard water during the washing process. Approximately 10 years ago, it was realized that phosphates in detergents were causing substantial problems in certain bodies of water in this country through the stimulation of the growth of algae, a process called eutrophication.

As a substitute for phosphates, many detergent makers switched to a substance called NTA a few years ago. Yet, NTA is not without problems either. On September 15th, 1971, the Surgeon General warned that NTA in detergents could present substantial health problems in that the substance enhances the availability and toxicity of heavy metals such as mercury or cadmium.

To avoid both phosphates and NTA, many detergent manufacturers then turned to different materials which cleaned by increasing the causticity of the detergent. Thus, the threat of a direct health hazard was presented. Currently, synthetic detergent makers have abandoned the use of NTA and have returned, for the most part, to phosphates.

The entire history of the detergents problem is characterized by a lack of information as to environmental and public health effects of synthetic detergents as well as a lack of regulatory control when action might have been taken. For example, if we had known what phosphates would do to the Great Lakes at the time phosphate detergents were introduced thirty years ago, I seriously doubt that our headlong rush to synthetic phosphate detergents would have been tolerated. There was substantial testimony at the Committee on Commerce hearings that plain ordinary soap is every bit as effective as synthetic detergents in many areas of the country. Consequently, the use of phosphates, or any synthetic detergent for that matter, is needless in many areas. It is also safe to assume that the detergents industry was probably willing to introduce NTA on a massive scale with many of the environmental and public health questions unanswered. Following the disclosure of the hazards, the use of NTA was voluntarily curbed, but there is no assurance that the willingness of the detergent makers will continue or that other substitutes yet to be developed will be free from undue environmental threat.

The startling aspect of the detergents problem is that throughout the entire scenario, the Federal Government has been without one shred of authority to regulate the composition of detergents because of their environmental threat or to require testing of the manufacturers.

Other environmentally damaging chemicals have likewise escaped regulatory attention. The problems associated with PCBs, mercury and other heavy metals, and a variety of other synthetic organic compounds would fall within the regulatory framework envisioned by this legislation.

Nearly 250,000 new chemical compounds are developed each year. A few hundred will find their way into the marketplace and subsequently into the environment. It is certainly possible, if not an assurable fact, that some of these new compounds will turn out to be another NTA or another mercury. Without this legislation, I fear that we may subject ourselves to environmental threats that would never be permitted if we had full knowledge of the effect of a substance prior to its introduction.

The primary feature of the bill is that new chemical substances must be tested prior to commercial production and that the results of those tests must be submitted to the Environmental Protection Agency at least ninety days in advance of such production. The ninety-day period could be extended for an additional ninety days for good cause shown. Some have suggested that a premarket screening mechanism of this type is unwarranted and that the manufacturer of the chemical ought to check his own test results with no regulatory review by EPA prior to commercial production. While most manufacturers would discharge this duty in a conscientious manner, there are obviously others who would not. We would think it ill-advised for a law school graduate to correct and grade his own bar examination and for would-be drivers to correct and grade their drivers license examinations. The situation seems analogous here, especially where the threat of widespread harm is so great.

As the legislation passed the House last year, premarket screening was provided only for those chemical substances which the Administrator found were likely to pose substantial danger to health or the environment. As EPA could not predict whether a new unknown substance might be likely to pose substantial dangers, there would be no chance of regulatory review of test data for those substances prior to commercial production. Thus the very real possibility would exist that the dangers of a new susbtance would become manifest before the Environmental Protection Agency would have knowledge of those dangers and could react to restrict the substance's use or distribution. This legislation deals with that problem by requiring premarket screening of all new chemicals unless exempted by EPA because of no unreasonable risk.

Briefly, the other features of the bill are as follows:

1. The Environmental Protection Agency would specify those existing chemical substances which there is reason to believe might present unreasonable threats. Those specified would be tested and the results furnished to EPA.

2. The Environmental Protection Agency would have the authority to regulate toxic substances in a variety of ways, including the authority to restrict use or distribution, to seek the seizure of chemical susbtances creating imminent hazards in court and to order such other actions as is necessary to protect man and the environment.

3. Manufacturers and processors of chemical substances would be required to maintain records and reports to enable EPA to properly determine hazards.

4. Citizens would be authorized to bring suits to enjoin violations and to require the performance of mandatory duties of the Administrator.

As the Committee on Commerce held extensive hearings and executive sessions on the proposed legislation in the last Congress, the spade work has been largely completed. Thus, I would hope that the Senate could move quickly and that this legislation will become law before the environment is burdened with yet another insult with which it cannot cope.

S. 426

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 "Toxic Substances Control Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) The Congress finds that—

(1) man and the environment are being exposed to a large number of chemical substances each year;

(2) among the many chemical substances constantly being developed and produced are some which may pose an unreasonable threat to human health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances necessitates the regulation of transactions in such chemical substances in intrastate commerce as well.

(b) It is the policy of the United States that—

(1) new chemical substances and hazardous or potentially hazardous existing chemical substances should be adequatelv tested with respect to their safety to man and the environment and that such testing should be the responsibility of those who produce such chemicals;

(2) adequate authority should exist to restrict the distribution and use of chemical substances found to pose an unreasonable threat to human health or the environment, and to seize chemical substances that pose imminent hazards;

(3) authority over chemical substances should be exercised in such a manner as not to unduly impede technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical susbtances does not pose an unreasonable threat to human health or the environment; and

(4) as set forth herein, citizens should be encouraged to participate in carrying out the purposes of this title.

DEFINITIONS

SEC. 3. As used in this title the term—

(1) "Administrator" means the Administrator of the Environmental Protection Agency;

(2) "Chemical substance" means any organic or inorganic substance of a particular molecular identity, or any uncombined chemical radical or element;

(3) "New chemical substance" means any chemical substance which is first produced in commercial quantities after the effective date of any regulation promulgated pursuant to section 4 of this Act which is applicable to such substance;

(4) "Existing chemical substance" means any chemical substance which has been produced in commercial quantities before the effective date of any regulation promulgated pursuant to section 4 of this Act which is applicable to such substance;

(5) "Manufacturer" means any person engaged in the production or manufacture of chemical substances for purposes of sale or distribution in commercial quantities, or an importer thereof;

(6) "Processor" means any person engaged in the preparation of a chemical substance for distribution or use either in the form in which it is received or as part of another product, as defined by regulations of the Administrator;

(7) "Restrict the use or distribution" means to prescribe the amount sold to given types of processors, or to limit the type of processor to whom a substance may be sold, or to prescribe the amount which may be utilized by a given type of processor, or to limit the sale or the manner in which a substance may be used, handled, labeled, or disposed of by any person, including self-monitoring requirements for manufacturers and processors to insure that the chemical substance being manufactured or processed is of reasonably consistent composition, and such restriction on use or distribution may be applied on a geographic basis and may include a total ban;

(8) "Byproduct" means a chemical substance produced as a result of the production, manufacture, processing, use, or disposal of some other chemical substance.

(9) "Environment" includes water, air, land, all living things therein, and the interrelationships which exist among these;

(10) "Protect health and the environment" means protect against any unreasonable threat to human health or the environment resulting from any chemical reaction of a chemical substance taking into account the benefits of the chemical substance as compared to the risks to human health or the environment;

(11) "District courts of the United States", which courts shall have jurisdiction over actions arising under this title, includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii;

(12) "Intermediate chemical substance" means any chemical substance to the extent that such substance is converted chemically or used as a catalyst in the manufacture of other chemical substances subject to this Act;

(13) "Test protocol" means a standardized procedure for performing tests as required by this title pursuant to regulations promulgated by the Administrator, the results of which will provide a basis for judging the effects of a chemical substance on human health or the environment; and

(14) "Laboratory reagent" means any chemical substance produced, distributed, or used for scientific experimentation or chemical research or analysis.

TEST STANDARDS

SEC. 4. (a) Within one year after enactment of this Act and from time to time thereafter, the Administrator shall issue proposed regulations (i) for such test protocols for various chemical substances or classes of chemical substances and (ii) for the results that must be achieved therefrom, as are necessary to protect health and environment. Such regulations shall apply to all chemical substances which are produced in commercial quantities, except that the Administrator shall not propose regulations for those chemical substances or classes of chemical substances which (1) in his judgment, are of no unreasonable environmental or public health threat, or (2) are more efficiently controlled through the regulation of their components. To the extent feasible, such regulations shall indicate the use or distribution of a chemical substance which will be permitted upon and only upon the attainment of specified test results.

(b) In making the finding required under subsection (a), the Administrator shall consider all relevant factors, including—

(1) the effects of the chemical substance on health and the magnitude of human exposure;

(2) the effects of the chemical substance on the environment and the magnitude of environmental exposure;

(3) any benefit of the chemical substance and the availability of less hazardous substances for any use or distribution of such substances;

(4) the extent to which the test protocol is reasonably predictive of the potential adverse effects of the chemical substances on health or the environment; and

(5) any data concerning the safety of the chemical substance which may affect the requirements of the test protocol.

(c) Such test protocols may include tests for carcinogenesis, teratogenesis, mutagenesis, persistence, the cumulative properties of the substance, the synergistic properties of the substance and other types of hazards, and epidemiological studies of the effects of the chemical substance.

(d) The Administrator shall specify in the proposed regulations the date on which such regulations shall take effect, except that such regulations shall take effect as soon as feasible, allowing sufficient time for the execution and reporting of required test as may be required by sections 5 and 6 of this Act.

PREMARKET SCREENING OF NEW CHEMICAL SUBSTANCES

SEC. 5. (a) After the effective date of initial regulations promulgated pursuant to section 4 of this Act any manufacturer of a new chemical substance to which such regulations are applicable shall submit to the Administrator, at least ninety days in advance of the commercial production of such substance, the test data developed in accordance with the regulations issued pursuant to section 4 of this Act for the intended use or distribution of such substance. Subject to section 6 of this Act, the Administrator shall promptly publish in the Federal Register the identity of such chemical substance, the use or distribution intended, and a statement of the availability of test data. Any subsequent manufacturer of a new chemical substance for which test data have been furnished to the Administrator under this subsection or any subsequent manufacturer of a new chemical substance falling within a class of chemical substances specified in regulations promulgated under section 4 of this Act for which test data have been furnished to the Administrator, shall not be required to furnish test data which are duplicative of data submitted previously by another manufacturer, except such new chemical substances shall not be commercially produced prior to commercial production of the chemical substance for which test data were furnished under this subsection. Any chemical substance or member of a class of chemical substances or any manufacturer or processor thereof referred to under the preceding sentence shall be subject to all other provisions of this Act.

(b) If warranted by data or the absence of data available to him, the Administrator may propose by regulation to restrict the use or distribution of any such substance in accordance with section 7 of this Act. If such regulation is proposed prior to the expiration of the ninety-day period referred to in subsection (a) of this section such proposed restrictions on use or distribution shall apply, pending the outcome of administrative proceedings on such proposal, to any subsequent commercial production of such new chemical substance as if such proposed regulation were final. After such regulation is proposed, the Administrator may refer it to a committee referred to in section 12(c) of this Act. The Administrator shall refer such proposal to such committee if requested by any interested party.

(c) The Administrator may extend the date after which a new chemical substance may be commercially produced under this Act for any particular use or uses beyond ninety days from the submission of test data required by section 4 of this Act for an additional period, not to exceed ninety days, for good cause shown. Subject to section 16 of this Act, notice of such extension and the reasons therefor shall be published in the Federal Register and shall constitute a final action subject to judicial review in accordance with section 24(d) of this Act.

(d) Nothing in this section shall be construed to prohibit the Administrator from restricting the use or distribution of any such new chemical substance pursuant to section 7 of this Act after commercial production of such substance has begun or to take action against any substance which is found to be an imminent hazard pursuant to section 8 of this Act.

(e) Whenever a manufacturer of a new chemical substance proposes to commercially produce such substance for a use or distribution with respect to which the Administrator has not received test data for such use or distribution pursuant to subsection (a) of this section, the manufacturer shall be required to follow the procedures of this section before such substance may be commercially produced for such use or distribution. The requirements of the preceding sentence shall apply notwithstanding the fact that the Administrator may previously have screened such substance for other use or distribution without objection.

EXISTING CHEMICAL SUBSTANCES

SEC. 6. (a) The Administrator shall issue, within one year after the enactment of this Act and from time to time thereafter, proposed regulations specifying those existing chemical substances or classes of existing substances, the manufacture, processing, distribution, use, or disposal of which there is reason to believe may pose an unreasonable threat to human health or the environment. Concurrently with each proposal to specify such existing chemical substance, the Administrator shall propose regulations under section 4 of this Act, if he has not previously done so, which are applicable to each existing chemical substance so specified. On or before the effective date of any applicable regulations under section 4 of this Act any manufacturer of an existing chemical substance shall furnish the test data developed in accordance with such regulations to the Administrator. Subject to section 16 of this Act, the Administrator shall, upon receipt of such test data from a manufacturer, promptly publish in the Federal Register the identity of such existing chemical substance, the uses to which the substance is put, and a statement of the availability of test data.

(b) Manufacturers of existing chemical substances for which testing is required under subsection (a) of this section shall not be required to submit test data which would duplicate applicable test data submitted previously by other manufacturers. Such chemical substances and the manufacturers thereof shall be subject to all other provisions of this Act.

(c) Whenever a manufacturer of an existing chemical substance proposes to commercially produce such substance for use or distribution to which a regulation under section 4 of this Act is applicable and with respect to which the Administrator has not received test data for such use or distribution pursuant to subsection (a), the manufacturer shall be required to follow the procedures of this section notwithstanding the fact that no objection has been raised to other uses. Whenever a manufacturer of an existing chemical substance proposes to commercially produce such substance for a new use following the effective date of a regulation under section 4 of this Act applicable to such use, the manufacturer shall be required to follow the procedures of section 5 of this Act before such substance may be commercially produced for such use or distribution.

RESTRICTIONS ON USE OR DISTRIBUTION

SEC. 7. (a) If warranted by data available to him, or in the absence of acceptable test data required under sections 5 or 6 of this Act, the Administrator may propose by regulation (1) to restrict the use or distribution of any chemical substance to the extent necesary to protect health and the environment; (2) to require that any or all persons engaged in the distribution of the chemical substance so regulated give notification to purchasers or other recipients of the substance of such restrictions in such form and manner as the Administrator determines is necessary to protect health and the environment including labeling require-

ments on such chemical substances or products containing such substances with appropriate warning provisions and directions for use and disposal; and (3) to require such other action as may be necessary to carry out such restrictions including recalling such product or substance from the market.

(b) In issuing such regulations the Administrator shall consider all relevant factors including—

(1) the effects of the substance on human health;

(2) the effect of the substance on the environment;

(3) the benefits of the substance for various uses;

(4) the normal circumstances of use;

(5) the degree to which the substance is released to the environment;

(6) the magnitude of exposure to humans and the environment to the substance; and

(7) the availability of less hazardous substitutes.

The Administrator shall specify in the order the date on which it shall take effect, which shall be as soon as feasible. To the extent possible, the manufacturer shall be responsible for supplying all necessary information for the Administrator to make findings under this subsection. All data relevant to the Administrator's findings shall be available to the public in accordance with section 16 of this act.

(c) Whenever the Administrator has good cause to believe that a particular manufacturer or processor is producing or processing a chemical substance not in compliance with a particular restriction on the use or distribution requiring reasonably consistent composition of such chemical substance—

(1) he may require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance; and

(2) if he thereafter determines that such noncompliance is attributable to the inadequacy of the manufacturer's or processor's control procedures, he may, after notice and opportunity for hearing pursuant to section 554 of title 5, United States Code order the manufacturer to revise such quality control procedures to the extent necessary to remedy such inadequacy.

IMMINENT HAZARD

SEC. 8. (a) An imminent hazard shall be considered to exist when the evidence is sufficent to show that the manufacture, processing, distribution, use, or disposal of a chemical substance will result in serious damage to human health or the environment prior to the completion of an administrative hearing or other formal proceeding held pursuant to this Act:

(b) If the Administrator has reason to believe that an imminent hazard exists he may petition an appropriate district court of the United States, or he may request the Attorney General to do so, to restrain the uses or distribution of the chemical substance responsible for the hazard, or to require that stocks of such substances be recalled by the manufacturer, wholesalers, retailers, or other distributors. The Administrator shall simultaneously, if he has not done so, propose any regulation which may be warranted under section 7 of this Act.

SEIZURE

SEC. 9. (a) Any chemical substance or article containing such chemical substance which the Administrator finds (1) is manufactured, processed, distributed, used, or disposed of in violation of sections 4 or 7 of this Act and (2) of itself constitutes an imminent hazard shall be liable to be proceeded against by the Administrator or the Attorney General on libel of information and condemned in any district court of the United States within the jurisdiction of which the chemical substance or article containing such chemical substance is found. Such substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty.

(b) Any substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such substance shall not be sold under such decree contrary to the provisions of this title or the laws of the jurisdiction in which sold: *Provided*, That after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such substance shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State or territory in which sold, the court may by order direct that such substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this title under the supervision of an officer or employee duly designated by the Administrator, and the expenses of such supervision shall be paid by the person obtaining release of the article under bond.

(c) When a decree of condemnation is entered against the article, court costs and fees, and storage and other property expenses, shall be awarded against the person, if any, intervening as claimant of the article.

REPORTS

SEC. 10. (a) The Administrator shall require all manufacturers of chemical substances or, where appropriate, processors to submit reports to him annually and at such more frequent times as he may reasonably require containing any or all of the following—

(1) the names of any or all chemical substances produced, imported, or processed in commercial quantities by the manufacturer or processor thereof;

(2) the chemical identity and molecular structure of such substances insofar as is known;

(3) the categories of use of each such substance, insofar as they are known to him or are reasonably ascertainble by him;

(4) reasonable estimates of the amounts of each substance produced or processed for each such category of use; and

(5) a description of the byproducts, if any, resulting from the production of each such substance, and, insofar as they are known to him or are reasonably ascertainble by him, from the processing, use, or disposal thereof. The Administrator may, by regulation, exempt manufacturers or processors from all or part of the requirements of this section if he finds that such reports are not necessary to carry out the purposes of this act.

(b) Whenever the Administrator determines that such action would be necessary to allow him to carry out his responsibilities and authorities under this act, he may be publishing a notice in the Federal Register invite and afford all interested persons an opportunity to provide in writing information respecting the human health or environmental effects of a chemical substance.

EXEMPTIONS AND RELATIONSHIP TO OTHER LAWS

SEC. 11. (a) This act shall not apply to—

(1) Pesticides and chemical substances used in such pesticides, except that if a chemical substance which constitutes such a poison or such an ingredient is or may be used for any non-pesticidal purpose which is not regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, this act shall apply to such other uses;

(2) foods, drugs, devices, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, as amended, foods subject to the Federal Meat Inspection Act, the Egg Products Inspection Act, and the Poultry Products Inspection Act, and chemical substances used therein, except that if such an item or substance is or may be used for any purpose which is not regulated by such Acts this Act shall apply to such other uses;

(3) any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Atomic Energy Commission;

(4) except as otherwise provided for in title II of this Act, the transportation of hazardous materials insofar as it is regulated by the Secretary of the Department of Transportation;

(5) except for section 10 of this Act, intermediate chemical substances, unless the Administrator finds that such chemical substances cannot be sufficiently regulated by the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, to the extent necessary to protect health and the environment;

(6) except for section 10 of this Act; any other chemical substance that the Administrator finds can be regulated more effectively by the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, to the extent necessary to protect health and the environment;

(7) laboratory reagents, except those which there is reason to believe the manufacture, processing, distribution, use, or disposal of which may produce an unreasonable threat to human health or the environment;

(8) tobacco and tobacco products; and

(9) any extraction of any mineral deposit covered by the mining or mineral leasing laws of the United States, unless the Administrator finds by regulation, that such extraction of such mineral deposit poses an unreasonable threat to human health or the environment which cannot be effectively regulated under any other provision of law.

(b) To the extent that such chemical substances are subject to regulation by other Federal laws, including the Occupational Safety and Health Act of 1970 and the Federal Hazardous Substances Act, as amended, the Administrator shall not regulate the use or distribution of a new or existing chemical substance on the basis of any possible hazard to employees in their place of employment, or the hazard directly to consumers resulting from the personal use, enjoyment, or consumption of marketed products which contain or might contain the substance.

(c) If it appears to the Administrator that any such substance may pose a hazard when transported, or when used on or in food or as a drug or cosmetic, or may be a hazard to employees in their place of employment, or may pose a hazard directly to consumers resulting from the personal use, enjoyment, or consumption of marketed products which contain or might contain the substance, he shall transmit any data received from manufacturers or processors or data otherwise in his possession which is relevant to such hazards to the Federal department or agency with authority to take legal action if a hazard is found to exist.

(d) The Administrator shall coordinate actions taken under this Act with actions taken to implement the Federal Water Pollution Control Act and the Clean Air Act, and shall, where appropriate, use the authorities contained in such Acts to regulate chemical substances.

(e) The Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of other appropriate Federal agencies in administering the provisions of this Act. The Administrator shall report annually to the Congress on actions taken to coordinate with other Federal agencies and actions taken to coordi-

nate the authority under this Act with the authority granted under other Acts referred to in this section.

(f) This Act shall not be construed as superseding or impairing the provisions of any other law or treaty of the United States.

CHEMICAL SUBSTANCES BOARD

SEC. 11. (a) There shall be established in the Environmental Protection Agency a Chemical Substances Board (hereinafter referred to as the "Board") consisting of twelve scientifically qualified members. The Administrator shall appoint members of the Board from a list of individuals recommended to him by the National Academy of Sciences, except that the Secretary of Health, Education, and Welfare shall appoint one member of the Board from whatever source he desires. Such Board shall include qualified scientists not more than one-third of which represent the chemical industry. None of the members of such Board, other than chemical industry representatives, shall have any significant economic interest in the chemical industry. Members of the Board shall serve one term of four years, except that one-half of the members initially appointed shall serve one term of two years. Thereafter, one-half of the members of the Board shall be appointed every two years. Members of the Board shall not be reappointed for consecutive terms. One of the members shall be designated by the Administrator to serve as Chairman of the Board.

(b) The National Academy of Sciences, in consultation with the Board, shall maintain a list of qualified scientists, to assist in carrying out the provisions of this section. Such scientists may also be utilized as consultants to the Chemical Substances Board.

(c) Except as provided in section 5(b) of this Act, before proposing any regulations under sections 4, 6, or 7 of this Act, the Administrator shall refer his proposed action and the available evidence to a committee selected by the Administrator from members of the Board and the list of consultants to the Board, except that the Secretary of Health, Education, and Welfare may appoint one member of such committee from whatever source he desires. Concurrently with such referral, the Administrator shall publish in the Federal Register a notice of the referral identifying the proposed action. Such committee shall include qualified scientists not more than one-third of which represent the chemical industry. None of the members of such committee shall have a significant economic interest in the manufacturing, processing, distribution, or sale of any chemical substance which may, directly or indirectly, be affected by the proposed action. The committee shall conduct an independent scientific review of the proposed action and shall report its views and reasons therefor in writing to the Administrator, within a reasonable time, not to exceed forty-five days as specified by the Administrator. Such time may be extended an additional forty-five days if the Administrator determines the extension necessary and such committee has made a good faith effort to report its views and reasons therefor within the initial forty-five day period. All such views shall be given due consideration by the Administrator. If the committee fails to report within the specified time, the Administrator may proceed to take action under this Act. Subject to section 16 of this Act, all proceedings and deliberations of such committees and their reports and reasons therefor shall be public record. The report of the committee and any dissenting views shall be considered as part of the record in any proceeding taken with respect to the Administrator's action.

(d) The Administrator may, at his discretion, also request the Board to convene a committee to consider other actions proposed to be taken under this Act. In such case all provisions of this section shall apply.

(e) The Administrator is authorized to reimburse the National Academy of Sciences for expenses incurred in carrying out this section.

(f) Members of the Board or committees who are not regular full-time employees of the United States shall, while serving on business of the Board or committee, be entitled to compensation at rates fixed by the Administrator, but not exceeding the daily rate applicable at the time of such service to grade GS–18 of the classified civil service, including traveltime; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

RESEARCH

SEC. 13. The Administrator is authorized to conduct such research and monitoring as is necessary to carry out his functions under this Act. Such research and monitoring may be undertaken to determine proper test protocols and results to be obtained therefrom under section 14 of this Act, determinations of what existing chemical substances might present unreasonable hazards under section 6 of this Act, and such monitoring of chemical substances in man and in the environment as is otherwise necessary to carry out the purposes of this Act. In addition, research may be undertaken to confirm the results of tests required by this Act. To the extent possible, such research and monitoring shall not duplicate the efforts of other Federal agencies or the research required of manufacturers under this Act. In order to carry out the provisions of this section, the Administrator is authorized to make contracts and grants for such research and monitoring. The Administrator may construct research laboratories for the purposes of this Act (A) after fully utilizing the personnel, facilities, and other technical support available in other Federal agencies, (B) when authorized by the Congress to plan, design, and construct such laboratories, and (C) subject to the appropriation of funds for this purpose by the Congress.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

SEC. 14. (a) (1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and otherwise facilitating the carrying out of his function under this Act, the Administrator is authorized, in accordance with this section, to enter any factory, warehouse, or other premises in which chemical substances are maintained, including retail establishments, and to conduct administrative inspections thereof.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Administrator. Any such inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) his administrative inspection warrant or a written notice of his other inspection authority, shall have the right to enter such premises and conduct such inspection at reasonable times.

(3) Except when the owner, operator, or agent in charge of such premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data;

(C) pricing data;

(D) personnel data;

(E) research data (other than data required by this title); or

(F) process technology other than that related to chemical composition or the industrial use of a chemical substance.

(b) A warrant under this section shall not be required for entries and administrative inspections (including seizures of chemical substances or products containing chemical substances manufactured in violation of regulations issued under this act)—

(1) conducted with the consent of the owner, operator, or agent in charge of such premises; or

(2) in any other situation where a warrant is not constitutionally required.

(c) Issuance and execution of administrative inspection warrants shall be as follows:

(1) Any judge of the United States or of a State court of record, or any United States magistrate, may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this title, and seizures of property appropriate to such inspections. For the purposes of this subsection the term "probable cause" means a valid public interest in the effective enforcement of this title or regulations thereunder sufficient to justify administrative inspections of the area, premises, building, or contents thereof, in the circumstances specified in the application for the warrant.

(2) A warrant shall be issued only upon an affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, or building, to be inspected, the purpose of such inspection, and, where appropriate, the types of property to be inspected, if any. The warrant shall identify the items of types of property to be seized, if any. The warrant shall be directed to a person authorized under subsection (a)(2) of this section to execute it. The warrant shall state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof. It shall command the person to whom it is directed to inspect the area, premises, or building, identified for the purpose specified, and, where appropriate, shall direct the seizure of the property. The warrant shall direct that it be served during normal business hours. It shall designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory, and shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all

papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

EXPORTS AND IMPORTS

SEC. 15. (a) Notwithstanding any other provision of this Act, no chemical substance shall be deemed in violation of this Act when intended solely for export to any foreign nation except that (1) test data which would be required to be submitted under section 54 or 65 of this title if such substance were produced for domestic use, shall be submitted to the Administrator in accordance with such sections; (2) such chemical substance shall be subject to the reporting requirements of section 10 of this Act, and (3) no chemical substance may be exported if the Administrator by regulation finds that the chemical substance as exported and used will, directly or indirectly, pose an unreasonable threat to the human health of persons within the United States or the environment of the United States.

(b) If submittal of test data is required for a chemical substance under sections 54 or 55 of this Act, or restrictions on use or distribution have been imposed for a chemical substance under section 76 of this Act, the Administrator, subject to section 16 of this Act, shall furnish to the governments of the foreign nations to which such chemical substance may be exported (1) a notice of the availability of the data submitted to the Administrator under sections 51 or 56 of this Act concerning such chemical substance, (2) any restrictions on use or distribution of such chemical substance that have been imposed or proposed by the Administrator under section 6 of this Act and (3) any court order issued under section 8 of this Act.

(c) The Secretary of the Treasury shall refuse entry into the United States of any chemical substance or article containing such substance offered for entry if it fails to conform with regulations promulgated under this act. If a chemical substance or article is refused entry, the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the disposal or storage of any substance or article refused delivery which has not been exported by the consignee within three months from the date or receipt of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe, except that the Secretary of the Treasury may deliver to the consignee such substance or article pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such substance or article, together with the duty thereon, and on refusal to return such substance or article for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond. All charges for storage, cartage, and labor on substances or articles which are refused admission or delivery under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) The Secretary of the Treasury, in consultation with the Administrator, shall issue regulations for the enforcement of subsection (c) of this section.

CONFIDENTIALITY

SEC. 16. (a) Copies of any communications, documents, reports, or other information received or sent by the Administrator under this Act shall be made available to the public upon identifiable request, and at reasonable cost unless such information may not be publicly released under the terms of subsection (b) of this section.

(b)(1) The Administrator or any officer or employee of the Environmental Protection Agency or the Chemical Substances Board or committees established under section 12 of this Act, shall not disclose any information which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed by the Administrator—

(A) to other Federal government departments, agencies, and officials for official use, upon request, and with reasonable need for such information;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this title, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

(E) to the public in order to protect their health, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health).

In no event shall the names or other means of identification of injured persons be made without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter presently under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

PROHIBITED ACTS

SEC. 17. The following acts and the causing thereof are prohibited—

(1) the failure to comply with any final regulation or order issued by the Administrator or the Secretary of the Treasury pursuant to this title;

(2) the failure or refusal to provide information as required by sections 5, 6, or 10 of this Act;

(3) the manufacture, processing, sale, distribution, or importation into the United States of a chemical substance whenever such manufacture, processing, sale, distribution, or importation is known to be or should have been known to be for a use in violation of regulations promulgated under section 4 or 7 of this Act, and the use, including disposal, of any such substance when such use or disposal is known or should have been known to be in violation of such regulations; and

(4) the failure of any person who purchases or receives a chemical substance and who is required to be given notice of restrictions on use or distribution of such substance pursuant to paragraph (2) of section 7(a) of this Act to comply with such restrictions on use or distribution.

PENALTIES AND REMEDIES

SEC. 18. (a) Any person willfully violating section 17 of this Act shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than one year, or both.

(b)(1) Any person not willfully violating section 17 of this Act shall be liable to the United States for a civil penalty of a sum which is not more than $25,000 for each day of violation, to be assessed by the Administrator after notice and opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after he has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

(2) Upon failure of the offending party to pay the civil penalty, the Administrator may commence an action in the appropriate district court of the United States for such relief as may be appropriate or request the Attorney General commence such an action.

(c) The Attorney General or the Administrator may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of section 17 of this Act, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

CITIZEN CIVIL ACTIONS

SEC. 19. (a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any regulation or order promulgated under section 4 or 7 of this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, and (ii) to any alleged violator of the regulation or order, or

(B) if the Administrator or Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the regulation or order, but in any such action any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any regulation or order or to seek any other relief.

(f) For purposes of this section, the term "person" means an individual, corporation, partnership, association, State, municipality, or political subdivision of a State.

(g) When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more jurisdictions, such pending proceedings, upon application of the defendant reasonably made to the court of one such jurisdiction, may, if the court in its discretion so decides, be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) may by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the applicant's principal place of business in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereby to the other courts having jurisdiction of the cases covered thereby.

ENVIRONMENTAL PREDICTION AND ASSESSMENT

SEC. 20. The Environmental Protection Agency shall, in cooperation with the Council on Environmental Quality and other Federal agencies, develop the necessary personnel and information resources to assess the environmental consequences of the introduction of new chemical substances into the environment.

COOPERATION OF FEDERAL AGENCIES

SEC. 21. Upon request by the Administrator, each Federal agency is authorized—

(a) to make its services, personnel, and facilities available with or without reimbursement to the greatest practicable extent within its capability to the Administrator to assist him in the performance of his functions; and

(b) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession, as the Administrator may reasonably determine to be necessary for the performance of his functions as provided by this Act.

HEALTH AND ENVIRONMENT DATA

SEC. 22. The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate Federal, State, and local departments or agencies, the scientific community, and the chemical industry, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical compounds and related substances, and (2) a standard means for storing and for obtaining rapid access to information respecting such materials.

STATE REGULATIONS

SEC. 23. (a) Nothing in this title shall affect the authority of any State or local government to impose more stringent restrictions on the use or distribution of any chemical substances, or to establish and enforce more stringent standards for test protocols for various classes and uses of chemical substances, and for the results that must be achieved therefrom, to protect human health or the environment, except that—(1) if the Administrator issues a final regulation under section 7 of this act restricting the use or distribution of a chemical substance a State or local government may not enforce any such restriction of its own for purposes similar to this title after the effective date of such regulation, other than a total ban on use or distribution; and

(2) if the Administrator issues a final regulation under section 4 of this Act a State or local government may not enforce any standards for test protocols and the result to be achieved therefrom after the effective date of such regulation.

(b) The Administrator may by regulation, upon the petition of any State or local government or at his own initiative, exempt State and local governments from the prohibitions of subsection (a) of this section or from the prohibitions contained in any other Federal law administered by the Environmental Protection Agency against the regulation by State or local governments of the manufacture, use, or distribution of chemical substances with respect to a chemical substance if such exemption will not, through difficulties in marketing, distribution or other factors, result in placing an unreasonable burden upon commerce.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 24. (a) At his own initiative, or upon the petition of any person, the Administrator is authorized to issue regulations to carry out the purposes of this title and to amend or rescind such regulations at any time.

(b) The Administrator shall publish any regulations proposed under this title in the Federal Register at least sixty days prior to the time when such regulations shall become final. The Administrator shall also publish in the Federal Register a notice of all petitions received under subsection (a) and, if such petition is denied, his reasons therefore. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Administrator shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Administrator until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto.

(c) Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and the relationship of such findings to the regulations issued.

(d) Any judicial review of final regulations promulgated under this title and final actions under section 54(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that (1) with respect to regulations promulgated under section 4, 6, or 7 of this Act, the findings of the Administrator as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole, and (2) with respect to relief pending review, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay (a) is likely to prevail on the merits in the review proceeding and (b) will suffer irreparable harm pending such proceeding.

(e) Except as expressly modified by the provisions of this section, the provisions of the Administrative Procedures Act (5 U.S.C. 551 et seq.), shall apply to proceedings conducted by the Administrator under this Act.

(f) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either (1) that the information is material and was not available at the time of the proceeding before the Administrator or (2) that failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

NATIONAL SECURITY WAIVER

SEC. 25. The Administrator may waive compliance with the provisions of this Act, in whole or in part, upon receiving information from the Secretary of Defense that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense in the interest of national security, unless the Administrator has been requested by the Secretary of Defense to omit such publication because the publication would be contrary to the interests of national security.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 26. (a) There is hereby authorized to be appropriated such sums as may be necessary, but not to exceed $6,300,000, $10,400,000, and $9,600,000 for the fiscal years ending on June 30, 1974, June 30, 1975, and June 30, 1976, respectively, for the purposes and administration of this Act. No part of the funds so authorized to be appropriated shall be used to plan, design, or construct any research laboratories unless specifically authorized by the Congress by law.

(b) To help defray the expenses of implementing the provisions of this title, the Administrator may by regulation require the payment of a reasonable fee from the manufacturer of each chemical substance for which test data has been submitted under this Act.

By Mr. KENNEDY (for himself, Mr. RANDOLPH, Mr. WILLIAMS, Mr. JAVITS, Mr. BEALL, Mr. CRANSTON, Mr. HATHAWAY, Mr. MONDALE, Mr. PELL, Mr. SCHWEIKER, and Mr. TAFT):

S. 427. A bill to provide for the extension of the Developmental Disabilities Services and Facilities Construction Act. Referred to the Committee on Labor and Public Welfare.

DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT EXTENSION

Mr. KENNEDY. Mr. President, I introduce on behalf of myself and Senators RANDOLPH, WILLIAMS, JAVITS, BEALL, CRANSTON, HATHAWAY, MONDALE, PELL, SCHWEIKER, and TAFT, a bill to extend the Developmental Disabilities Services and Facilities, Construction Act for 3 more years. I wish to thank the distinguished Senator from West Virginia, Senator JENNINGS RANDOLPH, chairman of the Senate Subcommittee on the Handicapped, for giving me the opportunity to chair the upcoming hearings on this legislation. The developmentally disabled are the children and adults in our society whose severe handicaps originate in childhood and continue in some measure throughout adult life. The mentally retarded form the largest group of the developmentally disabled. More than 6 million Americans are afflicted with this condition.

Our society has been slow to recognize its obligations to the developmentally disabled. The Federal Government's first acknowledgment of its responsibilities came in 1935 when the Social Security Act created the crippled children's program within the Children's Bureau. Except for income maintenance programs providing benefits to mentally retarded persons after their 18th birthday, the only other expression of Federal responsibility in this area was the Vocational Rehabilitation Act of 1943. It provided job counseling and placement for the mentally retarded. In his first year in office, President Kennedy called attention to the long neglected programs of both the mentally retarded and the mentally ill. He established a President's Panel on Mental Retardation. Two significant pieces of Federal legislation grew out of the recommendations of that Panel in 1963: First, Public Law 88–156 launched a special Federal program of comprehensive maternity and infant care projects aimed at high-risk mothers. It also authorized grants to the States for comprehensive planning in the field of mental retardation. Second, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 launched the first major Federal program for the construction of Federal facilities for the mentally retarded and the mentally ill.

The last major legislative advance in this area was the Developmental Disabilities Act of 1970. This bill enlarged the focus of the Federal effort from a sole concentration on the mentally retarded to encompass all those who are developmentally disabled; which includes victims of cerebral palsy, epilepsy, and similar disabilities attributable to neurological impairments. This legislation also significantly expanded the role of the States in the planning and implementation of comprehensive programs of services for the developmentally disabled. The bill was hailed by professionals who felt it would make a truly comprehensive program possible for the first time in the Nation's history.

On November 16, 1971, President Nixon pledged "continuing expansion" of Federal spending in the area of developmental disabilities. He asked the American people to join him in a commitment to two major national goals: First, to reduce by half, the occurrence of mental retardation in the United States before the end of this century. And second, to enable one-third of the more than 200,000 retarded persons in public institutions to return to useful lives in the community. The President eloquently said:

> Beyond any question, the effort is worth making. For at the present rate of occurrence, more than 4 million of the 142 million children whom demographers estimate will be born in America between now and the year 2000 will grow up retarded. Their future is in our hands.

The President's words, when viewed against enactment of the developmental disabilities legislation in 1970, raised the hopes not only of the developmentally disabled, but of their families and friends, of the health professionals and volunteer workers associated with them. It seemed that our society, which had shunned and ignored the developmentally disabled for so long, was finally ready to cope compassionately with their problems.

How disheartening it is to look back now on the President's actions since his November 16 statement. In spite of authorizations of $60 million for fiscal year 1971, $105 million for fiscal year 1972, and $130 million for fiscal year 1973, the President's annual appropriations requests for those 3 years were $36 million, $40 million, and $44 million. As in so many other areas of the health field, the President's refusal to fully implement the authority contained in the Developmental Disabilities Act of 1970 has effectively vitiated the effectiveness of the program. Now almost 3 years after its historic enactment, that legislation has still not been given a chance to do the job.

On other occasions, the President has been asking the Congress to expand the role of States in the development and implementation of health programs. The President has made services integration a prime goal of the Department of Health, Education, and Welfare. The thrust of the Development Disabilities Act was to expand the role of the States in the development and implementation of comprehensive services programs and to coordinate the various State and local efforts in this area. Yet, in spite of the fact that the legislation was responsive to Presidential priorities, it fared no better than any of the other health programs in HEW. States, for example, have received far less money than they requested in order to carry out their programs for the developmentally disabled. New York State in fiscal year 1972, received $1.4 million out of budget requests for $70 million. Massachusetts requested $6 million in fiscal year 1971, but received $246,000.

Senator JAVITS is today introducing his, "bill of rights for the mentally retarded." This bill will focus on the establishment of standards for residential facilities for the mentally retarded. It will be considered by the Senate Subcommittee on the Handicapped together with the developmental disabilities legislation. The two bills are complimentary and together represent a comprehensive approach to meeting the problems of the developmentally disabled.

Mr. President, the bill my colleagues and I are introducing today will extend all of the provisions of the 1970 Developmental Disabilities Act for 3 more years. We expect to hold hearings to determine ways to improve that authority. But unless the President is fully willing to implement it, it will not solve the problems. It is easy to find compassionate things to say about the plight of the developmentally disabled; it is more difficult to act compassionately. It is my hope that the executive and legislative branches can set aside their political differences and reflect a new dedication to solving the problems confronting the developmentally disabled.

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

S. 429. A bill entitled the "Children's Dental Health Act of 1973." Referred to the Committee on Labor and Public Welfare.

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

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

STATEMENT BY SENATOR MAGNUSON

Mr. President, I introduce for myself and the Senator from Massachusetts (Mr. KENNEDY) a bill entitled "The Children's Dental Health Act".

This legislation is, for all practical purposes, identical to a bill of the same title which I introduced in the 92nd Congress and which was passed by the Senate by a vote of 88–1 in December, 1971. Regrettably, the House failed to act on that bill prior to the adjournment of the last Congress. However, I am now very hopeful that the House will act expeditiously and favorably on this proposal early in this session.

During hearings held in the last Congress by the Senate Health Subcommittee, strong support was expressed for The Children's Dental Health Act by the American Dental Association, the National Dental Association, the American Dental Hygienists Association, the American Society of Dentistry of Children and the American Academy of Pediatrics. This bill has also been formally endorsed by the American Medical Association.

Mr. President, the legislation we are introducing here today would authorize appropriations totaling $142 million to be expended during fiscal years 1973, 1974, and 1975. $50 million would be authorized for pilot projects providing preventive, corrective and follow-up dental care to approximately a half million low-income children. $9 million would be authorized for matching grants to communities or public schools wishing to fluoridate their drinking water. $57 million would be authorized to expand and intensify the training of auxiliary dental personnel. And, $26 million would be authorized for programs to train dentists and dental students in the full and effective management of dental auxiliary teams.

Perhaps the most compelling reason for enacting this legislation is presented by the alarming lack of dental care now available to America's children, particularly those in low-income families.

By age 2, half of this country's children have decayed teeth. By the time he enters school, the average child has three decayed teeth and by his fifteenth year, he has eleven decayed, missing or filled teeth. And, more often than not, those are eleven decayed or missing—rather than filled—teeth since over half of all children have never been to a dentist and that proportion is even higher among children in rural areas. But, by far, the greatest need is among children from low-income families—the very children who would be served by the pilot projects proposed in this legislation—for almost 70 percent of them have never received a dentist's care.

The consequences of this neglect of children's dental health are indeed serious. An unpublished report written in 1970 by the staff of the Division of Dental Health in the Bureau of Health Manpower noted that "More than 20 million persons have lost all their teeth and another 25 million have lost half or more," and "Only six persons in every

1,000 possess a full complement of sound teeth."

The needless economic cost of this neglect was documented in that same report which stated:

"Much, if not most, of the nearly $4 billion spent annually by Americans for dental care goes to correct conditions which need never have developed at all or which could have been arrested at an earlier stage at considerably less cost in money and professional time."

In view of the paucity of dental care now available to children in low-income families and the serious consequences of that neglect, the need for the pilot projects proposed in this legislation is clear.

Beyond the immediate needs of low-income children, however, lies the broader question of the entire nation's dental health. Population growth and growing public awareness of the importance of dental health ooth point toward a rising demand in the future for dental care. Add to those factors the very real possibility that a national health insurance program, including coverage for dental care, will be implemented and projections of future demand escalate sharply.

Obviously, we must continue Federal efforts to increase the number of dentists. However, we must also recognize that we now have approximately 20,000 fewer dentists than even present demands require and that the long length of time required to train new dentists makes it highly unlikely that we will be able to fulfill the nation's expanding requirements simply by turning out more dentists.

Satisfying the rising demand for dental care will require our emphasizing preventive measures so that expensive corrective care can be minimized, training more auxiliaries so that dentists' productivity can be maximized, and successfully combining dentists and auxiliaries into an efficient dental care delivery system. At this point, then, I would like to briefly outline how The Children's Dental Health Act would touch directly upon each of these factors.

Prevention. Although community water fluoridation has long been recognized by public health officials and dentists as a safe, effective method of preventing dental disease, the 1969 census showed that the majority of Americans are still drinking unfluoridated water. The $9 million authorized in this bill for matching grants would permit as many as 4200 communities with 27 million residents to initiate water fluoridation if they so desired. The decision to seek these matching grants for water treatment would, however, be made entirely at the local level.

Auxiliary Training. The value of dental auxiliaries is widely acknowledged. One study, for example, has demonstrated that a dentist can increase his productivity by up to 225 percent by using four auxiliaries. Despite that kind of evidence, however, we are training far too few auxiliaries to meet even current demands let alone future requirements. The expansion of auxiliary training efforts that would be made possible by The Children's Dental Health Act would go far towards closing this gap. In the absence of such an expanded training effort, the nation will be short by approximately 23,500 technicians, 25,000 hygienists and 137,000 assistants by 1980, according to estimates made by the American Dental Association.

Delivery. As the title implies, an "auxiliary" cannot function independently of a dentist. Consequently, as we increase the number of auxiliaries, it is imperative that we also expand programs to train dentists and dental students to manage their own auxiliary teams. This bill would authorize $26 million for that purpose.

In closing, let me reiterate the hope that the House will act promptly and favorably on this proposal and that it will also once more receive the Senate's approval.

S. 429

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 "Children's Dental Health Act of 1973".

SEC. 2. The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XI—DENTAL HEALTH PROJECTS

"GRANTS FOR PROJECTS FOR DENTAL CARE FOR CHILDREN

"SEC. 1101. (a) There are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1973; $15,000,000 for the fiscal year ending June 30, 1974; and $30,000,000 for the fiscal year ending June 30, 1975; which shall be used by the Secretary to make grants to the health agency of any State (or political subdivision thereof) or to any other public or nonprofit private agency, organization, or institution to pay for part of the cost of the carrying out (on a planned and systematic basis) by such agency, organization, or institution, of one or more comprehensive projects for dental care and services for children of preschool and school age. Any such project shall include such comprehensive corrective, followup and preventive services (including dental health education), and treatment as may be required under regulations of the Secretary.

"(b) Grants under this section shall not be utilized to provide or pay for dental care and services for children unless such children are determined (in accordance with regulations of the Secretary) to be (A) from low-income families, or (B) unable, for other reasons beyond their control, to obtain such care and services.

"(c) Grants under this section may be utilized for the conduct of research, demonstrations, or experimentation carried on with a view of developing new methods for (A) the prevention, diagnosis, or treatment of dental problems, (B) the payment of dental care and services, or (C) the utilization of dental health care personnel with various levels of training; except that not more than 10 per centum of any grant under this section shall be so utilized.

"(d) In making grants under this section, the Secretary shall accord priority to projects designed to provide dental care and preventive services for children of preschool age and school age children who are in the first five grades of school.

"GRANTS FOR WATER TREATMENT PROGRAMS

"SEC. 1102. (a) There are hereby authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1973; $3,000,000 for the fiscal year ending June 30, 1974; and $4,000,000 for the fiscal year ending June 30, 1975; which shall be used by the Secretary to make grants to States, political subdivisions of States, and other public or nonprofit private agencies, organizations, and institutions to assist them in initiating, in communities or in public elementary or secondary schools, water treatment programs designed to reduce the incidence of oral disease or dental defects among residents of such communities or the students in such schools (as the case may be).

"(b) Grants under this section may be utilized for (but are not limited to) the purchase and installation of water treatment equipment.

"(c) Grants under this section shall not exceed—

"(1) 80 per centum of the cost of the treatment program with respect to which such grant under this section is made in the case of any grant under section 1101; and

"(2) 66⅔ per centum of the cost of the treatment program with respect to which such grant is made in the case of any other grant.

"GRANTS TO TRAIN AUXILIARY DENTAL PERSONNEL

"SEC. 1103. There are hereby authorized to be appropriated $12,000,000 for the fiscal year ending June 30, 1973; $20,000,000 for the fiscal year ending June 30, 1974; and $25,000,000 for the fiscal year ending June 30, 1975; which shall be used by the Secretary to make grants to public and nonprofit private institutions to assist them in establishing and carrying out programs to educate and train persons for careers as auxiliary dental personnel with special emphasis on the education and training of veterans of the Armed Forces who have received experience and training in dental auxiliary functions.

"PROJECTS TO PROMOTE EFFECTIVR USE OF AUXILIARY DENTAL PERSONNEL

"SEC. 1104. (a) There are hereby authorized to be appropriated $6,000,000 for the fiscal year ending June 30, 1973; $10,000,000 for the fiscal year ending June 30, 1974; and $10,000,000 for the fiscal year ending June 30, 1975; which shall be used by the Secretary to make grants and enter into contracts (without regard to section 3648 of the Revised Statutes, 31 U.S.C. 539) under section (c) and to make grants to dental schools, and to other public or nonprofit private agencies, organizations, and institutions, and to enter into contracts (without regard to section 3648 of the Revised Statutes, 31 U.S.C. 529 with individuals, agencies, organizations, and institutions, for projects described in subsection (b),

"(b) Grants and contracts under this section may be made or entered into for projects for—

"(1) planning, establishing, demonstrating, or supporting programs to teach dental students and dentists the efficient and effective utilization of dental auxiliaries and the management and supervision of total dental health teams (including, but not limited to, teams consisting of various types of auxiliary dental personnel who are trained in carrying out expanded functions or procedures which do not require the knowledge and skill of the dentist), with special emphasis on the employment and utilization of veterans of the armed forces who have received experience and training in dental auxiliary functions;

"(2) demonstration and experimentation of ways to organize dental health services to achieve maximum effectiveness in the use of auxiliary dental personnel, which projects take into account such factors as patient acceptance, quality of care, and cost of services; and

"(3) planning, establishing, demonstrating, or supporting field training programs for dental students and auxiliary dental personnel in which dental care and preventive services are provided by such persons under professional supervision in areas characterized by low family incomes or shortage of and need for dental services.

"(c) The Secretary is authorized to utilize sums appropriated pursuant to subsection (a) to make grants to dental schools and to other public or nonprofit private agencies, organizations, and institutions, and to enter into contracts with individuals, agencies, organizations, and institutions for special projects related to investigation and demonstration of ways of providing incentives for developing or establishing dental facilities or services in areas or communities in a State determined by the appropriate State health authority in such State to have a shortage of and need for dentists.

"DENTAL ADVISORY COMMITTEE

"SEC. 1105. (a) The President shall appoint a Dental Advisory Committee consisting of seven members, four of whom shall be selected from the dental profession and three from the general public. Members shall be apponted from among persons who, by virtue

of their training, experience, and background are exceptionally qualified to appraise the programs established by this title. The Secretary shall be an ex officio member of the Committee.

"(b)(1) Members shall be appointed for six-year terms, except that of the members first appointed three shall be appointed for two years, two shall be appointed for four years, and two shall be appointed for a term of six years as designated by the President at the time of appointment. The members shall select their own chairman.

"(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

"(3) The Dental Advisory Committee shall advise the Secretary in regard to the reports required under section 1006, in regard to programs established under this title, and in regard to activities carried on by the Department of Health, Education, and Welfare related to dental health, dental manpower, or dental training and services, and shall serve as a reviewing body for grants made pursuant to this title, where such review is deemed necessary by the Secretary.

"(4) Members of the Dental Advisory Committee who are not officers or employees of the United States shall receive compensation at rates not to exceed the daily rate prescribed for GS–18 under section 5332, title 5, United States Code, for each day they are engaged in the actual performance of their duties, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703, title 5, United States Code, for persons in Government service employed intermittently.

"(5) The Secretary shall make available to the Dental Advisory Committee such staff, information, and other assistance as it may require to carry out its activities.

"(6) The Secretary, after consultation with the Dental Advisory Committee, shall promulgate such rules and regulations as are necessary to carry out the purposes of this title.

"REPORT

"SEC. 1106. (a) The Secretary shall submit a report to the Congress not later than January 31 of each year on the progress of the implementation and administration of the programs established under this title.

"(b) The Secretary shall submit to the Congress a report containing his recommendations concerning the need and feasibility of a comprehensive national dental health program for children within ninety days before the end of the fiscal year ending June 30, 1975."

SEC. 3. Section 1902(a)(10) of title XIX of the Social Security Act is amended by adding at the end thereof the following: "and except that services described in paragraph (10) of section 1905(a) may be made available to individuals or groups of individuals under age eighteen without making available such services of the same amount, duration, and scope to individuals of any other ages;".

SEC. 4. (a) Section 1 of the Public Health Service Act is amended to read as follows:

"SECTION 1. Titles I to XI, inclusive, of this Act may be cited as the 'Public Health Service Act'."

(b) The Act of July 1, 1944 (58 Stat. 682), as amended, is further amended by renumbering title XI (as in effect prior to the enactment of this Act) as title XII, and by renumbering sections 1101 through 1114 (as in effect prior to the enactment of this Act), as sections 1201 through 1214, respectively.

SEC. 5. Section 602 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new subsection:

"(g)(1) If it is a dentifrice and (A) because of its nature, composition, or packaging it involves a potential risk to consumers including but not limited to its potential sensitizing, allergenic, or abrasive character or (B) because of any foreseeable handling, storage, or use by individuals it presents such a potential risk; then such dentifrice shall bear adequate cautionary labeling (such labeling shall be conspicuous and shall include first-aid information if appropriate). Whenever the Secretary finds any dentifrice or class of dentifrices to be subject to this subsection and in his judgment a declaration to that effect will reduce the potential risk to the consumer, he may by regulation declare such dentifrice or class thereof to be subject to such provision and may in such regulation specify the content of such cautionary information, the appropriate type size to be used for such warning, its placement on labels and may in pursuance of the objective of this subsection require the submission of the quantitative formula for such dentifrice or class thereof by the manufacturers of such dentifrice.

"(2) If it is a dentifrice and its labeling fails to bear cautionary information in the manner prescribed in clause (1) of this subsection.".

SEC. 6. Section 201 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof the following new subsection:

"(y) The term 'dentifrice' means any cosmetic, drug, or other article recommended, suggested, or indicated for use by humans in the cure, mitigation, treatment, or prevention of diseases of the teeth or for cleansing or beautifying teeth.".

SEC. 7. Title V of the Lead-Based Paint Poisoning Prevention Act is amended by adding at the end thereof the following new section:

"AUTHORITY TO MAKE GRANTS TO STATE AGENCIES IN CERTAIN CASES

"SEC. 504. Notwithstanding any other provision of this Act, grants under sections 101 and 201 may be made to an agency of State government in any case where State government provides direct services to citizens in local communities or where units of general local government within the State are prevented by State law from implementing or receiving such grants or from expending such grants in accordance with their intended purpose; and in any such case the term 'local' when used in section 101 or 201 with respect to any program shall be deemed to read 'State'."

By Mr. HARTKE:

S. 431. A bill to amend titles I, IV, X, XIV, and XVI of the Social Security Act to prevent recipients of assistance under programs established pursuant to such titles from having the amount of such assistance reduced because of increases in the monthly insurance benefits payable to them under title II of such act. Referred to the Committee on Finance.

Mr. HARTKE. Mr. President, today I introduce legislation which is part of the unfinished business of the 92d Congress. In essence, it provides that any increase in social security retirement benefits made after June 1, 1972, shall not be considered in determining a person's need for public assistance nor the amount of aid that person shall receive.

When this proposal is enacted into law, it will assure that increases in social security benefits provided by the Congress last year for the purpose of raising the standard of living of the Nation's elderly would in fact be available to them as increased monthly income. It would provide increased assistance to persons receiving Federal old-age assistance, aid and services to needy families with children, aid to the blind, and aid to the disabled.

Mr. President, since the enactment of the Social Security Act in 1935, Congress has acted many times to provide increases in social security benefits. These increases have been provided to assure that those who are retired, disabled, or dependents of deceased workers have enough money in their monthly checks to enable them to live better lives and clothe themselves in a proper manner.

After the passage of the 20 percent benefits increase last year, many older Americans were startled to find that they actually got no increase whatsoever. In fact, many lost their eligibility for other welfare programs—such as medicaid and public housing—thus actually suffering from the social security increase.

To understand the reason for this, one need only examine the relationship between the social security program and the old-age assistance program. When a person applies for aid under the latter program, a dollar amount based upon his total need is established—let us say $100 a month. Then available resources are ascertained—regular contributions from relatives, insurance, pensions, and other forms of fixed and regularly received income. Social security payments, whether received because of retirement or disability are classed as available resources with the exception of the first $15.50 of monthly social security income. Since public assistance is only intended as supplementary help—help provided in addition to available resources—social security payments are used to reduce the amount of public assistance grants.

Therefore, a person who has an established need of $100 a month according to public assistance standards, and who receives the minimum social security payment of $84.50 a month, $15.50 of which is ignored, will only receive a $31 public assistance grant. Increasing that person's social security benefits by 5, 10, or 20 percent will not provide one cent of benefit to that individual. Each increase in social security benefits will bring about a corresponding decrease in public assistance grants. The person intended by Congress to be benefited by the social security increase will not benefit at all.

The Hartke bill will correct this inequitable situation and assure that increases in social security payments provided by the Congress since last June will actually improve the living standards of elderly and disabled persons.

Mr. President, I ask unanimous consent that the text of my 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. 431

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(a)(10)(A) of the Social Security Act is amended by inserting "(I)" immediately after "(i)", by striking out "(ii)" and inserting in lieu thereof "(II)", and by adding immediately before the semicolon at the end thereof the following: ", and (ii) the State agency may, prior to June 1, 1972, and on and after such date shall, in the case of any individual who for any month is entitled to a monthly insurance benefit under section 202 or 223, disregard any increase in such monthly insurance benefit which resulted from provisions of law enacted after June 1, 1972, providing increases in the schedule of benefits under either such section with respect to one or more categories or beneficiaries under title II, if for the month (or any portion thereof) in which the Act containing such provisions of law was enacted such individual was a recipient of old-age assistance under the State plan".

(b) Section 402(a)(7) of such Act is amended by striking out the word "and" at the end of clause (B) thereof, and by adding immediately before the semicolon at the end thereof the following: ", and (D) the State agency may, prior to January 1, 1973, and on and after such date shall, in the case of any individual who for any month is entitled to a monthly insurance benefit under section 202 or 223, disregard any increase in such monthly insurance benefit which resulted from provisions of law enacted after June 1, 1972, providing increases in the schedule of benefits under either such section with respect to one or more categories of beneficiaries under title II, if for the month (or any portion thereof) in which the Act containing such provision of law was enacted such individual was a recipient of aid to families with dependent children under the State plan".

(c) Section 1002(a)(8) of such Act is amended by striking out the word "and" at the end of clause (B) thereof, and by inserting immediately before the semicolon at the end thereof the following: ", and (D) the State agency may, prior to January 1, 1973, and on and after such date shall, in the case of any individual who for any month is entitled to a monthly insurance benefit under section 202 or 223, disregard any increase in such monthly insurance benefit which resulted from provisions of law enacted after June 1, 1972, providing increases in the schedule of benefits under either such section with respect to one or more categories of beneficiaries under title II, if for the month (or any portion thereof) in which the Act containing such provision of law was enacted such individual was a recipient of aid to the blind under the State plan".

(d) Section 1402(a)(8) of such Act is amended by striking out the word "and" at the end of clause (B) thereof and by inserting immediately before the semicolon at the end thereof the following: ", and (D) the State agency may, prior to January 1, 1973 and on and after such date shall, in the case of any individual who for any month is entitled to a monthly insurance benefit under section 202 or 223, disregard any increase in such monthly insurance benefit which resulted from provisions of law enacted after June 1, 1972, providing increases in the schedule of benefits under either such section with respect to one or more categories of beneficiaries under title II, if for the month (or any portion thereof) in which the Act containing such provision of law was enacted, such individual was a recipient of aid to the permanently and totally disabled under the State plan."

(e) Section 1602(a)(14) of such Act is amended by striking out the word "and" at the end of subparagraph (C) thereof, by striking out the semicolon at the end of subparagraph (D) thereof and inserting in lieu of such semicolon a comma followed by "and," and by adding at the end thereof the following new subparagraph.

"(E) the State agency may, prior to January 1, 1973, and on and after such date shall, in the case of any individual who for any month is entitled to a monthly insurance benefit under section 202 or 223, disregard any increase in such monthly insurance benefit which resulted from provisions of law enacted after June 1, 1972, providing increases in the schedule of benefits under either such section with respect to one or more categories of beneficiaries under title II, if for the month (or any portion thereof) in which the Act containing such provision of law was enacted, such individual was a recipient of aid to the aged, blind, or disabled under the State plan;".

SEC. 2. The amendments made by this Act shall be effective with respect to the calendar quarter (commencing January 1, April 1, July 1, or October 1) in which this Act is enacted and with respect to all subsequent calendar quarters.

By Mr. ROBERT C. BYRD (for Mr. MAGNUSON) (for himself, Mr. HART, and Mr. TUNNEY):

S. 433. A bill to assure that the public is provided with an adequate quantity of safe drinking water, and for other purposes. Referred to the Committee on Commerce.

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

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

STATEMENT BY SENATOR MAGNUSON

Mr. President, the need for abundant supplies of high quality drinking water is one of the most basic necessities of life. Without it, human life would be impossible to sustain.

Perhaps because of its importance, we seem to take drinking water for granted. If it comes out of the tap, we presume it to be harmless. Yet, the evidence is mounting that this assumption is not always valid.

In mid-1970, what is now the Division Water Supply Programs of the Environmental Protection Agency completed a comprehensive study of drinking water supply systems in this country. The results of that study should eliminate any over-confidence that might exist with respect to public water supply systems. The study revealed that approximately 8 million people in this country are served water that is potentially dangerous in that it fails to meet mandatory standards set by the Federal Government with respect to interstate carrier systems. In most cases, the deficient systems were smaller systems serving smaller communities.

Seventy-nine percent of the systems checked had no sanitary survey by regulatory official in the year preceeding the study, with only 64% having had a sanitary survey in the preceeding 3 years. Ninety percent failed to meet the biological surveillance criteria of the current drinking water standards for interstate carriers, with 85% failing to take the minimum number of samples over a given period of time.

In addition to evidence of improper operation, the number of disease outbreaks in the past is grim evidence that a great deal more needs to be done. For example, during the period from 1961 to 1970 there were at least 128 known outbreaks of disease or poisoning attributed to drinking water. Several of these outbreaks are indicative of the calamity that can occur when a drinking water system goes bad. In 1965 an epidemic struck 18,000 people in Riverside, California. In 1968, 30% of the residents of Angola, New York, contracted gastroenteritis due to a malfunction in that city's drinking water disinfectant system. In 1969, 60% of the Holy Cross football team contacted infectious hepatitis as the result of an improperly installed drinking water distribution system.

Without doubt, a good part of the problem is explainable by the low level of funding that the States are able to devote to drinking water programs. Whatever the causes, it has been impossible for the states to properly monitor and police the drinking water systems within their jurisdiction. The Environmental Protection Agency has estimated that the States should be spending approximately three times the money they now spend to do a proper job of administering state drinking water programs. And the outlook is not good. As new demands are being placed on State governments to devote resources to water pollution clean-up and other programs, there is increasing pressure to do so at the expense of drinking water programs. While water pollution cleanup is an obvious first order necessity, it is unfortunate that similar priorities have not been attached to State drinking water supply programs.

Briefly, the legislation contains the following features:

1. The Environmental Protection Agency would establish minimum Federal drinking water standards prescribing maximum limits for contaminants as well as standards for the operation and maintenance of drinking water systems. Surveillance, monitoring, site selection, and construction standards for public water supply systems would also be established to assure safe dependable drinking water.

2. EPA would recommend standards to assure esthetically pleasing drinking water.

3. The States would be primarily responsible for enforcing the standards with Federal enforcement only if the States fail to act or in cases of imminent hazard.

4. A National Drinking Water Council would be established to advise EPA on scientific and engineering matters.

5. EPA would conduct and promote research, technical assistance, and training of personnel for water supply occupations.

6. EPA would conduct a rural water survey within 2 years of enactment with recommendations to Congress for further action.

7. A grant program would be established for special study and demonstration projects with respect to new water supply technology.

8. As a primary deficiency in drinking water programs is a lack of funding on the part of the States, a program of grants would be established to defray the costs of operating State programs.

9. Finally, the legislation contains a citizen suit provision which authorizes injunctive suits against violators of primary drinking water standards and against the Administrator for failing to perform mandatory duties.

The legislation is identical to the bill that passed the Senate in the waning days of the 92nd Congress. Similar legislation was pending in the House of Representatives at the time of adjournment. As most of the basic groundwork has been laid for this legislation, I would hope that the Congress could proceed quickly to deal with what I feel is one of the more important consumer and environmental issues of the day.

S. 433

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 "Safe Drinking Water Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) The Congress finds—

(1) that increasing quantities and types of chemicals, bacteria, viruses, toxic metals, and other contaminants are entering the public water systems that serve as sources which supply the Nation with water for drinking many of which are either not detected or removed by established water testing and treatment methods and which are consumed by or come in contact with the public, thereby presenting hazards or potential hazards to the public health;

(2) that the public should be provided with adequate quantities of water that is safe for drinking and other human uses;

(3) that the sale and shipment of contaminents of drinking water or products made through the use or production of such contaminants through interstate commerce present a danger to the public from consuming water containing such contaminants;

(4) that the Federal Government has the responsibility of establishing minimum national drinking water standards for all public water systems and to encourage State and local governments to establish equivalent or more stringent standards; and

(5) that State and local governments are in need of Federal assistance in assuring the quality of water required for drinking and other human uses, and to that end the Federal Government should supply technical assistance, research and development information, monitoring, and testing information, assistance for the planning and implementation of comprehensive State drinking water programs, assistance for the development and demonstration of new or improved methods of making water safe for drinking, and assistance for the training of individuals involved in the management and safe operation of our Nation's public water supply systems.

DEFINITIONS

SEC. 3. As used in this Act—

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

(2) The term "Agency" means the Environmental Protection Agency.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(4) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law and having jurisdiction over the supply of water to the public, and an Indian tribe or an authorized Indian tribal organization.

(5) The term "person" includes a State or political subdivision thereof, municipality, corporation, partnership, association, private or public nonprofit institution, or an individual.

(6) The term "public water system" means—

(A) any system which provides drinking water, including bottled drinking water, (i) to ten or more premises not owned or controlled by the supplier of water or (ii) to forty or more individuals receiving such drinking water from a system not serving travelers in interstate commerce;

(B) any system which provides drinking water to carriers serving travelers in interstate commerce;

(C) any system which provides drinking water to facilities or establishments serving travelers in interstate commerce, except that the Administrator may by regulation exempt any such system or class of such systems if he determines that such exemption will not result in any unreasonable threat to public health; and

(D) any other system or class of systems which provides drinking water if the Administrator determines by regulation that such system or class of systems may pose an unreasonable threat to public health.

(7) The term "supplier of water" means any person who controls, owns or operates a public water system.

(8) The term "Council" means the National Drinking Water Council, established under section 7 of this Act.

(9) The term "contaminant" means any physical, chemical, biological, radiological, or other substance or matter which may cause or transmit infectious disease, chemical poisoning, chronic disease, or other impairment to man, or which may have any other deleterious effect on the public health.

(10) The term "bottled drinking water" means water for human consumption sold in a closed container.

NATIONAL DRINKING WATER STANDARDS

SEC. 4. (a) The Administrator shall, after consultation with the Secretary of Health, Education, and Welfare, (A) issue initial proposed regulations prescribing national primary drinking water standards within one hundred and eighty days after the date of enactment of this Act and (B) issue initial proposed regulations prescribing national secondary drinking water standards within one hundred and eighty days after the date of such enactment. The Administrator shall specify in such proposed regulations the date on which such regulations shall take effect, which shall be as soon as is practicable.

(b) (1) National primary drinking water standards, as described under subsection (a) of this section, shall be drinking water standards and programs, the attainment and maintenance of which, are requisite to reasonably protect the public health, except that the Administration shall not prescribe the addition of any substance other than for the purpose of treating contaminants. Such standards—

(A) shall prescribe the maximum permissible levels for any contaminants which may exist in any public water system in the United States which may cause or transmit disease, chemical poisoning, or other impairments to man, allowing adequate margins of safety;

(B) may apply to any feature of the water supply system including, but not limited to, the treatment, storage, and distribution facilities;

(C) shall include requirements for the adequate operation, maintenance, surveillance, and monitoring of water quality adequate to assure a dependable supply of drinking water which meets the requirements of subparagraph (A); and

(D) shall include requirements for construction and site selection of public water system facilities to protect such facilities from floods and other natural disasters.

(2) National secondary drinking water standards, as described under subsection (a) of this section, shall specify the level of quality of drinking water the attainment and maintenance of which is requisite to reasonably assure aesthetically adequate drinking water. Such standards may apply to any constituent of drinking water (A) which may affect the taste, odor, or appearance of such water, or (B) which may otherwise be necessary to assure aesthetically adequate drinking water.

(3) In establishing or revising standards under this section, the Administrator shall take into consideration the views and recommendations of the Council established pursuant to section 7 of this Act.

(c) The Administrator shall publish simultaneously with the issuance of any proposed national primary or national secondary drinking water standard under this section—

(1) Such criteria and information as, in his judgment, are necessary to accurately reflect the nature and extent of all identifiable effects on public health or welfare which may be expected from the presence of the contaminant which is the object of such proposed drinking water standards.

(2) Information and data on drinking water treatment methods and technology for the control of the contaminant which is the object of such proposed drinking water standard. Such information and data shall apply to each feature of the water supply system at which control of the contaminant may be exercised including, but not limited to, treatment, storage, and distribution facilities and the adequate construction, maintenance, and operation thereof. Such information and data shall include the costs of such treatment and the effectiveness of such treatment in controlling such contaminant.

(d) The Administrator shall, at least every three years, review the adequacy of any national primary or secondary drinking water standard under subsection (a) of this section and the criteria, information, and data published under subsection (c) of this section. The Administrator shall publish his findings in the Federal Register.

ENFORCEMENT OF STANDARDS

SEC. 5. (a) For the purposes of this Act, a State will be considered to have primary enforcement responsibility during any period for which the Administrator has approved a plan in accordance with section 11(d) of this Act and such plan is not being unreasonably deviated from to any significant extent by such State. If any such State has primary enforcement responsibility, the Administrator shall monitor the activities of such State only to the extent necessary to determine if such plan is being unreasonably deviated from to any significant extent. To the maximum extent practicable, any such monitoring shall not duplicate the activities of such State.

(b) (1) Whenever, on the basis of information available to him, the Administrator finds during a period in which a State has primary enforcement responsibility under subsection (a) of this section that any public water system in such State does not comply with any national primary drinking water standard he shall so notify the State in which such water system is operating. If the Administrator finds that such failure to comply with such standard extends beyond the thirtieth day after such notification he shall give public notice of such failure to comply with such standard and the extent of the dangers posed and shall, if appropriate remedial action has not been taken to prevent any unreasonable endangerment to public health, (i) commence an action under section 16 of this Act, or request the Attorney General to do so, or (ii) issue an order in accordance with subsection (d) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds during a period in which a State does not have primary enforcement responsibility under subsection (a) of this section, that a public water system in such State does not comply with any national primary drinking water standard he shall give public notice of such finding and the extent of the dangers posed, and shall, if appropriate remedial action will not be taken to prevent any unreasonable endangerment to public health, (i) commence an action under section 16 of this Act, or request the Attorney General to do so, or (ii) issue an order in accordance with subsection (d) of this section.

(c) Whenever, on the basis of information available to him, the Administrator finds that any public water system in a State does not

comply with any national secondary drinking water standards, he shall notify such State and request such State to take appropriate remedial action. If, after a reasonable time following such notification, the Administrator finds that such State has not taken remedial action, he shall give public notification of such finding in a manner suitable to inform users of such public water system of such violation.

(d) (1) Any order issued under subsection (b) of this section shall specify such relief as may be appropriate to prevent any unreasonable endangerment to public health. Such relief may include an order requiring the person responsible for the violation which results in the order to cease such violation, to notify customers of such violation in accordance with section 11(d)(8) of this Act, or to furnish emergency supplies of drinking water.

(2) Any order under this subsection shall be issued only after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code.

IMMINENT HAZARDS

SEC. 6. (a) An imminent hazard shall be considered to exist when there is reason to believe that a constituent of the drinking water of a public water system will result in a serious risk to health prior to the conclusion of an administrative hearing or other formal proceeding held pursuant to this Act and that a State or local authority or the supplier of water has not acted to eliminate such risk.

(b) If an imminent hazard exists, the Administrator may petition an appropriate district court of the United States, or he may request the Attorney General to do so, to order such action as is necessary to eliminate the imminent hazard. The Administrator shall simultaneously, if he has not previously done so, propose any regulation which might be necessary under section 4 of this Act, or he may commence an action under section 16 of this Act.

NATIONAL DRINKING WATER COUNCIL

SEC. 7. (a) There shall be established in the Environmental Protection Agency a National Drinking Water Council consisting of fifteen scientifically qualified members. The Administrator shall appoint members of the board from a list of individuals recommended to him by the National Academy of Sciences or from such other sources as he deems advisable. Such Council shall include qualified scientists none of which shall have any economic interest in the supply of drinking water and not more than one-third of which shall have any responsibility for the regulation of drinking water. Each member of such Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term;

(2) the terms of the members first taking office shall expire as follows—(i) five shall expire three years after the date of enactment of this Act, (ii) five shall expire two years after such date, and (iii) five shall expire one year after such date, as designated by the Administrator at the time of appointment; and

(3) the members of such Council shall be eligible for reappointment.

(b) The National Academy of Sciences shall maintain a list of qualified scientists to assist the Administrator in appointing members to such Council.

(c) Such Council shall advise, consult with, and make recommendations to the Administrator on matters relating to the scientific review of data, including engineering data, relating to the activities of the Agency under this Act. Such Council shall, upon the request of the Administrator, review any proposed action of the Administrator and shall report its views and reasons therefor in writing to the Administrator within a reasonable time, as specified by the Administrator. All proceedings and deliberations of such Council and their reports and reasons therefor shall be public record. The report of the Council and any dissenting views shall be considered as part of the record in any proceeding taken with respect to the Administrator's action.

(c) The Administrator is authorized to reimburse the National Academy of Sciences for expenses incurred in carrying out this section.

(d) Members of such Council who are not regular full-time employees of the United States shall, while serving on business of the Council, be entitled to compensation at rates fixed by the Administrator, but not exceeding the daily rate applicable at the time of such service to grade GS—18 of the Classified Civil Service, including traveltime; and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5701 of title 5, United States Code, for persons in the Government service employed intermittently.

RESEARCH, TECHNICAL ASSISTANCE, INFORMATION, TRAINING OF PERSONNEL

SEC. 8. (a) The Administrator shall conduct and promote the coordination of research, studies, and investigations and render financial, technical, and other assistance to appropriate public agencies, institutions, water supply utilities, and individuals in the conduct of research, studies, and investigations relating to the causes, diagnosis, treatment, control, and prevention of diseases and impairments of man resulting directly or indirectly from contaminants in drinking water, or to the provision of an adequate quality and quantity of safe drinking water. Such research, studies, or investigations may include, but shall not be limited to, the development of—

(1) new and improved methods to identify and measure the existence of contaminants in drinking water and to identify the source of such contaminants;

(2) new and improved methods to identify and measure the health effects of contaminants in drinking water;

(3) new and improved methods of treating water to prepare it for drinking, to improve the efficiency of water treatment and to remove contaminants from the water; and

(4) new and improved methods for providing adequate quantities of safe water for drinking to the public, including improvements in water purification and distribution, and methods of assessing the health related hazards of other characteristics of drinking water supplies.

(b) In carrying out this Act, the Administrator is authorized to—

(1) collect and make available information pertaining to research and investigations, with respect to providing adequate quality and quantity of safe drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public agencies, institutions, water supply utilities, and individuals engaged in studies and research relating to water supply; and

(3) make grants to, and contracts with, any State or other public agency, educational institution, water supply utility, any other organization, and individuals in accordance with procedures prescribed by the Administrator, under which he may pay all or a part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management and safe operation aspects of providing safe drinking water; and

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the management and safe operation aspects of providing safe drinking water.

(c) There is hereby authorized to be appropriated to carry out the provisions of this section $14,000,000 for the fiscal year ending June 30, 1974; $23,000,000 for the fiscal year ending June 30, 1975; and $31,000,000 for the fiscal year ending June 30, 1976. Sums appropriated pursuant to this section shall remain available for obligation through the close of the following fiscal year.

RURAL WATER SURVEY

SEC. 9. (a) The Administrator shall (after consultation with the Secretary of Agriculture and the several States) enter into arrangements with public or private entities as may be appropriate to conduct a survey of the quantity, quality, and availability of rural drinking water supplies. Such survey shall include, but not be limited to, the consideration of the number of residents in each rural area—

(1) presently being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system;

(2) presently having inadequate access to or no access to drinking water; and

(3) who, due to the absence of inadequacy of a drinking water supply system, are exposed to an increased health hazard.

(b) Such survey shall be completed within two years of the date of enactment of this Act and a final report thereon submitted, not later than six months after the completion of such survey, to the President for transmittal to the Congress. Such report shall include recommendations for improving rural water supplies.

(c) There is hereby authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending June 30, 1974; $2,000,000 for the fiscal year ending June 30, 1975; and $1,000,000 for the fiscal year ending June 30, 1976.

SPECIAL STUDY AND DEMONSTRATION PROJECT GRANTS

SEC. 10. (a) The Administrator is authorized to make grants to appropriate public and private agencies, institutions, water supply utilities, and individuals for the purposes of—

(1) assisting in the development and demonstration of any project which will demonstrate a new or improved method, approach, or technology for providing a safe supply of drinking water to the public in both urban and rural areas of the Nation; and

(2) assisting in the development and demonstration of any project which will investigate and demonstrate the health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and related uses or which will demonstrate processes and methods for the safe and esthetic preparation of such waters.

(b) Grants made by the Administrator under this section shall not—

(1) exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator;

(2) be made for any project involving the construction or modification of any facility in any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water; and

(3) be made for any project unless the Administrator determines, after consulting the Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved tech-

niques, methods, or technologies for the provision of safe water to the public for drinking or other useful purposes.

(c) Nothing in this section shall affect the authority of the Administrator to make grants for Alaska village safe water and pollution elimination or control demonstration projects under section 113 of the Federal Water Pollution Control Act (86 Stat. 832).

(d) For the purposes of this section there is hereby authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1974; $5,000,000 for the fiscal year ending June 30, 1975; and $10,000,000 for the fiscal year ending June 30, 1976.

STATE DRINKING WATER SUPPLY PROGRAM GRANTS

SEC. 11. (a) There is hereby authorized to be appropriated $8,000,000 for the fiscal year ending June 30, 1974; $15,000,000 for the fiscal year ending June 30, 1975; and $21,300,000 for the fiscal year ending June 30, 1976 for grants to the States to assist them in establishing and maintaining adequate programs to assure the safety of public drinking water under this section.

(b) From the sums available pursuant to subsection (a) for any fiscal year the Administrator shall from time to time make payments to the several States, in accordance with regulations, on the basis of (1) the population, (2) the financial needs, and (3) the extent of the actual or potential water supply problem, except that any such payment shall not be greater than an amount equal to two-thirds of the cost of any such State program.

(c) The Administrator shall pay to each State an amount equal to its allotment under subsection (b) for the purposes of defraying the cost of carrying out its State plan approved under subsection (d) of this section, including the cost of training personnel for State and local public water supply work and the cost of administering the State plan. Such payments shall not be made if such plan has not been approved by the Administrator.

(d) The Administrator shall approve any plan for establishing and maintaining a program to assure the safety of public drinking water which is submitted by the State, if such plan—

(1) provides for the formal adoption by the State of drinking water standards which are no less stringent than the national primary drinking water standards prescribed under section 4 of this Act;

(2) provides for the adoption by the State of appropriate regulations and procedures for the implementation and enforcement of such State standards;

(3) provides for administration or for the supervision of administration of the plan by the State agency charged with the responsibility for the safety of drinking water;

(4) sets forth the plans, policies, and procedures to be followed in carrying out the State plan;

(5) provides for such accounting, budgeting, and other fiscal methods and procedures as are necessary for the proper and efficient administration of the plan;

(6) provides that the appropriate State agency will make annual reports, or such more frequent reports as the Administrator may reasonably require, in such form and containing such information as he may require;

(7) provides for the establishment of an emergency plan of action for each public water system within the State for use in case of an emergency affecting the safety of the treated drinking water or the effective operation of the treatment facility, including provision for emergency reserves or alternate sources of water suitable for drinking and culinary purposes; and

(8) provides for the implementation of a standards violation notification procedure, whereby any supplier of water found to be in violation of any Federal or State drinking water standard will be required to so notify its customers, in transmitting water bills or through other appropriate means, of the nature and extent and possible health effects of such violation and the remedial measures which will be taken to correct the problem.

(e) If a State plan has been approved, and the Administrator subsequently finds that such plan is being unreasonably deviated from to any significant extent, the Administrator is authorized to terminate any further payments under this section to such State.

(f) Any approval or disapproval of a State plan under subsection (d) of this section, or termination of payments under subsection (e) of this section, shall be in accordance with and subject to the procedures and judicial review provisions of section 12 of this Act.

(g) For the purposes of determining whether any State plan approved under subsection (d) of this section is being unreasonably deviated from to any significant extent, the Administrator shall cause to be made, at least once every three years, a complete audit of such State's water supply programs.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 12. (a) At his own initiative, or upon the petition of any person, the Administrator is authorized to issue regulations to carry out the purposes of this Act and to amend or rescind such regulations at any time.

(b) The Administrator shall publish any regulations proposed under this Act, or proposals to amend or rescind such regulations, and his justification therefor in the Federal Register at least sixty days prior to the time when such regulations shall become final. The Administrator shall also publish in the Federal Register a notice of all petitions received under subsection (a) and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Administrator shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Administrator until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data, views, or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto.

(c) Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and the relationship of such findings to the regulations issued.

(d) Any judicial review of final regulations promulgated under this Act shall be in accordance with section 701–706 of title 5, United States Code, except that, with respect to relief pending review, no stay of an Agency action may be granted unless the reviewing court determines that the party seeking such stay (a) is likely to prevail on the merits in the review proceeding and (b) will suffer irreparable harm pending such proceeding.

(e) Except as expressly modified by the provisions of this section, the provisions of the Administrative Procedures Act (5 U.S.C. 551 et seq.) Chapter 5, of title 5 of the United States Code, shall apply to proceedings conducted by the Administrator under this Act.

(f) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either (1) that the information is material and was not available at the time of the proceeding before the Administrator or (2) that failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

RECORDS

SEC. 13. (a) Every supplier of water who is subject to a standard prescribed under section 4 or grantee shall establish and maintain such records, make such reports, and provide such information as the Administrator shall reasonably require to assist him in establishing standard and regulations under this Act and in determining whether such person has acted or is acting in compliance with this Act. Suppliers of water and others subject to State enforcement under section 4(c) of this Act shall submit such reports and make available such records and information to the appropriate State agency for inclusion in State reports required under section 11(d)(6) of this Act.

(b) Any officer or employee duly designated by the Administrator, upon presenting appropriate credentials and a written notice of inspection authority to any supplier of water subject to a standard prescribed under section 4 of this Act or any grantee (or person in charge of any of its property), is authorized to enter any establishment or facility or other property of such person in order to determine whether such supplier or grantee has acted or is acting in compliance with this Act, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. Each inspection shall be commenced and completed with reasonable promptness and the supplier or grantee notified of the results of such inspection.

(c) For purposes of this section, the term "grantee" means any person who receives financial assistance under this Act.

STATE REGULATIONS

SEC. 14. Nothing in this Act shall affect the authority of any State or local government to establish drinking water standards or to make other requirements for purposes similar to those contained in this Act, except that any such standards or requirements shall not be less stringent than the requirements of this Act or regulations thereunder.

PROHIBITED ACTS

SEC. 15. The following acts and the causing thereof are prohibited:

(1) The failure to comply with any final regulation issued by the Administrator pursuant to this Act, except that noncompliance with a national secondary drinking water standard under section 4(b) of this Act is not prohibited;

(2) The failure or refusal to establish and maintain records, make reports, and provide information as required under section 13(a) of this Act;

(3) The refusal to allow entry and inspection of establishments, facilities, or other property pursuant to section 13(b) of this Act; or

(4) The failure of any person to comply

with any order issued under section 5(d) of this Act.

PENALTIES AND REMEDIES

SEC. 16. (a) Any person willfully violating section 15 of this Act shall on conviction be fined not more than $15,000 for each day of violation or imprisoned for not more than one year, or both.

(b)(1) Any person not willfully violating section 15 of this Act shall be liable to the United States for a civil penalty of a sum which is not more than $10,000 for each day of violation, to be assessed by the Administrator after notice and opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after he has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

(2) Upon failure of the offending party to pay the civil penalty, the Administrator may commence an action in an appropriate district court of the United States for such relief as may be appropriate or request the Attorney General to commence such an action.

(c) The Attorney General or the Administrator may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of section 15 of this Act, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

CITIZEN CIVIL ACTION

SEC. 17. (a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any national primary drinking water standard promulgated under section 4 of this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to any alleged violator of such standard and (iii) to the State in which the violation occurs,

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such standard, but in any such action any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any national primary drinking water standard or to seek any other relief.

CONFIDENTIALITY

SEC. 18. (a) Copies of (1) any communications, documents, reports, or other information received or sent by the Administrator or (2) the results of any drinking water quality analyses or other information pertaining to drinking water quality possessed by the Administrator shall be made available to the public upon identifiable request, and at reasonable cost unless such information may not be publicly released under the terms of subsection (b) of this section.

(b)(1) The Administrator or any officer or employee of the Agency or the Council established under section 7 of this Act shall not disclose any information which concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed by the Administrator—

(A) to other Federal government departments, agencies, and officials for official use, upon request, and with reasonable need for such information;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

(E) to the public in order to protect their health, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the person to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter presently under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is communication entitled to protection under subsection (b) of this section.

FEDERAL FACILITIES

SEC. 19. (a) Except as provided for in subsection (b) of this section, each Federal department or agency having jurisdiction over any building, installation, or other property, which is or will be served by a federally owned or maintained public water system, shall comply with all national primary drinking water standards prescribed under section 4 of this Act and shall, to the maximum extent practicable, comply with any national secondary drinking water standard prescribed under such section.

(b) The Administrator may waive compliance with the requirements of subsection (a) of this section, in whole or in part, upon receiving information from the Secretary of Defense or from the Secretary of the Department in which the United States Coast Guard is operating that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense or by the Secretary of the Department in which the United States Coast Guard is operating, in the interest of national security, unless the Administrator has been requested by the applicable Secretary to omit such publication because it would be contrary to the interests of national security.

RELATIONSHIP TO OTHER LAWS

SEC. 20. The authority of the Secretary of Health, Education, and Welfare to regulate bottled drinking water under the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 321, et seq.) shall be repealed on the effective date of initial national primary drinking water standards pertaining to bottled drinking water under section 4 of this Act.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 21. In addition to the authorizations contained in sections 8, 9, 10, and 11, there are hereby authorized to be appropriated such sums as may be necessary, but not to exceed $8,000,000, $11,000,000 and $13,000,000 for the fiscal years ending on June 30, 1974, June 30, 1975, and June 30, 1976, respectively, for the purposes and administration of the Act.

By Mr. HARTKE:

S. 436. A bill to provide for the coverage under medicare of dental care, eye care, dentures, eyeglasses, and hearing aids. Referred to the Committee on Finance.

Mr. HARTKE. Mr. President, I am introducing today a bill which would bring under the supplementary medical insurance program for the aged, the areas of eye, hearing, and dental care. It will include the provision of eyeglasses, hearing aids, and dentures where they are needed, as well as the necessary attendant examinations and treatment of other conditions related to these.

Under the supplementary medical insurance program for the aged, popularly known as part B of medicare, individuals are enrolled for monthly premiums. Benefits provided cover, in the language of the law, "medical and other health services." These are defined explicitly under section 1861(s), and they include among other things the services of physicians, X-ray and laboratory tests, rental of wheelchairs and hospital beds, and so on.

But there are also some important exclusions to the items for which the separate trust fund for this program—the "Federal Supplementary Medical Insurance Trust Fund," to use the full name—will pay. Under "exclusions" are listed specifically three areas of health care of very considerable importance to the elderly. Indeed, these three areas of affliction are all, by testimony of the Public Health Service, more common in those over 65 than in any other age group. These are the areas of eye, hearing, and dental care. Yet, although their incidence is more frequent in the elderly, the elderly receive in proportion to these problems, less care than other groups. The reason is plain—and it is the same reason which was pervasive when we adopted the part B program. That is simply that the costs are beyond the

means of millions of those who are social security beneficiaries.

Let us look for a moment at the latest available statistics on the needs which my bill would care for. Among those in the age range 25 to 44 the mean number of filled teeth is highest—averaging about eight per person. But for those over 65—and under 80—that average drops to about five. At the same time, the number of missing teeth increases from about eight to 19. These figures apply, of course, only to those in all ages who retain some of their own teeth.

A survey of dental visits conducted during a 1-year period of 1963–64, shows that persons 25 to 44 go to the dentist more than twice as often as those over 65, even though it is apparent that the need is greater in the elderly. Part of the reason for less frequent visits, however, *is that* the elderly are most often those who have lost all their teeth—the survey estimates that 60 percent of those over 65 are in that category of the "edentulous." Many of these, and I am sure we all know some of them, are entirely without dentures and, because they can manage only soft foods, their general health is often impaired to some extent. Many others have a need for denture repairs or replacement of badly fitting dentures, but because of their income limitations, go without seeing a dentist for these corrections.

That this is true is shown not only by the reduced number of dental visits among the elderly, but also by the much lower number of dental visits by those with low incomes. For persons with family incomes of $7,000 per year the incidence of visits to the dentist is more than twice that of persons with family incomes below $4,000. There is no need, in view of the common knowledge we have acquired in recent years as to the income status of the elderly, to cite statistics on that score; it is well known that the largest low-income group in the Nation is composed of the elderly, many of whom try to exist on nothing more than their social security income.

One more survey in the dental series deals with periodontal disease, which is the commonest cause of tooth loss when left unattended. Let me quote from the report, which discusses the proportion of the population with periodontal disease or gingivitis which affects the gums and ultimately destroys the teeth.

> Although at ages 19–24 years, for example, 70.9 percent of men and 63.2 percent of women already had either gingivitis or destructive disease, by ages 75–79 years the group with disease included as many 93.7 percent of men and 80.1 percent of women.
>
> The increase in severity with age was even more striking, with destructive disease far more likely to be encountered in older persons than in younger ones. Among both men and women 18–24 years of age who had periodontal disease, only about 15 percent had periodontitis. By ages 75–79, however, the percentage with obvious pocket formation had risen to 64.0 and 60.4 respectively.

These figures, it might be noted, apply only to those who still have some remaining teeth, not to those who have current dentures or denture needs.

A second area of need covered by my bill is that of eye care. Again, the basic facts are the same: it is the elderly who are in the greatest need because they have the greatest sight impairment, but because of their limited income, they are far more likely to live with their disability rather than have it properly cared for to make their latter years as enjoyable as they might be. Again, data from the National Health Survey of 1963–65 reveals the facts.

Here the survey is quite specific:

> About 56 percent of all cases of visual impairments were among persons with a family income of less than $4,000. The high prevalence of visual defects among persons in the lower income groups was influenced by the older age composition of these population groups.

An accompanying chart shows that at the time of the survey 24.4 percent of those over 65 had incomes below $3,000 and another 12 percent were under $4,000. At the same time, the over-65-age group comprised nearly half—46.4 percent—of all those with visual impairment. I quote again:

> The number of visually impaired persons per 1,000 population increased sharply with age. From a rate of 0.6 among young people under 25, the rate of severe visual impairments increased to 97.5 among persons 75 years and older. The corresponding rate for other visual impairments were from 6.9 to 77.4 and 131.3.

As may be judged from this wording, the study makes a distinction between "severe visual impairments" and "other visual impairments." The "severe" impairments mean that glasses will not give sufficient help to allow reading of ordinary newspaper print. In this group, more than 55 percent of those affected over 65 years of age have some degree of limitation of their activities as a result. In the Nation as a whole, there are an estimated 1,342,000 with the "severe" impairment, an average rate of 6.6 per 1,000 of the population; but as the citation shows, this jumps to 23.6 per thousand in the 65 to 74 age bracket and nearly 1 in 10 are among those over 75.

The leading cause of severe impairment among the elderly is the presence of cataracts, which is more than three times as frequent as in those under 65. In fact—and this figure may be surprising—nearly 40 percent of all visual impairments among those over 65 are due to cataracts. This, of course, is a condition which can be relieved by surgery at the proper stage, and such surgery is covered under the law as in any other surgery.

But—and this is an important part of the problem—it is obvious that a cataract must be diagnosed before it can be treated by surgery or otherwise. And at this point, the law leaves the expense of a diagnostic visit to the individual, without coverage under part B, as I am proposing. Specifically excluded in section 1862a7—are:

> Procedures performed during the course of any eye examination to determine the refractive state of the eyes.

As well as exclusion of expenses for:

> Eyeglasses or eye examinations for the purpose of prescribing, fitting or changing eyeglasses.

The result is obvious: thousands of the elderly whose vision is impaired by cataracts do not know they have them and are thus barred from the treatment by surgery which the law provides. This is a situation which cries out for change. Providing the opportunity for the elderly to visit an ophthalmologist, or an optometrist under part B medicare would lead to the discovery and treatment of uncounted cases of cataract now undetected.

Quite unrelated to the problem of the patient in need of eye care, or at least of most importance from another viewpoint, is that of the present evasion of the law, which I am told by those in the profession, takes place on a fairly extensive scale. Some of the more sophisticated among those under medicare, or perhaps even more responsible for the situation are some in the ophthalmology profession, now secure eyeglasses at the expense of medicare by means of subterfuge. I have no notion how widespread the practice is, but I am sure that any doctor of ophthalmology will tell you that there are some who provide the excluded services but list their work as in the area of pathology and hence eligible for reimbursement because their claim states the patient has received eligible treatment for disease of the eye. Certainly it is understandable that a doctor in this field has a little difficulty making the distinction between diagnosing and treating a patient who comes to him with cataracts or glaucoma and prescribing glasses which will help the condition even though a refractory examination is outside the law's care provisions.

The third area in which my bill removes the present exclusion is that of hearing impairment. Actually, the rate of hearing impairment is considerably greater than that of visual impairment, although I venture that most people seeing so many more eyeglasses than hearing aids in use, would be much surprised to know that fact. Whereas there are an estimated 5,390,000 persons in the Nation with eye problems at least severe enough to make them unable even with glasses to recognize a friend walking on the other side of the street, more than 8½ million have their own or a family member's account in answering the health survey questions—"deafness or serious trouble hearing with one or both ears." The incidence per 1,000 of the population is, respectively, 28.8 for "all visual impairments" as defined and described earlier, and 45.7 for hearing impairments.

Again, the burden of this disability falls heaviest on the elderly. Indeed, in comparison to the rest of the population, this is an even greater problem for them, as the figures attest. Among those under 25 years of age, the incidence of hearing impairment is only 9.5 per 1,000, but among those over 75 the figure is more than 33 times as great, 317.2 per 1,000 or nearly a third of all persons in that age bracket. The rate for those in the 65 to 74 bracket is less, but still more than 17 times the rate for the young, or 162.1 per 1,000. And again, there seems to be some statistical significance to the income factors:

> Among persons under 65 years of age, those with a family income of less than $3,000 had a relatively high rate of hearing impairment.

For persons with higher incomes, there were only slight differences between the rates of hearing loss—Among older persons, the rate of hearing impairment decreased steadily from 242.5 per 1,000 persons with a family income of less than $3,000 to 173.3 per 1,000 with a family income of $7,000 to $9,999.

There is little need to say more; the argument and the circumstances are all but identical with those concerning dental and eye care. Why should we retain the present exclusions in the medicare law? The only reason I can suggest is the one which time after time pulls up short our good intentions for increasing the national well-being—unless it is considered "essential" to our Military Establishment, no matter how minor its claim to necessity—and that is the cost.

Mr. President, the cost of the Hartke proposal is estimated to be $750 million. For that money, we would be able to provide immeasurable assistance to the more than 4 million older people who are hard of hearing, to the 700,000 or so who suffer from visual impairments and to the uncounted tens of thousands in need of dental care. I ask unanimous consent that the text of my bill be printed at the conclusion of my remarks.

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

S. 436

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Social Security Act be amended as follows:

SECTION 1. (a) Section 1861(r)(2) of the Social Security Act is amended by striking out "but only with respect to (A) surgery related to the jaw or any structure contiguous to the jaw or (B) the reduction of any fracture of the jaw or any facial bone".

(b) Section 1861(s)(8) of such Act is amended (1) by inserting "(A)" immediately after "(8)", and (2) by striking out "(other than dental)", and (3) by adding thereunder the following new subparagraph:

"(B) dentures, eyeglasses, hearing aids, and other prosthetic devices relating to the oral cavity, jaw, eyes, or ears, including replacement thereof; and".

(c)(1) Section (a)(7) of such Act is amended to read as follows:

"(7) where such expenses are for routine physical checkups, or immunizations;".

(2) Section 1862(a) of such Act is further amended (A) by inserting "or" at the end of paragraph (11) thereof, (B) by striking out paragraph (12) thereof, and (C) by redesignating paragraph (13) hereof as paragraph (12).

(d) The amendments made by the preceding provisions of this section shall apply with respect to services furnished after the month which follows the month in which this Act is enacted.

(e)(1) Section 1861(r) of the Social Security Act is amended (A) by striking out "or" at the end of clause (2), and (B) by inserting immediately before the period at the end thereof the following: ", or (4) a doctor of optometry, but only for purposes of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to functions which he is legally authorized to perform as such by the State in which he performs them".

(2) Section 1862(a) of such Act (as amended by subsection (c) of this section) is further amended (A) by striking out the period at the end of paragraph (12) (as redesignated by paragraph (2) of such subsection (c)) and inserting in lieu of such period "; or", and (B) by adding after such paragraph (12) the following new paragraph:

"(13) where such expenses constitute charges with respect to the referral of an individual to a physician (as defined in section 1861(r)(1)) by a doctor of optometry arising out of procedure in connection with the diagnosis or detection of eye diseases."

By Mr. BELLMON:

S. 437. A bill to amend the Export Administration Act of 1969, as amended. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. BELLMON. Mr. President, late last year Senator TALMADGE, chairman of the Agriculture Committee, requested a delegation of that committee, headed by the distinguished Senator from Minnesota (Mr. HUMPHREY), to visit the Soviet Union to examine conditions which led to the record sale of American grain to the U.S.S.R. This trip was successfully completed, and the report to Congress is being prepared. I believe the information gained will be of major benefit to the committee and to Congress as we undertake to develop lasting trade relations with the U.S.S.R.

On this trip, Senator HUMPHREY and I were accompanied by Mrs. Humphrey, Representative HENRY S. REUSS (Wisconsin); Mr. Dan Spiegel, of Senator HUMPHREY's staff; Mr. Carl Kettler, of my staff; Dr. John P. Hardt, Senior Specialist in Soviet Economics, Congressional Reference Service, Library of Congress, and a team of newsmen from Minnesota.

Mr. President, it is not too often that a Member feels sufficiently moved in these Chambers, where we frequently witness heated confrontations and not infrequently displays of partisanship, to heap praise upon a colleague of the other party. But based upon our experiences together in Russia, I believe Senator HUBERT HUMPHREY deserves such an accolade.

Throughout our long series of meetings with officials of the government of the Soviet Union, Senator HUMPHREY presented our country's position in a clear and firm yet friendly manner which made our discussions open, informative, and positive. The international stature which he enjoys, as a distinguished Member of this body and a former Vice President of the United States, opened doors in the Russian Government which would otherwise have remained closed.

In addition, Senator HUMPHREY's personal understandings of agriculture and international trade enabled our group to gain from the Soviets considerable knowledge which will be helpful to the committee and to Congress as we undertake to establish meaningful and mutually beneficial trade relations. I believe Senator HUMPHREY performed a great service to our country and for Congress, and I commend him for his skillful and resourceful leadership. Also I thank his charming wife, Muriel, and him for being pleasant traveling companions.

Mr. President, I returned from the Soviet Union convinced that the sale of American grain to Russia was a transaction of great mutual benefit to both countries. The fact is that the Soviets needed grain to sustain and to improve the diet of their people by maintaining and expanding their livestock enterprises during a period of reduced Russian farm production. It is also true that had the price of American grain been substantially higher than the levels prevailing when the purchases were made or had difficult trade barriers existed, the Russian officials might very well have adopted a policy of "belt tightening." They could simply have required the use of the limited amount of grain produced in the Soviet Union for human food and reduced the production of livestock products. As it was, they chose to have both meat and bread for their people by buying large amounts of American grain.

Mr. President, in spite of its mutual benefits, there were some aspects of the transaction which trouble me deeply. Primarily I am concerned that the private American grain traders who do business with representatives of a closed society and a central government, such as exists in Russia, are at a distinct disadvantage. The same is true with the U.S. Government officials who administer the export subsidy program.

I make this assertion for the reason that the Russian grain buyers came to the United States knowing full well of their own poor crop conditions through their access to nonpublic information gathered from their collective farm system. They also had full knowledge, through freely available reports, of the crop conditions and grain supply available throughout the world, especially in this country.

On the other hand, because of the restrictions placed upon American and other efforts to gather crop reporting information in the Soviet Union, our officials and our grain traders were virtually uninformed as to the Soviet crop situation. Therefore, negotiations leading to the grain sales were not held between individuals who were equally informed, but rather in circumstances when one side knew all there was to know and the other side had only half the picture.

When the matter was presented by Senator HUMPHREY and me to the Russian officials, they chuckled about the situation and reminded us that we had not learned the lesson that Canadian and Australian Governments and grain producers have learned. In those grain exporting countries, government has established a central marketing agency through which foreign purchasers must deal. This enables the governments, the exporters, and the producers of those countries to know precisely the kinds and amounts of grain being purchased by foreign buyers at any given time.

By contrast, under our system, the Russian grain buyers were and are able to come here, approach our private grain exporting companies secretly and individually to make their deals without other companies, Government officials, or grain producers having any knowledge of what was transpiring. Therefore, the grain growers have no way of knowing the true demand for their products at harvest time, when most sales are made.

Also, our Government officials who administer the grain export program have no way of knowing the true size of the world demand and therefore are unable to anticipate the real need for export subsidies.

Mr. President, there is no point in

looking backward and making recriminations for what happened last year.

Members of the Senate may remember a saying attributed to Confucius, which, broadly interpreted says:

That if an individual makes a fool of you once, damn him; if you let him make a fool of you twice, damn yourself.

In effect, by taking advantage of a weakness in our laws, the Russians made a fool of American grain growers, grain dealers, and Government officials in 1972. I believe we must take action, now, to keep the same thing from happening in the future. At the same time, we must avoid erecting trade barriers which might discourage future sales.

For this reason, I am today introducing a measure intended to accomplish this objective. The bill is brief and I ask unanimous consent that it be printed in full in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. BELLMON. The purpose of this legislation is to require grain buyers, representing foreign countries which limit free access to information, to make public their intention to purchase American commodities in advance of the time these sales are actually made. In this way, American graingrowers, grain traders, and Government officials will know what is going on at the time these trades are made.

Under the present system, this knowledge is not available until long after the deals have been made and the contracts have been signed.

Mr. President, the purpose of this legislation is not to limit in any way exports of American grain: rather it is to make certain when export contracts are entered into that negotiators on both sides of the table will be equally informed so far as possible. Let me say again that I feel the 1972 grain sales to Russia were in the best interests of both countries and that they were handled as honorably and as intelligently as possible under the conditions that existed at that time. But many of our graingrowers sold too soon and at too low a price because they had no way of knowing the level of demand for their products.

When criticized for the way the Russian traders pretended to desire to purchase feed grain at the same time they were actually buying wheat, a Russian official said:

Well, what would you have done? Certainly you would not have bought ads in the newspapers to tell the world that your crop was short and that you needed to purchase bread grains in large amounts. You Americans wanted to sell grain; we wanted to buy; we did as you would have done by handling the deal in the way that was best for us.

One cannot criticize the Russians for opting in this matter. They are as eager for saving money and making a good buy as anyone else.

Mr. President, I do not criticize the Russians, nor do I criticize those Americans who handled this transaction. I am deeply convinced, however, that the Congress needs to take immediate steps to change the ground rules so that in the future Americans involved in transactions of this kind will go to the negotiating table with as much knowledge as the representatives of other governments. American grain growers and those who represent the industry can trade well and wisely but only if they are as well informed as their opposite numbers. This bill will go a long way toward accomplishing this objective without erecting unnecessary barriers to future international trade and without basically altering the private grain marketing and producing industry which has served our country long and well.

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

Mr. BELLMON. I yield.

Mr. BROCK. Mr. President, I thank the Senator for yielding. I congratulate the Senator on his remarks and the effort he is making. I believe it is an effort that will bear fruit.

EXHIBIT 1

S. 437

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Export Administration Act of 1969, as amended, is amended by adding the following at the end of Section 4(e):

"*Provided*, That the Secretary of Agriculture shall promulgate such rules and regulations as may be necessary to assure that a license be obtained by the exporter prior to sale of any agricultural commodity produced in the United States, its territories and possessions, to any country which denies U.S. citizens or employees or agents of the United States Department of Agriculture freedom to gather information relating to crop conditions in agricultural producing areas of such country. Such a license shall be granted upon publication by the Secretary of pertinent information regarding the proposed sale in the Federal Register and upon notification of appropriate news media. The pertinent information shall include, but not be limited to, the kind and amount of commodity to be exported. Publication and notification shall occur as soon as practicable after the receipt of application by the Secretary but no less than seven days prior to the consummation of the sale of the agricultural commodity to be exported."

By Mr. HARTKE:

S. 438. A bill to amend the Social Security Act to provide coverage for out-of-hospital prescription drugs under medicare. Referred to the Committee on Finance.

Mr. HARTKE. Mr. President, today I introduce the most important piece of social security legislation which will come before the 93d Congress. When enacter, it will provide medicare coverage for out-of-hospital prescription medicines which are needed to combat the chronic diseases of the aged.

This Hartke proposal is identical to the one which passed the Senate last year after receiving the approval of the Senate Finance Committee. It is similar to proposals which I have put forward over the past several years in that it provides medicare coverage for drugs used in instances of chronic diseases. It is this approach which the Finance Committee adopted last year, and it is this approach which made it possible for the Senate to go on record in overwhelming support of the need to add prescription drug coverage to the medicare program.

Mr. President, millions of older Americans will benefit from this legislation, and yet its cost is only $700 million yearly. That is a very small price to pay in order to make it possible for the elderly to get the medicines they so badly need. Prescription drugs represent the largest single personal health expenditure the aged are now required to make out of their own resources. A HEW Department Task Force on prescription drugs, a special committee of nongovernmental drug experts, and the 1971 Advisory Council on Social Security all recommended that prescription drugs be covered under medicare. Drug coverage as provided in the Hartke bill will provide protection for those who need it most—that is, to those who have recurring costs because of a chronic ailment. The economic problem of the aged in relation to drug costs is not the occasional acute illness, but the problem of a continuing drain of $10, $15, and $20 a month for these maintenance drugs.

The Hartke approach provides coverage for those drugs necessary for the treatment of diabetes, high blood pressure, chronic cardiovascular disease, chronic respiratory disease, chronic kidney disease, arthritis, gout, rhumatism, tuberculosis, glaucoma, thyroid disease, and cancer.

The cost of living is rising steadily, but the incomes of the aged are relatively fixed. We can provide a major benefit to the Nation's elderly by covering out-of-hospital prescription drugs under medicare.

Mr. President, I ask unanimous consent that the text of the Hartke bill be printed in the RECORD at the conclusion of my remarks.

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

S. 438

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Social Security Act be amended as follows:

SECTION 1. (a) (1) Section 1861 of the Social Security Act is amended by adding after subsection (z) thereof (as added by section 234(f) of this Act) the following new subsection:

"(z–1) (1) The term 'covered drugs' means those drugs appearing on the list specified in paragraph (2) of this subsection.

"(2) (A) Subject to the provisions of subparagraph (C), the Secretary shall, with the advice of the Expert Committee on Drug Coverage established by section 1868, establish and publish a list of those drugs for which payment may be made subject to the conditions of section 1812(a)(4) under part A of this title. The Secretary shall distribute such list on a current basis to practitioners licensed by law to prescribe and administer drugs or to dispense drugs and shall make such other distribution as in his judgment will promote the purposes of this title. He shall from time to time (but at least once a year) review such list, and shall revise it or issue supplements thereto, as he may find necessary, so as to maintain insofar as practicable currency in the contents thereof and shall publish and distribute such revisions in accordance with the preceding sentence.

"(B) Each drug appearing on the list established under subparagraph (A) shall be designated by its established name and with

respect to each such drug, the Secretary may include such other information as he finds necessary to promote the purposes of this subsection and section 1919.

"(C) A drug shall not appear on the list established under subparagraph (A) unless—

"(i) such drug is lawfully available for dispensing or administration to humans; and

"(ii) it is determined by the Secretary, with the advice of the Expert Committee on Drug Coverage to be useful in the treatment of diabetes, high blood pressure, chronic cardiovascular, respiratory, or kidney diseases or conditions, arthritis, gout, rheumatism, tuberculosis, glaucoma, thyroid disease, or cancer.

"(D) For purposes of this subsection—

"(i) the term 'drug' means a drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (including those specified in section 351 of the Public Health Service Act) and

"(ii) the term 'established name' shall have the meaning assigned to such term by section 502(e)(2) of the Federal Food, Drug, and Cosmetic Act."

(2) Section 1861(t) of such Act is amended by inserting after "subsection (m)(5)" the following: "or subsection z-1)".

(b) Section 1812(a) of such Act is amended by—

(1) striking out "and" at the end of paragraph (2);

(2) striking out the period at the end and inserting in lieu thereof: "; and"; and

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

"(4) covered drugs furnished to such individual but not when furnished to him while he is an inpatient in a hospital."

(c) Section 1813 of such Act is amended by adding at the end the following subsection:

"(c)(1) The amount payable for a covered drug furnished an individual shall be reduced by an amount equal to the copayment determined under paragraph (2), or, if less, the charges imposed with respect to such individual for such covered drug, except that, if the customary charges for such covered drug are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed.

"(2) The copayment specified in paragraph (1) shall be $2.00 the first time any particular prescription is filled and $1.00 each time a prescription is refilled."

(d) Title XVIII of the Social Security Act is amended by adding after section 1818 of such Act (as added by section 202 of this Act) the following new subsections:

"PAYMENT FOR COVERED DRUGS; CONDITIONS AND LIMITATIONS ON SUCH PAYMENT

"SEC. 1819. (a)(1) The amount paid to any provider of drugs with respect to covered drugs for which payment may be made under this part shall, subject to the provisions of this section and section 1813(c), be the reasonable drug charge with respect to such drugs.

"(2)(A) The 'reasonable drug charge' for a covered drug shall be the acquisition allowance plus a dispensing allowance.

"(B) The Secretary shall by regulations establish the method or methods for determining the acquisition allowance of a covered drug, giving consideration to the cost to providers of drugs of acquiring the drug by its established name. If the source from which any covered drug is available charges different prices therefor to different classes or types of providers, or if a class of providers may reasonably obtain such drug from only certain types of sources, the Secretary may, in establishing the acquisition allowance, take into account these differences.

"(C) The Secretary shall by regulations establish the methods for determining a dispensing allowance for a covered drug, giving consideration to such factors as cost of overhead, professional services, and a fair profit. He may provide different dispensing allowances for different classes of providers.

"(b) Payment for covered drugs furnished to an individual may be made only to a dispenser of drugs eligible therefor under subsection (c) and only if—

"(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary may by regulation prescribe; and

"(2) a written prescription, signed by a physician, was filed with such provider of drugs; except that (pursuant to such regulations as the Secretary may prescribe) no payment may be made for a covered drug—

"(3) if it is prescribed in an unusual quantity; or

"(4) if it fails to meet such requirements as to quality and standards of manufacture as the Secretary may prescribe; or

"(5) it fails to meet such specifications as to dosage form as the Secretary may require.

"(c) For purposes of subsection (a), a provider of drugs shall be eligible for payment if—

"(1) he is licensed or authorized pursuant to state law to dispense drugs to humans;

"(2) he agrees to comply with such rules and regulations as the Secretary may issue with respect to—

"(A) submission of bills at such frequency and on such forms as may be prescribed in such rules and regualtions;

"(B) availability for audit of his records relating to drugs and prescriptions;

"(C) the maintenance and retention of such records relating to the cost of drugs as may be specified in such rules and regulations;

"(3) he meets such other conditions relating to health and safety as the Secretary may find necessary;

"(4) he agrees not to charge any individual for a drug for which such individual is entitled to have payment made under this part an amount in excess of the customary charge at which such dispenser of drugs sells or offers such drug to the public at the time such drug is furnished to such individual."

(e) Title XVIII of the Social Security Act is further amended by adding after section 1867 of such Act the following new section:

"FORMULARY COMMITTEE

"SEC. 1868. (a)(1) There is hereby established, within the Department of Health, Education, and Welfare, a Formulary Committee, a majority of whose members shall be physicians and which shall consist of the Commissioner of Food and Drugs and of four individuals (not otherwise in the regular full-time employ of the Federal Government) who are of recognized professional standing and distinction in the fields of medicine, pharmacology, and pharmacy, to be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Chairman of the Committee shall be elected, from the appointed members thereof, by majority vote of the members of the Committee for a term of one year. A member may succeed himself as Chairman.

"(2) Each appointed member of the Formulary Committee shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the members first taking office shall expire, as designated by the Secretary at the time of appointment, one at the end of the first year, one at the end of the second year, one at the end of the third year, and one at the end of the fourth year. A member shall not be eligible to serve continuously for more than two terms.

"(b) Appointed members of the Formulary Committee, while attending meetings or conferences thereof or otherwise serving on business of the Committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(c)(1) The Formulary Committee is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Formulary Committee such secretarial, clerical, and other assistance as the Formulary Committee may require to carry out its functions.

"(2) The Secretary shall furnish to the Formulary Committee such office space, materials, and equipment as may be necessary for the Formulary Committee to carry out its functions.

"(d)(1) The Formulary Committee shall compile, publish, and make available a Formulary of the United States (hereinafter in this title referred to as the 'Formulary').

"(2) The Formulary Committee shall periodically revise the Formulary and the listing of drugs so as to maintain currency in the contents thereof.

"(3) The Formulary shall contain an alphabetically arranged listing, by established name, of those drugs and biologicals that shall be deemed qualified drugs for purposes of the benefits provided under section 1812(a)(4).

"(4) Publish and disseminate at least once each calendar year among physicians, pharmacists, and other interested persons, in accordance with directives of the Secretary, (i) an alphabetical list naming each drug or biological by its established name and such other information as the Secretary deems necessary, (ii) an indexed representative listing of such trade or other names by which each such drug or biological is commonly known, together with the maximum allowable cost for various qualities, strengths, or dosage forms thereof, together with the names of the supplier of such drugs upon which the maximum allowable cost is based, (iii) a supplemental list or lists, arranged by diagnostic, prophylactic, therapeutic, or other classifications, of the drugs included in the Formulary, and (iv) information (including conditions of use required in the interest of rational drug therapy) which will promote the safe and effective use, under professional supervision, of the drugs listed in the Formulary.

"(5) The Formulary Committee shall exclude from the Formulary any drugs which the Formulary Committee determines are not necessary for proper patient care, taking into account other drugs that are available from the Formulary.

"(e)(1) In considering whether a particular drug shall be included in the Formulary, the Formulary Committee is authorized to obtain (upon request therefor) any record pertaining to the characteristics of such drug which is available to any other department, agency, or instrumentality of the Federal Government, and, as a condition of such inclusion, to require suppliers of drugs to make available to the Committee information (including information to be obtained through testing) relating to such drug. If any such record or information (or any information contained in such record) is of a confidential nature, the Formulary Committee shall exercise utmost care in preserving the confidentiality of such record or information and shall limit its usage thereof to the proper exercise of such authority.

"(2) The Formulary Committee shall establish such procedures, as may be necessary to determine the propriety of the inclusion

or exclusion in the Formulary, of any drug, including such data and testing as it may require of a proponent of the listing of a drug in the Formulary.

"(f)(1) The Formulary Committee, prior to making a final determination to remove from listing in the Formulary any drug which would otherwise be included therein, shall afford a reasonable opportunity for a hearing on the matter to any person engaged in manufacturing, preparing, propagating, compounding, or processing such product who shows reasonable grounds for such a hearing. Any person adversely affected by the final decision of the Formulary Committee may obtain judicial review in accordance with the procedures specified in section 505(h) of the Federal Food, Drug, and Cosmetic Act.

"(2) Any person engaged in the manufacture, preparation, propagation, compounding, or processing of any drug not included in the Formulary which such person believes to possess the requisites to entitle such drug to be included in the Formulary, may petition for inclusion of such drug and, if such petition is denied by the Formulary Committee, shall, upon request therefor, showing reasonable grounds for a hearing, be afforded a hearing on the matter. The final decision of the Formulary Committee shall, if adverse to such person, be subject to judicial review in accordance with the procedures specified in section 505(h) of the Federal Food, Drug, and Cosmetic Act.

"(g) Drugs and biologicals shall be determined to be qualified drugs only if they can legally be obtained by the user only pursuant to a prescription of a physician; except that the Formulary Committee may include certain drugs and biologicals not requiring such a prescription if it determines such drugs or biologicals to be of a lifesaving nature.

"(h) In the interest of orderly, economical, and equitable administration of the benefits provided under section 1812(a)(4), the Formulary Committee may, by regulation, provide that a drug or biological otherwise regarded as being a qualified drug shall not be so regarded when prescribed in unusual quantities."

(i) The heading of part A of title XVIII of such Act is amended by striking out "INSURANCE" and inserting in lieu thereof "INSURANCE AND DRUG".

(j) Section 1811 of such Act (as amended by section 201(a)(2) of this Act) is further amended by inserting after "services" the following: "and the cost of covered drugs".

(k) Section 1814(c) of such Act is amended by—

(1) adding at the end of the heading the following: "or Federal Provider of Drugs";

(2) inserting "(1)" after "(c)"; and

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

"(2) No payment may be made under this part to any Federal provider of drugs (as provided for in section 1819), except a provider of drugs which the Secretary determines is dispensing drugs to the public generally as a community institution or agency; and no such payment may be made to any provider of drugs for any drug which such provider is obligated by a law of, or a contract with, the United States to render at public expense."

(l) Section 1815 of such Act is amended by—

(1) adding at the end of the heading the following: "and Providers of Drugs";

(2) adding after "provider of services with respect to the services furnished by it"; ", and each provider of drugs with respect to drugs,";

(3) inserting after "provider of services" the second time it appears "and the provider of drugs, as the case may be,".

(m) Section 1861(r) of such Act (as amended by other provisions of this Act) is further amended by adding at the end thereof the following new sentence: "For purposes of section 1819, such term includes any such doctor only with respect to drugs he is legally authorized to prescribe by the State in which he prescribes such drugs."

(n) Section 1869(c) of such Act is amended by inserting after "provider of services" the following: "or any person dissatisfied with any determination by the Secretary that he is not a provider of drugs eligible for payment under this title,".

(o)(1) Section 1870(a) of such Act is amended by—

(A) inserting ", provider of drugs," after "provider of services"; and

(B) inserting "or drugs" after "items or services".

(2) Section 1870(b) of such Act is amended by—

(A) inserting ", or provider of drugs," after "provider of services" each time it appears;

(B) inserting "or drugs" after "items or services"; and

(C) adding at the end of pargraph (2) the following: "any payment has been made under section 1819 to a provider of drugs for drugs furnished an individual,".

(3) Section 1870(d) of such Act is amended by inserting: ", or provider of drugs," after "provider of services".

(p) The heading of section 226 of such Act is amended by striking out "INSURANCE" and inserting in lieu thereof "INSURANCE AND DRUG".

(q) Section 226(b)(1) of such Act (as amended by section 201(b) of this Act) is further amended by—

(1) striking out "(as such terms are defined" and inserting in lieu thereof the following: "and for covered drugs (as such terms are defined"; and

(2) inserting ", and (C) no such payment may be made for covered drugs furnished before July 1, 1972; and" immediately before the semicolon at the end thereof.

(r) Section 21(a) of the Railroad Retirement Act of 1937 is amended by—

(A) striking out "and" which follows "extended care services,"; and

(B) striking out "post-hospital home health services" and inserting in lieu thereof "post hospital home health services, and covered drugs".

(s) Section 21(e) of the Railroad Retirement Act of 1937 is amended by inserting after "services" the first time it appears "(other than covered drugs)".

"MAXIMUM ALLOWANCE COST FOR QUALIFIED DRUGS

"SEC. 1869. (a) For purposes of this part, the term 'maximum allowable cost' means the following:

"(1) When used with respect to a prescription legend drug, such term means the lesser of—

"(A) the amount determined by the Formulary Committee, in accordance with subsection (b) of this section, plus a reasonable fee determined in accordance with subsection (c) of this section, or

"(B) the actual, usual, or customary charge at the price at which it is generally available to establishments dispensing drugs.

"(2) In considering (for purposes of the maximum allowable cost for any drug) the various sources from which and the varying prices at which such drug is generally available, there shall not be taken into account the price of any drug which is not included in the Formulary.

"(3) Whenever an amount or amounts at which a qualified drug is generally available for sale to the ultimate dispensers thereof vary significantly among the various regions of the United States or among such ultimate dispensers, the Formulary Committee may determine a separate amount or amounts with respect to such drug for various regions or for various classes of its ultimate dispensers.

"(c)(1) Any licensed pharmacy, which is a provider of services for purposes of this part, shall, in a form prescribed by the Secretary, file with an intermediary or other agency designated by the Secretary, a statement of a fee for the purpose of establishing the maximum allowable cost as defined in (a) above. Such fee shall include such costs, including the costs of professional services and a fair profit, which are reasonably related to the provision of pharmaceutical service rendered to persons entitled to receive benefits under this part.

"(2) Any licensed pharmacy shall, except for subsection (a)(1)(B) above, be reimbursed, in addition to any amounts provided for in subsection (b) above, the amount of the fee filed in (1) above, except that no fee shall exceed the largest fee filed by 90 per centum of such licensed pharmacies.

"(3) The Secretary shall, in addition to statements required pursuant to paragraph (2), require a form and at a time suitable to him financial or other data to justify recognition of any fee (A) which amount falls between the fiftieth and ninetieth percentile of all fees filed by participating pharmacies, or (B) in any case where a participating licensed pharmacy has, in the preceding four calendar quarters, been among the highest 20 per centum by prescription volume of all pharmacies participating in the program.

"(4) Where no fee statement or other information required by the Secretary has been filed by a licensed pharmacy otherwise qualified and participating in the program, fees to which such pharmacies may be entitled shall be limited to the amount of the lowest fee filed by any licensed pharmacy described in paragraph (1) above.".

(i) Section 1861(t) of the Social Security Act is amended—

(1) by inserting ", or as are approved by the Formulary Committee" after "for use in such hospital"; and

(2) by adding at the end thereof the following new sentence: "The term 'qualified drug' means a drug or biological which (1) can be self-administered, (2) is furnished pursuant to a physician's prescription or a physician's certification that it is a lifesaving drug which is medically required by such individual when not an inpatient in a hospital or extended care facility, (3) is included by strength and dosage forms among the drugs and biologicals approved by the Formulary Committee, (4) is dispensed (except as provided by section 1814(j)) by a pharmacist from a licensed pharmacy, and (5) which is generally available for sale to establishments dispensing drugs in an amount or amounts equal to or lesser than the amount or amounts established by the Formulary Committee pursuant to section 1820(b)."

(j) Section 1861(u) of the Social Security Act (as amended by section 227(d)(1) of this Act) is further amended by striking out "or home health agency" and inserting in lieu thereof "home health agency, or licensed pharmacy".

(k) Section 1861(v) of the Social Security Act (as amended by sections 227(c), 223(b), 251(c), and 221(c)(4) of this Act) is further amended—

(1) by striking out 'The reasonable cost" in the first sentence of paragraph (1) and inserting in lieu thereof "Except as provided in paragraph (1), the reasonable cost"; and

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

"(7)(A) With respect to any qualified drug, the maximum allowable cost shall be an amount determined in accordance with section 1820 of this Act."

(l) Section 1861 of the Social Security Act is further amended by adding at the end thereof the following new subsection:

"LICENSED PHARMACY

"(Z-1) The term 'licensed pharmacy' (with respect to any qualified drug) means a pharmacy, or other establishment providing community pharmaceutical services, which is licensed as such under the laws of the State in which such drug is provided or otherwise dispensed in accordance with this title."

(m) (1) The first sentence of section 1866 (a) (2) (A) of the Social Security Act is amended by striking out "and (ii)" and inserting in lieu thereof the following: "(ii) the amount of any copayment required pursuant to section 1813(a)(4), and (iii)".

(2) The second sentence of section 1866 (a) (2) (A) of such Act is amended by striking out "clause (ii)" and inserting in lieu thereof "clause (iii)".

(n) The amendments made by this section shall apply with respect to items and services furnished on and after the 1st day of January 1974.

By Mr. JAVITS (for himself, Mr. STENNIS, Mr. EAGLETON, Mr. BENTSEN, Mr. TAFT, Mr. ABOUREZK, Mr. BAKER, Mr. BAYH, Mr. BIBLE, Mr. BIDEN, Mr. BROCK, Mr. BROOKE, Mr. BURDICK, Mr. HARRY F. BYRD, JR., Mr. ROBERT C. BYRD, Mr. CASE, Mr. CHILES, Mr. CLARK, Mr. COOK, Mr. CRANSTON, Mr. FONG, Mr. HART, Mr. HASKELL, Mr. HATFIELD, Mr. HATHAWAY, Mr. HUDDLESTON, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. KENNEDY, Mr. MAGNUSON, Mr. MANSFIELD, Mr. MATHIAS, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RANDOLPH, Mr. RIBICOFF, Mr. ROTH, Mr. SCHWEIKER, Mr. SCOTT of Pennsylvania, Mr. STAFFORD, Mr. STEVENS, Mr. STEVENSON, Mr. SYMINGTON, Mr. TALMADGE, Mr. TUNNEY, Mr. WEICKER, Mr. WILLIAMS, and Mr. YOUNG):

S. 440. A bill to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress. Referred to the Committee on Foreign Relations.

WAR POWERS ACT

Mr. JAVITS. Mr. President, I send to the desk for myself and 57 other Senators the War Powers Act, and I ask that it be received and appropriately referred.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. JAVITS. Mr. President, I ask unanimous consent that at the conclusion of my remarks the statements on the bill prepared to be made by Senators EAGLETON, MUSKIE, and CHILES may be printed in the RECORD. Senator EAGLETON has made a major contribution to the War Powers Act and is a principal cosponsor. He intended to participate in a colloquy, but is unable to be here. I am nonetheless pleased to place his statement in the RECORD, for his views on this issue are noteworthy. Senator STENNIS had also intended to speak today on the reintroduction of the War Powers Act, but due to the extreme press of other business, he has had to postpone his statement until next week. We all look forward to hearing his statement.

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

Mr. JAVITS. Mr. President, on behalf of myself, Senators STENNIS, Democrat, of Mississippi, EAGLETON, Democrat of Missouri, BENTSEN, Democrat, of Texas, TAFT, Republician of Ohio, and 53 additional cosponsors who have joined with us, I introduce the War Powers Act—a measure which, in our judgment, establishes practical and well-considered procedures to assure a proper role for the Congress according to the Constitution with respect to committing the Nation to war. The legislation introduced today is identical to the bill passed by the Senate on April 13, 1972, by a vote of 68 to 16. It is particularly significant that both the majority leader and the minority leader have joined in cosponsoring this bill, I am also very pleased to note that among its sponsors is the deputy leader of the Democratic side, Senator ROBERT C. BYRD of West Virginia.

As the new session begins, the Nation is watching to see if the 93d Congress will face up to the vital issue of the assertion of its constitutional authority and responsibility with respect to the making of war. It is in this context that I introduce this bill today.

While the War Powers Act is not—and cannot be under existing circumstances—another effort to legislate an end to the Vietnam war—it is a war already in liquidation—and the current hostilities are exempted from retroactive applicability, it is a bill to end the practice of Presidential war and thus to prevent future Vietnams. It is an effort to learn from the lessons of the last tragic decade of war which has cost our Nation so heavily in blood, treasure, and morale. The War Powers Act would assure that any future decision to commit the United States to any warmaking must be shared in by the Congress to be lawful.

No legislation can guarantee national wisdom, but the fundamental premise of the Constitution, with its deliberate system of checks and balances and separation of powers, is that important decisions must be national decisions, shared in by the people's representatives in Congress as well as the President. By enumerating the war powers of Congress so explicity and extensively in article I, section 8, the framers of the Constitution took special care to assure the Congress of a concurring role in any measures that would commit the Nation to war. Modern practice, culminating the Vietnam war and the result of a long history of Executive action employing the warmaking power which weaves in and out of our national history, has upset the balance of the Constitution in this respect.

The central core of the War Powers Act is contained in sections 3 and 5 of the bill. Section 3 consists of four clauses which define the conditions of circumstances under which, in the absence of a congressional declaration of war, the Armed Forces of the United States "may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances."

The first three categories are codifications of the emergency powers of the President, as intended by the Founding Fathers and as confirmed by subsequent historical practice and judicial precedent. Thus, subsections (1), (2), and (3) of section 3 delineate by statute the implied power of the President in his concurrent role as Commander in Chief.

Subsection (4) of section 3 is perhaps the most significant; while subsections (1), (2), and (3) codify emergency powers which are inherent in the independent constitutional authority of the President as Commander in Chief, subsection (4) deals with the delegation by the Congress of additional authorities which would accrue to the President as a result of statutory action by the Congress, and which he does not, or would not, possess in the absence of such statutory action. Thus, subsection (4) regulates and defines the undertaking of a "national commitment."

Section 5 provides that actions taken under the provisions of section 3 "shall not be sustained beyond 30 days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless—"the continued use of such Armed Forces in hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof."

Section 5 resolves the modern dilemma of reconciling the need of speedy and emergency action by the President in this age of instantaneous communications and of intercontinental ballistic missiles with the urgent necessity for Congress to exercise its constitutional mandate and duty with respect to the great questions of war and peace.

A detailed, section-by-section explanation of the entire bill is contained in my speech of March 29, 1972, which initiated the Senate debate on the War Powers Act. I ask unanimous consent that the text of that speech, along with the text of the War Powers Act, be printed in the RECORD at the conclusion of my remarks. I ask unanimous consent that the report of the Foreign Relations Committee on the War Powers Act, dated February 9, 1972, also be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. JAVITS. Our experience of the last 5 years or more has demonstrated how much harder it is to get out of an undeclared war than it is to get into one. In dealing with this situation, Congress has been forced back onto relying solely on its power over appropriations. We have seen how difficult and unsatisfactory it is for Congress to try to get a meaningful hold on the Vietnam war through the funds cutoff route.

Yet there are a group of pundits, historians, and commentators who would have us fly directly in the fact of this tortuous experience and confine ourselves to the funds cutoff route. Those who would so advise us are either too

timid or to conservative to try institutional reform. They would have us face the presidential war power so often used as a fine tuned, subtle, and decisive instrument with a clumsy, blunt, and obsolescent tool. The fund cutoff remedy is there now and will be there when the war powers bill becomes law. It can then be an excellent sanction, but it is not a substitute.

The obvious lesson for Congress is to devise ways to bring to bear its extensive, policy powers respecting war at the outset, so that it is not left to fumble later in an after-the-fact attempt to use its appropriations power. This is what the War Powers Act seeks to do.

If James Madison had pressed his point on September 7, 1787, during the debate in the Constitutional Convention, we might not be faced with our current agonizing dilemma. Madison proposed then that two-thirds of the Senate be authorized to make treaties of peace without the concurrence of the President.

The President He said: would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace.

However, Madison withdrew his proposal without putting it to a vote.

It is not clear whether Madison was speaking seriously or facetiously. It is clear, however, that Presidents have tended to see their role, as Commander in Chief conducting a war, as the decisive power of the Presidency. President Nixon articulated this view very precisely, when he said last April:

Each of us in his way tries to leave (the Presidency) with as much respect and with as much strength in the world as he possibly can—that is his responsibility—and to do it the best way that he possibly can. . . . But if the United States at this time leaves Vietnam and allows a Communist takeover, the office of President of the United States will lose respect and I am not going to let that happen.

The effort embodied in the War Powers Act is the fulcrum, in my judgment, of the broader attempt of the Congress to redress the dangerous constitutional imbalance which has developed in the relationship between the President and the Congress. Unless Congress succeeds in reasserting its war powers I do not think it can succeed in reasserting its powers of the purse which have grown so weak in comparison with the executive branch.

The publicists and the lawyers of the Presidency have been busy for years now in advancing a new constitutional doctrine. According to this novel doctrine the President has inherent powers, in his role as Commander in Chief, to override any other powers conferred anywhere else in the Constitution.

We have reached a point where proponents of the Presidency seem to be claiming that the power of the Commander in Chief is what he himself defines it to be in any given circumstance. This is the challenge that must be met by the Congress. If this challenge is not met successfully by the Congress, I do not see how it can prevent the further erosion of its powers and jeopardize freedom itself.

Most Senators are already familiar with the War Powers Act. It was the subject of extensive, and indeed historic, hearings before the Foreign Relations Committee in 1971. The printed record of those hearings constitutes the most comprehensive inquiry into this vital constitutional issue in our Nation's history. The bill was subjected to further intense scrutiny in a major Senate debate which lasted from March 29 to April 13, 1972, when the Senate voted 68 to 16 to adopt the legislation.

In view of the action of the Senate in 1972, and the number of cosponsors who have joined in reintroducing the War Powers Act today, I am hopeful that the Senate will again pass this historic measure.

The sponsors of the War Powers Act are hopeful that this year the bill will be considered on its merits in the House of Representatives, where it has not yet received full committee hearings or been accorded a debate and a vote on the floor of the House. In 1972, the House of Representatives passed a bill principally sponsored by Representative ZABLOCKI seeking advance notice from the President and requiring a full report in instances involving the use of the Armed Forces in hostilities without specific prior authorization by the Congress. This bill essentially accepted the notice provisions of the War Powers Act, but went no further. In the ensuing conference between the Senate and House, the conferees could find no common ground, as the House measure completely eliminated the Senate principle of joint control by the President and the Congress of the war-making power. In this endeavor, above all others, the House and the Senate should be partners in a common cause to protect the viability of the Congress as a coequal branch of Government under our constitutional system.

Mr. President, I do take heart from the fact that the new bill introduced this year by Representative ZABLOCKI contains some significant new elements bringing it closer to the Senate bill. For one thing, it provides for further consideration of the President's actions by Congress.

For another thing, it seeks to specify and define the emergency situations in which the President is empowered to use the Armed Forces without a declaration of war. I am encouraged by these new provisions in the Zablocki bill. They give evidence that the House of Representatives, and the leaders on this vital issue in that Chamber, have not frozen their thinking on war powers. I look forward to a further convergence of views.

Mr. President, the Congress itself is on trial in the eyes of the people and the War Powers Act is a decisive test. The issue addressed by the War Powers Act is a fundamental constitutional issue. It rejects the premise that the issue of "presidential war" can be handled by making distinctions between "good" Presidents and "bad" Presidents. We could never arrive at an agreed criteria for making such judgments and there is no way such distinctions could be applied to presidential wars on an ad hoc basis.

The need is for legislation which will assure congressional involvement at the outset of all wars. Our constitutional system requires a confidence that the Congress will act as responsibly as any President in the national interest. Even more significantly, it assumes that the national interest can best be defined and acted upon when both the President and the Congress are required to come to an understanding as to what is the national interest.

The War Powers Act embodies practical and well-conceived procedures to implement the constitutional war powers of Congress in a manner which fully meets the requirements of national security in the modern world.

Mr. President, I yield to the Senator from New Jersey.

Mr. CASE. Mr. President, I thank the Senator from New York for yielding to me and also for his reintroduction of this bill. I believe that I am a cosponsor of the measure. If not, I would like to be listed as a cosponsor.

Mr. JAVITS. The Senator from New Jersey is a cosponsor.

Mr. CASE. The only thing I want to emphasize at this time with relation to this question is something that the Senator from New York has already mentioned. Of course it is implicit in his whole action. And that is that in this area not only is the President limited by the appropriations authority of the Congress, but in addition to that, he is limited by the specific language of the Constitution. And this was meant to be different from the older establishment relationship of the Parliament and the King.

It was pointed out by Abraham Lincoln in a letter to his great friend, William Herndon, that it was this power of the kings to involve their countries in war that our Constitution understood to be the most oppressive of all kingly oppressions. The Founding Fathers resolved to frame the Constitution so that no man could keep that power for himself.

It is more than just the exercise of our power to withhold appropriations that is involved. We have in addition to the authority of Parliament at that point the specific authority of the Constitution in regard to a declaration of war. And this was meant to be additional and beyond our constitutional authority, far beyond anything that applied under the King's system of Parliament and the King.

Mr. JAVITS. Mr. President, I thank the Senator from New Jersey very much for calling our attention to this very important point, which even precedes the adoption of our own Constitution.

Mr. CASE. Mr. President, I yield now to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. PERCY. Mr. President, the question of congressional responsibility for the combat use of U.S. Armed Forces was fully explored during the last session. By an overwhelming vote of 68 to 16, the Senate passed S. 2956 to define the relative roles of the executive and legislature in warmaking. Unfortunately, S. 2956, which enjoyed broad public support, did not become law.

The reintroduction of this bill today offers a chance to complete the task. I

was a cosponsor of S. 2956 and I am cosponsoring its resubmission this session.

I remain deeply concerned about the question of under what circumstances and by whose decision the Armed Forces can be committed to combat. In 1970 I submitted a resolution (S. 409) declaring it to be the sense of the Senate that the President should not use the Armed Forces for any combat activity abroad without the express consent of Congress. The only exception would be an instance where the use of our forces would be necessary, pending congressional approval, to respond to a clear and direct attack upon the United States, its territories or possessions, or upon U.S. forces lawfully deployed pursuant to a treaty or other specific congressional authorization.

A number of other bills and resolutions were also introduced in both Houses and extensive and orderly consideration was given to this issue during the last session, both in committee hearings and in floor debate. It should not be necessary to retrace all of the historical precedents and other aspects of this question, but it is useful to restate some of the major points which justify support for the bill resubmitted today.

There is no question that the framers of the Constitution meant to give Congress the power to initiate hostilities. They made only one exception, empowering the President, as Commander in Chief, to repel sudden attacks. However, the Constitution does not specify whether, under what circumstances, or by whose decision the Armed Forces can be sent into battle when Congress has not declared war and there has been no sudden attack on the Nation.

Many examples have been cited from our history attesting to Congress' primary responsibility in the initiation of military actions. At the same time, many examples have also been given where in practice the Executive has ignored Congress' role. Particularly since the turn of the century, Presidents have used military force more freely, moving troops in support of foreign policy decisions and in reply to particular situations. More recently, questions about the division of powers and Congress' prerogatives have been raised most strongly in connection with the sending of U.S. troops into the Dominican Republic and Vietnam.

The question of congressional responsibility in warmaking has become a major issue in the country and—as we in Congress well know—the American people are determined that there shall be no future undeclared wars initiated by Presidents and prosecuted without wide public support. Since a President cannot effectively prosecute a war without congressional support and popular approval, adherence to the provisions of the War Powers Act could save Presidents from undertaking military adventures contrary to the wishes and interests of the American people. Moreover, legislation of this type can be a deterrent to impulsive, ill-considered actions which may involve the Nation in undesirable wars of no direct consequence to our national security.

As I made clear last session, this legislation is in no way a reflection on President Nixon, who inherited a major American war and has consistently reduced American involvement in that war. Had this legislation been enacted in 1960, President Nixon might never have had the conduct of the Vietnam war thrust upon him, because the United States might not have committed troops to combat in that war.

I should also like to reaffirm that this bill is a bipartisan, nonideological attempt by many Members of this body to delineate the executive-legislative relationship. It is not a liberal initiative, and it is not a conservative initiative. The distinguished senior Senator from New York has correctly characterized the bill as landmark legislation.

On the occasion of the resubmission of the War Powers Act, I would like to commend the Senator from New York (Mr. JAVITS), the Senator from Mississippi (Mr. STENNIS), the Senator from Missouri (Mr. EAGLETON), the Senator from Texas (Mr. BENTSEN), and the Senator from Ohio (Mr. TAFT), all of whom have made important contributions to this legislation and to the debate on its merits. I would also like to recall the work of the former Senator from Virginia, Mr. Spong, who participated so effectively in the hearings on S. 2056 last year.

Following are excerpts from a speech I made on this subject in this Chamber on April 5, 1972:

There is no question that the framers of the Constitution meant to give Congress the power to initiate hostilities. They made only one exception, empowering the President, as Commander in Chief, to repel sudden attacks.

At the Constitutional Convention, during the debate on war-making powers, James Madison of Virginia and Elbridge Gerry of Massachusetts challenged the phrase "to make war" which had been the focus of discussion. They moved to change the phrase from "make war" to "declare war," contending that this would leave to the President the power to repel sudden attacks. This motion was agreed to by a vote of 8 to 1.

The Constitution ultimately named the President as Commander in Chief of the Army and Navy, and empowered him to make treaties with the advice and consent of Congress. To Congress was allocated the power to levy taxes for the common defense, to declare war, to raise and support armies, to provide and maintain a navy, and to make rules for the government and regulations of the land and naval forces.

When, at the Convention, Pierce Butler of South Carolina had suggested that the war-making power could be safely vested in the President, Mr. Gerry replied that he never expected to hear in a republic a motion to authorize the Executive alone to declare war. As I have mentioned, the Madison-Gerry motion was adopted, limiting the war-initiating power of the President to repelling sudden attacks.

But that is the limit of the Constitution's mandate in regard to war-making powers. Nowhere does the Constitution specify whether, under what circumstances, or by whose decision can the Armed Forces be sent into battle when Congress has not declared war and there has been no sudden attack on the Nation.

At the beginning of our constitutional history, the primary responsibility of Congress in the initiation of war was frequently proclaimed and upheld. President Adams, in 1798, concerned about French threats to American shipping, waited until Congress provided the authority to move. Alexander Hamilton had advised the administration, in a letter to Secretary of War James McHenry, as follows:

"In so delicate a case, in one which involves so important a consequence as that of war, my opinion is that no doubtful authority ought to be exercised by the President.

In 1801, in his opinion on the Amelia case, Chief Justice John Marshall stated that the "whole powers of war" were vested in Congress.

That same year, Tripoli declared war on the United States when the United States refused to pay tribute in exchange for safe passage of American ships. President Jefferson moved ships to the Mediterranean with orders limiting them to self-defense and the defense of other American ships. He told the Congress that he felt obligated to take only defensive actions because he was "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense."

During a dispute with Spain in 1805, President Jefferson renounced the use of force, saying that he thought it was his duty to await congressional authority "considering that Congress alone is constitutionally invested with the power to changing our position from peace to war."

In equally unequivocal statements, President Monroe and Secretaries of State John Quincy Adams and Daniel Webster, stated that the initiation of war is a prerogative of Congress. President Monroe wrote:

"The Executive has no right to compromise the nation in any question of war."

Adams wrote that under the Constitution "the ultimate decision" belongs to Congress. Webster states:

"I have to say that the war-making power rests entirely with Congress and that the President can authorize belligerent operations only in the cases expressly provided for by the Constitution and the laws. By these no power is given to the Executive to oppose an attack by one independent nation on the possessions of another."

In 1846, when President Polk moved troops into territory disputed between this country and Mexico, resulting in hostilities, Congress reluctantly declared war after the fact. Later, when the House of Representatives was resolving to thank Zachary Taylor, the victorious general, an amendment to the resolution stated that the war "was unnecessarily and unconstitutionally begun by the President of the United States." Former President John Quincy Adams, then a Member of the House, and future President Abraham Lincoln voted for the amendment which was adopted by a vote of 85 to 81, but later dropped.

In 1857, Secretary of State Lewis Cass, responding to a British request to send ships in support of an expedition to China, wrote to the British Foreign Office as follows:

"Under the Constitution of the United States, the executive branch of the Government is not the war-making power. The exercise of that great attribute of sovereignty is vested in Congress, and the President has no authority to order aggressive hostilities to be undertaken."

President Buchanan made the point as forcefully when he asked Congress for authority to protect transit across Panama in 1858. In his message to the Congress on December 6 of that year, he said:

"The executive government of this country in its intercourse with foreign nations is limited to diplomacy alone. When this fails it can go no further. It cannot legitimately resort to force without authority of Congress, except in resisting and repelling hostile attacks."

In 1900, President McKinley sent thousands of American troops to suppress the Boxer Rebellion in China and to rescue Western nationals in Peking. Although he was accused of acting without congressional authority, Congress had already adjourned and, because it was an election year, there was

no interest in returning for a special session.

In 1911, President William Howard Taft sent troops to the Mexican border, but conceded that only Congress could authorize sending troops across the border. In a message to Congress, President Taft said:

"The assumption of the press that I contemplate intervention on Mexican soil to protect American lives or property is of course gratuitous, because I certainly doubt whether I have such authority under any circumstances, and if I had I would not exercise it without express Congressional approval."

Since the turn of the century, Presidents have used military force more freely, moving troops in support of foreign policy decisions and in reply to particular situations. Thus, an incursion was made into Mexico in pursuit of the bandit, Pancho Villa, in 1917. President Wilson sent marines to fight in Haiti and Santo Domingo. President Truman sent hundreds of thousands of troops to fight in Korea. All these actions were taken by the Executive without congressional authority. They negate the concept, central to the Constitution, that our government requires a balance of powers within a system of checks and balances.

Of course, questions about the division of powers and the Congress' prerogatives have been raised most strongly in connection with the sending of U.S. troops into the Dominican Republic and Vietnam. Until Congress passed the Gulf of Tonkin resolution, the use of American troops in combat in Vietnam was totally without congressional approval. For this reason, more than any other, the question of congressional responsibility for war making has become a major issue in the country. As most of us in Congress well know, the American people are determined that there shall be no future undeclared wars initiated by presidents and prosecuted without wide public support. The people insist that Congress measure up to its constitutional role, and this legislation seeks to do just that—to clarify the Congressional role so that this Congress and future Congresses will do their duty.

Legislation of this type can be a deterrent to impulsive, ill-considered actions which may involve the Nation in undesirable wars which are of no direct consequence to our national security. There would be quick Congressional accord when a military action is obviously necessary to the Nation's security. Certainly the authority of presidents to respond to instant threats would in no way be impaired.

The distinguished journalist and student of world affairs, Roscoe Drummond, has written: "One thing the whole nation has learned from the Korean and Vietnam wars is that the United States armed forces must never be used in combat abroad without advance and explicit authorization by Congress except in case of direct attack. No president should ever make that decision by himself—never again. That is why it is urgent that Congress soon recover its full constitutional power to decide if, when, and under what circumstances the U.S. shall go to war."

Referring to my own Senate Resolution 409 which, like the pending bill, seeks to affirm Congressional responsibility in war making, Mr. Drummond wrote: "This is no radical proposal. It is simply bringing practice into conformity with the Constitution. . . . Now is the moment to put this principle and this policy into practice."

Now is surely the moment, although I think all will agree that ten years ago would have been an even better moment for the enactment of legislation to protect the Nation from unnecessary, undesirable wars.

Mr. JAVITS. I am very grateful to my colleague. I thank him very much. He has emphasized one point which is critical to me: If the President—our President, for whose reelection I worked, as did the Senator from New Jersey and the Senator from Illinois—does understand us clearly, then he will lend us his assistance in fashioning what should be the proper methodology to deal with what is obviously a vacant place in the Constitution; and that would be the most desirable result.

Mr. PERCY. I concur.

Mr. JAVITS. I thank the Senator.

EXHIBIT 1

THE WAR POWERS ACT: WHAT IT MEANS

(Remarks by Senator JAVITS, March 29, 1972)

The War Powers Bill (S. 2956) is one of the most important pieces of legislation in the national security field that has come before the Senate in this century. The bill's various sections are carefully interrelated and interdependent. As the Senator who probably has had the longest experience with the evolution of the bill, I will concentrate my remarks on an explanation of the bill and how it is intended to work, and I shall try to dispel the allegations which have been made against it by the State Department and other critics.

I shall begin by dealing with the constitutionality of S. 2956, as well as its historical background and then proceed to a detailed explanation of the bill.

In this connection we should begin with the words of the Constitution itself because from what many critics of S. 2956 have said, it almost seems as if they have neglected to read what the Constitution in fact does say about the war powers.

WAR POWERS OF CONGRESS

Article I, Section 8 of the Constitution enumerates the war powers of Congress. The list of these powers is both detailed and comprehensive:

—"provide for the common defense"

—"to define and punish . . . offences against the law of nations"

—"to declare war"

—"to raise and support armies"

—"to make rules for the government and regulation of the land and naval forces"

—"to provide for calling forth the militia to execute the laws . . . and repel invasions"

—"to provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States."

The powers of Congress which I have just listed are extensive and specific, but the Founding Fathers went even further to buttress the power of Congress in this field. They did this by concluding Article I, Section 8 with an all-inclusive power—the "necessary and proper" clause, which empowers Congress:

"to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and *all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.*" (italic added)

THE PRESIDENT AS COMMANDER IN CHIEF

And, compared with the war powers of Congress so specifically enumerated in the Constitution, let us examine the war powers actually granted to the President in the Constitution. These powers at best can be described as sparse and cryptic. Article II, Section 1 states: "The executive power shall be vested in a president of the United States of America."

Article II, Section 2, states, without further elaboration:

"The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States."

It would be useful at this point to take a look at the "legislative history" of the Commander-in-Chief concept as it is used in the Constitution. There was no doubt in the minds of the drafters of the Constitution about who would be the first President of the United States. George Washington was elected unanimously to the office less than 2 years after completion of the Constitutional Convention. Twelve years earlier, in June 1775, the Continental Congress had appointed George Washington to be "Commander-in-Chief" of the colonial forces. Washington held this post as Commander-in-Chief until his formal resignation and return of his commission in December 1783. He was the only Commander-in-Chief the United States had ever had when in 1787 the Constitution was drafted and the phrase "Commander-in-Chief" written into it.

Clearly, the drafters of the Constitution had the experience of the Continental Congress with George Washington in mind when they designated the President as "Commander-in-Chief" in Article II, Section 2. Thus, the "legislative history" of the constitutional concept of a Commander-in-Chief was the relationship of George Washington as colonial Commander-in-Chief to the Continental Congress.

That relationship is clearly defined in the Commission as Commander-in-Chief which was given to Washington on June 19, 1775, and which was formally returned by him to the Continental Congress on December 23, 1783.

I would like to quote the final clause of this Commander-in-Chief's Commission, because it establishes the relationship of the Congress to the Commander-in-Chief in unmistakable terms:

"And you are to regulate your conduct in every respect by the rules and discipline of war (as herewith given you) and punctually to observe and follow such orders and directions from time to time as you shall receive from this or a future Congress of the said United Colonies or a committee of Congress for that purpose appointed."

THE PRESIDENT'S EXPANDING POWERS

I have dwelt at some length on this question of the Congress' war powers, and the relationship of those powers to the President's function as Commander-in-Chief, because critics of the War Powers Bill so often choose to ignore what the Constitution says. Moreover, out of the sparse and cryptic language of Article II, Section 2 of the Constitution there has grown up an extraordinarily overblown doctrine of so-called Commander-in-Chief powers. The outer limits of this doctrine are cited as a barrier against even the exercise by Congress of its own clearly enumerated war powers. For instance, in his testimony before the Senate Foreign Relations Committee, Secretary of State Rogers approvingly quotes the following assertion of the Truman Administration; ". . . the President, as Commander-in-Chief of the Armed Forces of the United States, has full control over the use thereof."

To this ever-expanding doctrine of exclusive Commander-in-Chief power, Secretary Rogers added a new dimension of his own, in telling the Foreign Relations Committee:

"I would think that his powers as Commander-in-Chief would authorize him to take whatever action he felt necessary to try to protect the safety and the lives of our prisoners of war."

Presumably this could include authority on his own to invade North Vietnam, Laos, Cambodia and perhaps even the People's Republic of China. I doubt that there are many Americans who would go this far even to agree with Secretary Rogers.

HISTORICAL AND CONSTITUTIONAL PERSPECTIVES OF THE WAR POWERS BILL

The constitutional aspects of the War Powers Bill were investigated in a most authoritative way in the hearings conducted by the Foreign Relations Committee. The record

of those hearings is already coming to be recognized as the most comprehensive and authoritative examination in existence of the constitutional war powers issues. Law schools from all around the Nation are writing in for copies. I commend the hearings to all Senators interested in this subject.

The question has been asked, quite rightly, why—after all these years—do we need a war powers bill now? It is clear that the Administration opposes any legislation in the war powers field and is apparently quite happy with the present situation. Secretary Rogers said that the War Powers Bill: ". . . reflects an approach not consistent with our constitutional tradition." The Secretary further felt that the "respective roles and capabilities" of the Executive and the Congress should be "left to the political process."

It is the failure of this approach which necessitates a war powers bill. The golden days of Senator Vandenberg have been obliterated by the Vietnam war.

The constitutional imbalance, which has reached such dangerous proportions and which is the prime factor behind this bill, is a recent development growing out of the last few decades. The United States emerged from World War II as the dominant world power—a role alien to all our previous national experience. The unique challenges arising from this new role were such that we slipped into a practice which ran counter to the genius of our Constitution and the underlying structure of our political system. This practice has concentrated the essential war power in the institution of the Presidency and left Congress little more than an appropriations and confirmatory role. It has proved to be a most costly failure which has dangerously strained the fabric of our whole society.

Throughout our history it has been recognized that the essential conduct of foreign policy was a prerogative of the President. But until the United States emerged from World War II as the dominant power of the world, the President's foreign policy portfolio was a relatively modest one, evolving only slowly in our history from the traditions established by President George Washington's admonition to beware of "foreign entanglements."

The Founding Fathers were deeply distrustful of "standing armies." At the time of the ratification of the Constitution, the United States Army consisted of a total of 719 officers and men. On the eve of the Civil War it was only 28,000 and in 1890 it was only 38,000. Even in 1915, the Army numbered less than 175,000. However, since 1951 the size of our "standing" armed forces rarely has dipped below 3,000,000 men. These forces under the President's command are equipped with nuclear weapons and submarines, intercontinental missiles, supersonic jets and they are deployed all over the world. A budget of more than $83 billion has been requested to support these forces in FY 1973.

It is the convergence of the President's role of conducting the foreign policy with his role as Commander-in-Chief of the most potent "standing army" the world has ever seen that has tilted the relationship between the President and Congress so far out of balance in the war powers field. It is this convergence which has created the new situation requiring countervailing action by Congress to restore the Constitutional balance.

EXPLANATION OF THE BILL

It is important to note that the provisions of this bill govern the use of the Armed Forces: *"In the absence of a declaration of war by the Congress."* In this bill we are dealing with *undeclared wars*—wars which have come to be called Presidential wars because the constitutional process of obtaining Congressional authorization has been short-circuited.

Undeclared wars are not a new phenomenon in our history. Our Armed Forces have been introduced in hostilities many more times in the absence of a declaration of war than have been pursuant to a declaration of war. The key problem for the Congress and our Nation, particularly in contemporary circumstances, is undeclared war, or Presidential war, as epitomized by Vietnam. It is to this urgent, contemporary problem that S. 2956 addresses itself.

Section 1 of the bill contains its short title—the "War Powers Act."

Section 2 is a self-explanatory short statement of "Purpose and Policy," stressing its intention to ". . . insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances . . ."

Section 3 (along with Section 5) is the core of the bill. Section 3 consists of four clauses which define the conditions or circumstances under which, in the absence of a Congressional declaration of war, the Armed Forces of the United States "may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances."

The first three categories are codifications of the emergency powers of the President, as intended by the Founding Fathers and as confirmed by subsequent historical practice and judicial precedent. Thus, subsections (1), (2), and (3) of Section 3 delineate by statute the implied power of the President in his concurrent role as Commander-in-Chief.

The authority of Congress to make this statutory delineation is contained in the enumerated war powers of Congress in Article I, Section 8 of the Constitution, which I cited at the outset. Most importantly, the authority of Congress to make this statutory delineation is contained in the final clause of Article I, Section 8, granting to Congress the authority:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

REPELLING ARMED ATTACK ON THE UNITED STATES

Subsection (1) of Section 3 confirms the emergency authority of the Commander-in-Chief to:

"repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;"

It should be noted that this subsection authorizes the President not only to repel an attack upon the United States and to retaliate but also *"to forestall the direct and imminent threat of such an attack."* The inclusion of these words grants a crucial element of judgment and discretion to the President. While it was thought by some that the power to "forestall" was inherent in the power to "repel," it was decided to expressly include the forestalling power to avoid any ambiguity domestically or in the eyes of any potential aggressor. Its inclusion belies the allegation of critics that the bill is "inflexible."

Nonetheless, while the President clearly must apply his discretion and judgment to the implementation of this authority, it is by no means a "blank check." For the President to take forestalling action, the threat of attack must be "direct and imminent." Moreover, he must justify his judgment on this point under the mandatory reporting provisions contained in Section 4. But, and this is the point to be emphasized, the judgment is his.

REPELLING ATTACK ON U.S. ARMED FORCES

Subsection (2) further defines the emergency power of the President:

"to repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack;"

The authority contained in this subsection recognizes the right, and duty, of the Commander-in-Chief to protect his troops. Like subsection (1) it includes the authority to forestall a direct and imminent threat of attack, as well as to repel an attack. Clearly, just as the President would not have to wait until the bombs actually started landing on our soil to act against an attack upon the United States, similarly our forces would not have to wait until enemy bullets and mortars hit before they could react.

Nonetheless, it will be noted that the power to repel attacks upon the Armed Forces located outside the United States is less comprehensive in one respect than the power to repel attacks upon the United States itself. While the subsection contains the authority to repel and forestall, it does not include the separate and broader power to retaliate.

There are good reasons for this. First, it should be emphasized that the President could of course take retaliatory action if an attack upon our Armed Forces abroad was leading to an attack upon the United States. And he could do this respecting our NATO forces as part of his forestalling powers relating to an attack upon the United States. Nonetheless, the wording of this provision is meant to retain safeguards against wider embroilment resulting from incidental attacks upon U.S. Forces, or attacks resulting from provocative actions by local U.S. commanders. Thus, for instance, an attack upon a Marine Guard at our Embassy in Nepal would not trigger an authority to retaliate by seizing the country. Likewise, for instance, a sneak attack on security guards at one of our airbases in Thailand would not trigger an authority to retaliate by launching search and destroy missions into Northern Laos.

PROTECTING U.S. CITIZENS ABROAD

Subsection (3) codifies that the authority of the President to rescue United States citizens and nationals abroad—and this would include foreign soil as ships or planes on or over the high seas. By defining the circumstance and procedurec to be followed, this subsection is a conscious movement away from some of the excesses of nineteenth century gunboat diplomacy. The language of this subsection is as follows:

"to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States, and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country;"

NATIONAL COMMITMENTS

Subsection (3) is perhaps the most significant part of the bill. For, while subsections (1), (2), and (3) codify emergency powers which are inherent in the independent constitutional authority of the President as Commander-in-Chief, Section 3(4) deals with the delegation by the Congress of additional authorities which would accrue to the President as a result of statutory action by the Congress and which he does not, or would not, possess in the absence of such statutory action.

The language of Section 3(4) reads as follows: pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostili-

ties or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation *specifically* authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

The key phrase in this subsection is contained in its initial five words: "pursuant to specific statutory authorization." The rest of the subsection is an explanation, elaboration and definition of the meaning (for the purposes of the bill) of the words "pursuant to specific statutory authorization." In an important sense, this subsection gives legislative effect to S. Res. 85, the National Commitments Resolution adopted by the Senate on June 25, 1969 by a vote of 70 to 16 which states "that a national commitment by the United States to a foreign power necessarily and exclusively results from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment."

The significance of subsection (4) is multiple. First, it establishes a mechanism by which the President and the Congress *together* can act to meet any contingency which the nation might face.

There is no way to legislate national wisdom but subsection (4) does provide important protection to the American people by requiring that the Congress as well as the President must participate in the critical decision to authorize the use of the Armed Forces of the United States in hostilities, other than hostilities arising from such "defensive" emergencies as an attack upon the United States, our Armed Forces abroad, or upon U.S. citizens abroad in defined circumstances. It provides as much flexibility in the national security field as the wit and ingenuity of the President and Congress may be jointly capable of constructing.

Subsection (4) places a big responsibility upon the President as well as the Congress. The initiative in generating "specific statutory authorization" to meet contingencies and developing crises may in most instances come from the President. As the conductor of foreign policy, with all the information and intelligence resources at his command, it will be incumbent upon him to present the case to the Congress and the nation.

There is a clear precedent for the action anticipated in subsection (4)—the "area resolution." Over the past two decades, the Congress and the President have had considerable experience with area resolutions—some of it good and some quite unsatisfactory. In its mark-up of the War Powers Bill, the Foreign Relations Committee considered this experience carefully in approving the language of subsection 3 (4). The intent of the final clause of subsection (4) is to uphold the validity of three area resolutions currently on the statute books. These are: the "Formosa Resolution" (H.J. Res. 159 of January 29, 1955); the "Middle East Resolution" (H.J. Res. 117 of March 9, 1957, as amended); and the "Cuban Resolution" (S.J. Res. 230 of October 3, 1962).

The best known—and most controversial—of the area resolutions, the Tonkin Gulf Resolution (H.J. Res. 1145 of August 10, 1964), was repealed as of January 12, 1971.

The question may be asked: what is to guard against the passage of another resolution of the Tonkin Gulf type?

The answer is that any future area resolutions, to qualify under this bill as a grant of authority to introduce the armed forces in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, must meet certain carefully drawn criteria—as spelled out in the language of subsection (4). The pertinent language is:

". . . unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act. . ."

In other words, any future area resolution must be a specific grant of authority which would contain a direct reference to the Bill now under discussion. The phrase "exempts . . . from compliance with the provisions of this Act" is included to insure that the precise intention of the grant of authority is clearly established with reference to the War Powers Bill. The exemption could of course establish other procedures—or it could reaffirm all, or part, of the provisions of S. 2956. The bill thus allows for as much flexibility with respect to handling of any developing crisis or sudden emergency as the Congress and the President may jointly deem prudent.

Clearly, both the President and the Congress will have much to do, following the passage of this Bill. First, Congress will have to review closely the three area resolutions which are left standing by the provision of subsection (4). Legislation to terminate those resolutions has already been introduced.

As a first step in the mental attitude of partnership which will be brought about by this Bill, the Administration should review the world situation carefully and take the initiative in coming to the Congress with recommendations respecting the existing area resolutions—as well as recommendations for any new ones which the President may feel are needed for our national security.

As regards the three existing area resolutions which continue to qualify under subsection (4), the Nixon Administration, in another context, has said it did not rely on the resolutions and has taken the following position:

". . . as a functional matter, [the area] Resolutions have no continuing significance in the foreign policy formulation process, and it is for Congress to determine whether they should be terminated or simply allowed to fade away."

With the new situation that would follow the adoption of the War Powers Bill, a new approach would be required of the Executive.

At this point, I should draw attention to the fact that requests for new authority, pursuant to subsection (4), do *not* qualify for the "Congressional Priority Provisions" contained in Section 7. However, it is contemplated that Congressional consideration of new subsection (4) grants of authority can generally be undertaken in the absence of an imminent threat or emergency in a deliberative way, including committee hearings. The point here is to obviate a repetition of the unfortunate experience of the Congress with the Tonkin Gulf Resolution, which it was later realized went through the Congress without enough inquiry in the respective Committees and in the related floor debate, for it was confirmatory not plenary; and more a gesture of solidarity with the President than a decision on war by the Congress.

RENEWING CLOSE CONSULTATION

Not only must the Congress be prepared to play its role in the war powers area with wisdom and foresight—but with great responsibility.

And, an important new responsibility is also placed on the Executive branch. Last minute "crunches" can be avoided by a renewal of the earlier practice of continuing close consultation between the Executive branch and the relevant committees of Congress. The Executive will be obliged to make the Congress, again its partner in shaping the broad, basic national security and foreign policy of the Nation well in advance of the exercise of the war power.

CONGRESSIONAL AUTHORITY AND PRESIDENTIAL FLEXIBILITY

Some have argued that seeking Congressional authority to use the Armed Forces with respect to developing crisis situations would deprive the President of flexibility—or introduce ambiguity—in the conduct of foreign policy during crisis situations. It is said that the President would have to "telegraph his punches" and thus remove surprise from his diplomatic arsenal.

This charge does not stand up under scrutiny. First, the President would not be compelled or obliged to use the Armed Forces just because the Congress granted him the authority to do so. This could be made clear to the entire world through the public media facilities at the President's command, as well as through the diplomatic channels at his command.

Moreover, it is just not true, as some critics of the bill have alleged, that the passage of this legislation would inhibit the President's capacity to move elements of the fleet anywhere on the High Seas. To give a specific example, there is nothing in the bill which would have affected the President's decision to move elements of the Sixth Fleet into the eastern Mediterranean during the recent Jordanian crisis. The right of United States naval forces to operate freely anywhere in international waters would not be abridged by this bill. Moreover, the capacity of our armed forces to rescue U.S. citizens stranded or threatened on the high seas would not be restricted by the bill.

An important provision of Subsection (4) is contained in its first qualifying clause (A). As stated in the Committee Report, the purpose of this clause is to overrule the Orlando vs. Laird decision of the Second Circuit Court, which held that passage of defense appropriations bills, and extension of the Selective Service Act, constituted implied Congressional authorization for the Vietnam war.

TREATIES

One of the most far-reaching aspects of Subsection (4) is its provisions respecting treaties. Throughout the past two decades there has been continuing confusion, debate and controversy respecting a crucial phrase that is standard in our Nation's collective and bilateral security treaties; that phrase is that implemention of such treaties, as to involvement of U.S. forces in hostilities, will be in accordance with the "constitutional processes" of the signatories.

In an important sense, Subsection (4) defines "constitutional processes" for the first time, as it relates to treaty implementa-

tion by the United States. The definition of "constitutional processes" respecting treaty implementation is both negative and positive.

Subsection (4) makes a finding in law that no U.S. security treaties can be considered self-executing in their own terms. With respect to existing treaties the bill states:

"No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation . . ."

Additionally, the Subsection states that authorization for introducing the armed forces in hostilities shall not be inferred:

". . . from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act."

It is important to bear in mind that these negative findings with respect to treaties must be considered in conjunction with the authority of the President in Subsections (1), (2) and (3). The authority contained in those Subsections is in no way abridged or diminished by the negative findings on treaties *per se*.

Moreover, as the language of the Subsection makes clear, the bill envisages the adoption of treaty implementation legislation, as deemed appropriate and desirably by the Congress and the President. Such implementing legislation would constitute the authority "pursuant to specific statutory authorization" called for by Subsection (4).

There are two principal reasons for including these provisions with respect to our collective and bilateral security treaties. First, is to ensure that both Houses of Congress must be affirmatively involved in any decision of the United States to engage in hostilities pursuant to a treaty. Treaties are ratified by and with the consent of the Senate. But the war powers of Congress in Article I, Section 8 of the Constitution are vested in both Houses of Congress and not in the Senate (and President) alone. A decision to make war must be a national decision. Consequently, to be truly a national decision, and, most importantly, to be consonant with the Constitution it must be a decision involving the President and both Houses of Congress.

Second, the negative findings with respect to treaties is important so as to remove the possibility of a future issue of bitter contention such as arose with respect to the SEATO Treaty and the Vietnam war.

Treaties are not self-executing. They do not contain authority within the meaning of Section 3(4) to go to war. Thus, by requiring statutory action, in the form of implementing legislation or an area resolution of the familiar type, the War Powers Bill performs the important function of defining that elusive and controversial phrase—"constitutional processes"—which is contained in our security treaties.

Subsection (4) contains one additional important provision. It states:

"Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities."

As explained in the Committee report, the purpose of this provision is "to prevent secret, unauthorized military support activities." Senators conversant with the major debates of the past five years will recognize that this provision is designed to prevent a repetition of many of the most controversial and regrettable actions of the past two administrations in Indochina. For, we know that the ever deepening ground combat involvement of the United States in South Vietnam began with the assignment of U.S. "advisors" to accompany South Vietnamese units on combat patrols. Soon, such U.S. advisors were authorized to shoot, first in self-defense, and later, without restriction. And, in Laos, secretly and without Congressional authorization, U.S. "advisors"—frequently members of the Armed Forces on "loan" to the CIA—have been deeply engaged in the war in northern Laos.

We now have the anomalous situation in Cambodia where, despite legislative prohibitions against the introduction of U.S. advisors, we find that Cambodian forces are being trained in South Vietnam and then are accompanied back to Cambodia by members of the U.S. Armed Forces who have been training them but who are now designated as members of the military equipment delivery team. So far, I am not aware of any actions by U.S. forces in Cambodia which would violate the provision of the War Powers Bill which I am now discussing. However, the press is full of reports that communist forces are active around Phnom Penh and may soon launch an attack on the capital city itself. In such circumstances, one is concerned whether the so-called military equipment delivery teams, whose members have been training the Cambodians a few miles across the border, are likely to become involved in combat actions of the sort this provision of the War Powers Bill is designed to prevent unless there is specific statutory authorization to do so.

The situation in Cambodia is, of course, a hypothetical one in the context of this bill which does not apply to the ongoing hostilities in Indochina. Nonetheless, it points up the weakness of some of the previous Congressional efforts to achieve similar *ad hoc* restrictions through what I would call the appropriations route. Here, we find that semantic dexterity on the part of the Pentagon has created a loop-hole which gets around the best intent of Congress. One can well question the Pentagon's insistence that it is not defying the statutory ban contained in H.R. 19911—the Cooper-Church amendment which states:

"none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, *or to provide United States advisers to or for Cambodian military forces in Cambodia.*"

CONGRESSIONAL AUTHORITY FOR PRESIDENTIAL WARS

The approach taken in the War Powers Bill reverses the situation by placing the burden on the Executive to come to Congress for specific authority. The sponsors of the Bill believe that this provision will provide an important national safeguard against creeping involvement in future Vietnam-style wars. The danger of U.S. involvement in wars over the next decade at least would appear to be greater as regards small, "limited" brushfire, undeclared wars of obscure beginnings—such as the ones which have wracked Southeast Asia for the past several decades—than the danger of a big conventional war.

The State Department has raised the charge that this provision of S. 2956 would require the disbandment of NATO's unified command. I believe this to be a faulty and distorted reading of the legislation. It is certainly a reading which is in direct contradiction of the legislative purpose of the authors and sponsors of the Bill, and in normal operation it contradicts the plain text of the Bill. However, should any legitimate doubts persist on this point, following the Senate debate, the Senate could pass a specific statutory authorization for members of the Armed Forces of the United States to continue to participate fully in the NATO unified command. I would be glad to sponsor and introduce myself a joint resolution to this effect, if it should be considered desirable. Hence, it is important that we guard against any weakening of this important provision by irrelevancies which would reopen the flood gate to future Vietnams.

Section 4 of S. 2956 requires the President to report "promptly" in writing to both Houses of Congress any use of the Armed Forces covered by Section 3 of the Bill. The provisions of this section are clear and simple. In his report to Congress, the President is required to include "a full account of the circumstances under which . . . [he has acted], . . . the estimated scope of such hostilities or situation, and the consistency of the introduction of such forces in such hostilities or situation with the provisions of section 3 of this Act."

In addition, the President is required to make periodic, additional reports so long as the Armed Forces are engaged in circumstances governed by section 3. Such additional reports shall be submitted at least every six months.

It will be noted that the President is required to report "promptly." This word has been used in preference to "immediately" or a possible specific time limit such as 24 hours. The important thing is that the report must be prompt but it must also be comprehensive. It might take a few days for the Executive branch to assemble all the facts and reports from the field, as well as to assemble the various intelligence reports and, most importantly, to prepare an informed judgment on the "estimated scope of such hostilities."

What we are looking for here is a full and accurate report of events, combined with an authoritative statement by the President of his judgment about the direction in which the situation is likely to develop. The Congress can act intelligently and responsibly only when it has the necessary information at hand. We cannot allow a repetition of the experience we had with respect to the Tonkin Gulf Resolution, where we later learned that we were provided with incomplete, even misleading and inaccurate, reports of what had actually occurred.

It is important to bear in mind that the reporting requirements of the Bill apply independently of the provisions of Sections 5, 6 and 7. There are several reasons for this, despite the fact that there inevitably will be a close *de facto* operational connection between the President's report under Section 4 and the subsequent actions of Congress under Sections 5, 6 and 7.

First, it should be clear that the President's mandatory report is not to be considered a request for an extension of authority as might be granted subsequently under Section 5. Such a request can only be introduced by a member of Congress.

Second, it is entirely possible that even a majority of the actions taken under the President's direction pursuant to Section 3 will be short-lived, one-shot actions completed well within the thirty day time period, and thus requiring no extension in time of the authority spelled out in Section 3.

THIRTY-DAY AUTHORIZATION PERIOD

The Committee Report characterizes Section 5 as "the heart and core of the Bill." Taken in conjunction with Section 3 it is just that. It is the crucial embodiment of Congressional authority in the war powers field, based on the mandate of Congress enumerated so comprehensively in Article I, Section 8 of the Constitution. Section 5 rests squarely and securely on the words, meaning

and intent of Section 8, Article I and thus represents, in an historic sense, a restoration of the constitutional balance which has been distorted by the practice of recent decades.

Section 5 provides that actions taken under the provisions of Section 3 ". . . shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless the continued use thereof in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof."

Section 5 resolves the modern dilemma of reconciling the need of speedy and emergency action by the President in this age of instantaneous communications and of intercontinental ballistic missiles with the urgent necessity for Congress to exercise its constitutional mandate and duty with respect to the great questions of war and peace.

The choice of thirty days, in a sense, is arbitrary. However, it clearly appears to be an optimal length of time with respect to balancing two vital considerations. First, it is an important objective of this Bill to bring the Congress, in the exercise of its constitutional war powers, into any situation involving U.S. forces in hostilities at an early enough moment so that its (Congress') actions can be meaningful and decisive in terms of a national decision respecting the carrying on of war. Second, recognizing the need for emergency action, and the crucial need of Congress to act with sufficient deliberation and to act on the basis of full information, thirty days is a time period which strikes a balance enabling Congress to act meaningfully as well as independently.

It should be noted further, that the thirty day provision can be extended as Congress sees fit—or it can be foreshortened under Section 6. The way the Bill is constructed, however, the burden for obtaining an extension under Section 5 vests on the President. He must obtain specific, affirmative, statutory action by the Congress in this respect. On the other hand, the burden for any effort to foreshorten the the thirty day period rests with the Congress, which would have to pass an act or joint resolution to do so. Any such measures to foreshorten the thirty day period would have to reckon with the possibility of a Presidential veto, as his signature is required, unless there is sufficient Congressional support to override a veto with a two-thirds majority.

The issue has been raised, quite properly, as to what would happen if our forces were still engaged in hot combat at the end of the thirtieth day—and there had been no Congressional extension of the thirty day time limit.

The answer is that the President, in his capacity as Commander-in-Chief and in accordance with his duty as Commander-in-Chief to protect his troops, would not be required or expected to order the troops, to lay down their arms.

The President would, however, be under statutory compulsion to begin to disengage in full good faith to meet the thirty-day time limited. He would be under the injunction placed upon him by the Constitution, which requires of the President that: "he shall take care that the laws be faithfully executed."

The thirty-day provision contained in Section 5 thus assumes that the President will act according to law. No other assumption is possible unless we are to discard our whole constitutional system. So long as the President is acting in good faith in acting to disengage, there would be no constitutional confrontation over fighting by our forces after the thirty-day period (or any other period established by statute).

Section 6 of the bill establishes that Congress may, through statutory action, foreshorten the thirty-day provisions of Section 5. Clearly, such action could only happen in most extraordinary circumstances wherein a President might act in blatant opposition to the national will or the national interest.

ANTIFILIBUSTER SAFEGUARD

Section 7 is an important provision of the bill which establishes strict procedures to assure priority Congressional action to extend, or foreshorten, the thirty-day time period as provided in Sections 5 and 6. The provisions of Section 7 are included to remove the possibility that action in this regard could be prevented or delayed through filibuster or committee pigeon-holing.

It is important to note again that requests for authority under Subsection (4) of Section 3 would not qualify for the priority consideration procedures established in Section 7. In other words, a Presidential request for an area resolution of the type contemplated in Section 3, Subsection (4) would not trigger the provisions of Section 7. Such requests would be considered by Congress under normal procedures. Section 7 would apply only with respect to measures which would extend (or foreshorten) measures already previously made statutory under Section 3.

To give an example, the Tonkin Gulf Resolution could not have been shoved through the Congress under the priority consideration procedures of Section 7. On the other hand, hypothetically, if United States Armed Forces were fighting in Mexico, pursuant to specific statutory authorization under Section 3, to resist an invasion by the Soviet Union or Cuba, a resolution to extend the thirty-day authorization period would qualify for the priority consideration procedures, if sponsored or cosponsored by one-third of the membership of the House in which it was introduced.

Finally, it should be noted that an important measure of flexibility has nonetheless been retained in Section 7. Its strict, almost instant, provisions can be modified in any particular instance by a majority vote of the members of the House in which it is being considered. This is the meaning of the phrase "unless such House shall otherwise determine by yeas and nays." The significance of this "escape clause" is that in situations which clearly do not constitute a national emergency, the Congress can proceed as it may decide to, upon majority vote.

Section 8 contains a standard separability clause which simply provides that if any provision of the bill should be held invalid, this would not effect the validity of the rest of the bill.

Section 9 provides that:

"This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act."

The purpose of this section is very clear and straightforward. The bill is not intended to apply retroactively to the Vietnam War should that war still be in progress when this act becomes effective. I am confident that the wisdom of this decision will be evident to most Senators.

CONCLUSION

The real question—and the State Department admits it—is, independently of Congress, "to what extent the President has the power to use the armed forces by virtue of his role as Chief Executive, as Commander-in-Chief, and in the conduct of foreign relations." In practice, the question has been answered over the past several decades, in effect, by no limits being placed on this alleged power of the Commander-in-Chief so that the President has been able to commit the people to extended war. All he has asked from Congress is that it provide the money and the men he wants to pursue his policies. But this was almost the doctrine of Charles II or Louis XVI—not that any American President so intends it, but he is driven to it by some awful logic if this claim of power by the Executive is acquiesced in by Congress and the Nation as valid under the Constitution. It is not valid if the Congress chooses to exercise its power under the "necessary and proper" clause to define by law the President's and its own role is going to war. And when the President's authority is so defined, as it will be if this War Powers bill becomes law, then the issue of authority is determined in an authoritative way, and, I have little doubt, will be carried out to the best of his ability in good faith by any American President.

EXHIBIT 2

S. 440

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

SHORT TITLE

SECTION 1. This Act may be cited as the "War Powers Act".

PURPOSE AND POLICY

SEC. 2. It is the purpose of this Act to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of the Armed Forces of the United States in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations. Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof. At the same time, this Act is not intended to encroach upon the recognized powers of the President, as Commander in Chief and Chief Executive, to conduct hostilities authorized by the Congress, to respond to attacks or the imminent threat of attacks upon the United States, including its territories and possessions, to repel attacks or forestall the imminent threat of attacks against the Armed Forces of the United States, and, under proper circumstances, to rescue endangered citizens and nationals of the United States located in foreign countries.

EMERGENCY USE OF THE ARMED FORCES

SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, only—

(1) to repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

(2) to repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack;

(3) to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from (A) any situation on the high seas involving a direct and imminent threat to the lives of such citizens and nationals, or (B) any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States,

and shall, where possible, obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country; or

(4) pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provision of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

REPORTS

SEC. 4. The introduction of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall be reported promptly in writing by the President to the Speaker of the House of Representatives and the President of the Senate, together with a full account of the circumstances under which such Armed Forces were introduced in such hostilities or in such situation, the estimated scope of such hostilities or situation, and the consistency of the introduction of such forces in such hostilities or situation with the provisions of section 3 of this Act. Whenever Armed Forces of the United States are engaged in hostilities or in any such situation outside of the United States, its territories and possessions, the President shall, so long as such Armed Forces continue to be engaged in such hostilities or in such situation, report to the Congress periodically on the status of such hostilities or situation as well as the scope and expected duration of such hostilities or situation, but in no event shall he report to the Congress less often than every six months.

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless (1) the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities; or (2) Congress is physically unable to meet as a result of an armed attack upon the United States; or (3) the continued use of such Armed Forces in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN 30-DAY PERIOD

SEC. 6. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress, except in a case where the President has determined and certified to the Congress in writing that unavoidable military necessity respecting the safety of Armed Forces of the United States engaged pursuant to section 3(1) or 3(2) of this Act requires the continued use of such Armed Forces in the course of bringing about a prompt disengagement from such hostilities.

CONGRESSIONAL PRIORITY PROVISIONS

SEC. 7. (a) Any bill or joint resolution authorizing a continuation of the use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act, or any bill or joint resolution terminating the use of Armed Forces of the United States in hostilities, as provided in section 6 of this Act, shall, if sponsored or cosponsored by one-third of the Members of the House of Congress in which it is introduced, be considered reported to the floor of such House no later than one day following its introduction unless the Members of such House otherwise determine by yeas and nays. Any such bill or joint resolution, after having been passed by the House of Congress in which it originated, shall be considered reported to the floor of the other House of Congress within one day after it has been passed by the House in which it originated and sent to the other House, unless the Members of the other House shall otherwise determine by yeas and nays.

(b) Any bill or joint resolution reported to the floor pursuant to subsection (a) or when placed directly on the calendar shall immediately become the pending business of the House in which such bill or joint resolution is reported or placed directly on the calendar, and shall be voted upon within three days after it has been reported or placed directly on the calendar, as the case may be, unless such House shall otherwise determine by yeas and nays.

SEPARABILITY CLAUSE

SEC. 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE AND APPLICABILITY

SEC. 9. This Act shall take effect on the date of its enactment but shall not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act. Nothing in section 3(4) of this Act shall be construed to require any further specific statutory authorization to permit members of the Armed Forces of the United States to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this Act and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

EXHIBIT 3

WAR POWERS

The Committee on Foreign Relations, to which was referred the bill (S. 2956), to make rules governing the use of the Armed Forces of the United States in the absence of a declaration of war by the Congress, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

WHAT THE BILL PROVIDES

The purpose of the war powers bill, as set forth in its statement of "purpose and policy," is to fulfill—not to alter, amend, or adjust—the intent of the framers of the United States Constitution in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of the Armed Forces of the United States in hostilities or in situations where imminent involvement in hostilities is indicated by circumstances. The constitutional basis for this bill is found in Article 1, Section 8, of the Constitution, which enumerates the war powers of Congress, including the power to declare war and to make rules for the Government and regulation of the Armed Forces, and further specifies that Congress shall have the power "to make all laws necessary and proper for carrying into execution" not only its own powers but also "all other powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof."

The essential purpose of the bill, therefore, is to reconfirm and to define with precision the constitutional authority of Congress to exercise its constitutional war powers with respect to "undeclared" wars and the way in which this authority relates to the constitutional responsibilities of the President as Commander-in-Chief. The bill is in no way intended to encroach upon, alter or detract from the constitutional powers of the President, in his capacity as Commander-in-Chief, to conduct hostilities authorized by Congress, to repel attacks or the imminent threat of attacks upon the United States or its armed forces, and to rescue endangered American citizens and nationals in foreign countries.

Section 3 of the bill defines the emergency conditions in which, in the absence of a declaration of war by Congress, the Armed Forces of the United States may be introduced in hostilities, or in situations where imminent involvement in hostilities is indicated by circumstances.

The conditions under which the President may make such emergency use of the armed forces, defined with a view to reconciling modern conditions of warfare and politics with the intent of the framers of the Constitution, are as follows:

(1) to repel an armed attack upon the United States, its territories and possessions; to take necessary and appropriate retaliatory actions in the event of such an attack; and to forestall the direct and imminent threat of such an attack;

(2) to repel an armed attack against the Armed Forces of the United States located outside of the United States, its territories and possessions, and to forestall the direct and imminent threat of such an attack;

(3) to protect while evacuating citizens and nationals of the United States, as rapidly as possible, from any country in which such citizens and nationals are present with the express or tacit consent of the government of such country and are being subjected to a direct and imminent threat to their lives, either sponsored by such government or beyond the power of such government to control; but the President shall make every effort to terminate such a threat without using the Armed Forces of the United States,

and shall, where possible obtain the consent of the government of such country before using the Armed Forces of the United States to protect citizens and nationals of the United States being evacuated from such country; or

(4) pursuant to specific statutory authorization, but authority to introduce the Armed Forces of the United States in hostilities or in any such situation shall not be inferred (A) from any provisions of law hereafter enacted, including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in such situation and specifically exempts the introduction of such Armed Forces from compliance with the provisions of this Act, or (B) from any treaty hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation and specifically exempting the introduction of such Armed Forces from compliance with the provisions of this Act. Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities. No treaty in force at the time of the enactment of this Act shall be construed as specific statutory authorization for, or a specific exemption permitting, the introduction of the Armed Forces of the United States in hostilities or in any such situation, within the meaning of this clause (4); and no provision of law in force at the time of the enactment of this Act shall be so construed unless such provision specifically authorizes the introduction of such Armed Forces in hostilities or in any such situation.

The designation of conditions for the emergency use of the armed forces spelled out in Section 3 is the result of a concerted effort on the part of the Committee and the principal sponsors of the "War Powers Act" to make ample provision for the exigencies of modern warfare and international politics but to do so in such a way as to fulfill the intent of the Constitution, particularly with reference to war powers of Congress.

Senator Javits, the initial sponsor of war powers legislation, in testimony before the Committee explained the rationale for the proposed legislation as follows:

My cosponsors and I regard this bill as basic national legislation. It is legislation essential to our security and well being. It is legislation in the interest of the President as well as the Congress. . . . We live in an age of undeclared war, which has meant Presidential war. Prolonged engagement in undeclared, Presidential war has created a most dangerous imbalance in our Constitutional system of checks and balances. . . [The bill] is rooted in the words and the spirit of the Constitution. It uses the clauses of Article I, Section 8 to restore the balance which has been upset by the historical disenthronement of that power over war which the framers of the Constitution regarded as the keystone of the whole Article of Congressional power—the exclusive authority of Congress to "declare war"; the power to change the nation from a state of peace to a state of war.

In testimony before the Committee, Senator Stennis, Chairman of the Armed Services Committee, stated: ". . . . I believe that all of the bills and resolutions so far introduced are important chiefly because they attempt to delineate between those circumstances in which the President can first act unilaterally and those in which prior authority by Congress is required before armed forces can be used."

Section 3 of the bill makes these crucial delineations. Subsections (1), (2) and (3) are codifications of the President's Commander-in-Chief power to "repel sudden attacks" and protect U.S. nationals whose lives are endangered abroad—powers based on established precedent and which the Constitutional Convention intended to give to the President, as evidenced by Madison's notation about "leaving to the Executive the power to repel sudden attacks." Subsection (4) of Section 3 of the bill is a crucial provision of the legislation, requiring that all other use of the Armed Forces in hostilities, or situations where hostilities are clearly imminent, must be "pursuant to specific statutory authorization."

With these two criteria in mind—modern conditions of warfare and world politics on the one hand and the intent of the framers of the Constitution on the other—it was judged appropriate to allow emergency use of the armed forces by the President (under Subsections 1 and 2 of Section 3) not only to respond to an attack upon the United States or its armed forces but also to "forestall the direct and imminent threat of such an attack." In allowing of emergency action to forestall the direct and imminent threat of an attack the majority of the Committee accepted the view expressed in testimony before the Committee by Alexander M. Bickel, Professor of Law, Yale University, that the authority involved is "a reactive not a self-starting affirmative power. . . ." As Professor Bickel put it:

The "sudden attack" concept of the framers of the Constitution denotes a power to act in emergencies in order to guard against the threat of attack, as well as against the attack itself, when the threat arises, for example, in such circumstances as those of the Cuban missile crisis of 1962. So long as it is understood that this is a reactive, not a self-starting affirmative power, I have no trouble agreeing that it is vested in the President by the Constitution, that it provides flexibility, and that Congress cannot take it away.[1]

One of the most important provisions of the bill is Subsection (4) of Section 3. This subsection sets forth the criteria, by means of which the Congress can "pursuant to specific statutory authorization" give the President advance authority to take emergency action. Authority which might be granted in advance to the President under Subsection (4) differs from the authority which the President has in Subsections (1), (2) and (3). The emergency authorities specified in the first three subsections of Section 3 are recognized to be authority which the President enjoys in his independent Constitutional office as President/Commander-in-Chief. In codifying this independent emergency authority of the President, the Congress is exercising its own Constitutional power: "To make all laws which shall be necessary and proper for carrying into execution . . . all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

It was judged important to specify (in Subsection 4 of Section 3) that authority to use the armed forces is not to be inferred from any provision of law, including appropriations, unless such authority is explicitly provided. It has been argued—and at least one lower court decision has held[2]—that appropriations for military operations constitute implied approval of an act of war in which the President may be engaged and, therefore, served as authorization for its continuation. The Committee and the sponsors reject this view, believing that the "approval" implied by an appropriation for a war-making operation already underway is admixed with the unwillingness to withhold the material support required from our forces in the field once they are engaged, rather than a freely given expression of consent. As Senator Eagleton noted:

"Appropriations bills should be rejected as a means of authorizing or sustaining hostilities. Unless they are, our entire constitutional system of carefully conceived checks and balances is turned on its head."

In the words of a noteworthy article published in the June 1968 edition of the Harvard Law Review:

The more blatant the *fait accompli* which forces Congress' hand, the less should exercise of its power of appropriation be taken as "consent" to the action. Even where there is no *fait accompli*, if the power over appropriations had been thought a sufficient safeguard against presidential war making it becomes difficult to understand why the framers were so concerned about withholding the war power from the Executive in the first place."[3]

It was thought essential to specify (in Subsection 4 of Section 3), that no treaty, existing or future, may be construed as authorizing use of the armed forces without implementing legislation. The treaty-making power has been held not to extend "so far as to authorize what the Constitution forbids."[4] This limitation is properly construed in the Committee's view, as preventing the President and the Senate from exercising by treaty a power vested elsewhere by the Constitution. The President and the Senate could not, for instance, use the treaty power to abridge the Bill of Rights; nor, in the Committee's view, can a treaty be used to abridge the war-declaring power, which is vested not in the Senate alone but in both Houses of Congress. The framers of the Constitution considered and rejected the possibility of vesting in the Senate alone the power to declare war. That power was deliberately vested in the Congress as a whole; a decision to initiate war must be made by both the Senate and the House of Representatives and cannot, therefore, be made by treaty. None of our existing treaties in any case require automatic military action.

It is also specified in Subsection (4) that specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to participate in combat-related military activities of the regular or irregular forces of any foreign country—the purpose here being to prevent secret, unauthorized military support activities.

Section 4 of the bill specifies that any emergency use of the armed forces shall be reported promptly in writing by the President to the Speaker of the House of Representatives and the President of the Senate, together with a full account of the circumstances and authority under which action was being taken and its projected scope. The President would be further required to make periodic reports on any military action outside of the United States, and in no event less often than every six months. This section of the bill parallels approximately the reporting requirement spelled out in H.J. Res. 1, adopted by the House of Representatives on August 2, 1971.

In his testimony before the Committee, Senator Eagleton made the point forcefully concerning the need for reporting:

For Congress to pay more than pious lip service to its war making role, it must not only pass a strong war powers bill, but also must be willing to demand, receive and act upon relevant information it needs to exercise the most solemn of its constitutional responsibilities—making the final decision that takes this country to war.

The heart and core of the bill—the provision which will give substance and weight to the Congressional war power—is Section 5, which provides that the use of the armed

Footnotes at end of article.

forces under any of the emergency conditions spelled out in Section 3 shall not be sustained for a period beyond thirty days unless Congress adopts legislation specifically authorizing the continued use of the armed forces. The intended effect of Section 5 is to impose a prior and unalterable restriction on the emergency use of the armed forces by the President. Emergency use of the armed forces by the President—under Section 3—would be undertaken with full knowledge on his part that the operation could be continued beyond a thirty-day period only with the specific authorization of Congress. The President would thereby stand forewarned against any emergency use of the armed forces that did not conform with the law and that he did not feel confident would command the support of majorities of both Houses of Congress.

Section 6 complements the restriction spelled out in Section 5 by specifying that Congress may terminate a military operation prior to the end of the thirty-day period by act or joint resolution.

Section 7 spells out mandatory procedures for expeditious action within the Committees and on the floor of both Houses of Congress with respect to any legislation authorizing a continuation of the use of the armed forces beyond the thirty-day period of the President's emergency powers or beyond a period authorized by Congress under Section 3 (4). The purpose of this section is to eliminate the risk of dilatory tactics to prevent or delay a Congressional decision with respect to the use of the armed forces. However, the accelerated procedures would not apply to advance requests for authorizations under Subsection (4) of Section 3 of the bill.

Section 8 contains a separability clause, specifying that, if any provision of the bill should be held invalid, the remainder would not be affected thereby.

Section 9 specifies that the bill would take effect on the date of its enactment but would not apply to hostilities in which the Armed Forces of the United States were involved prior thereto. The effect of this provision would be to exempt current military operations in Indochina from the application of the war powers bill.

BACKGROUND AND COMMITTEE ACTION

On June 15, 1970, Senator Javits introduced the first war powers bill (S. 3964) with the cosponsorship of Senator Dole; and on February 10, 1971, he reintroduced a revised version as S. 731 with the cosponsorship of Senators Mathias, Pell and Spong. War powers bill were subsequently introduced on January 27, 1971 by Senator Taft; on March 1, 1971 by Senator Eagleton; on May 11, 1971 by Senator Stennis; and on May 15, 1971, by Senator Bentsen. All of these bills, except that introduced by Sentaor Taft, contained the requirement of advance Congressional authorization for the commitment of the armed forces to hostilities by the President, except in certain designated emergencies, in the event of which the President would be authorized to commit the armed forces to combat for a period not to exceed thirty days unless explicitly authorized by Congress.

The immediate legislative origin of the war powers bills is the disappointing experience with the Gulf of Tonkin Resolution adopted in 1964 and the Vietnam war which ensued, as well as the failure of the Executive to heed the National Commitments Resolution of 1969 and to give Congress any deliberative part in actions undertaken by United States Armed Forces in hostilities in Laos and Cambodia. Really, the experience of the Gulf of Tonkin Resolution and the Commitments Resolution are two sides of the same coin. The first involves the war powers in allegedly carrying out a commitment." The other concerns the manner of undertaking of a "commitment" itself. Recent Presidents have relied upon dubious historical precedents and expansive interpretations of the President's authority as Commander-in-Chief to justify both the initiation and perpetuation of foreign military activities without the consent—in some instances without even the knowledge—of Congress. The Gulf of Tonkin Resolution was treated by the Johnson Administration alternately as the "functional equivalent" of a declaration of war and as a mere ceremonial gesture of the Congress. As President Johnson put it in a press conference, "We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we are doing." [5]

The Commitment Resolution, adopted by the Senate in June 1969 by a vote of 70 to 16, expressed the sense of the Senate that ". . . a national commitment by the United States to a foreign power necessarily and exclusively results from affirmative action taken by the executive and legislative branches of the United States Government. . . ." The War Powers Act deals with the consequences of a relevant commitment and establishes in Section 3(4) that an operable commitment can only be established "pursuant to specific statutory authorization." If the Senate's Commitments Resolution were observed by the Executive, and if the War Powers bill is enacted, the Congress would have, with the President, joint control of the key to the back and front doors of the corridor leading to war in the modern day.

The purpose of the National Commitments Resolution, as the Committee commented in its Report of April 16, 1969, was "not to alter the Constitution but to restore it." The resolution was understood by the Committee as essentially ". . . an invitation to the executive to reconsider its excesses, and to the legislature to reconsider its omissions, in the making of foreign policy, and, in the light of such reconsideration, to bring their foreign policy practices back into compliance with that division of responsibilities envisoned by the Constitution and sanctioned by over a century of usage." The Committee also held the view at that time that no further legislative enactment was required, that, indeed, ". . . all that is required is the restoration of constitutional procedures which have been permitted to atrophy." [6]

Much to the Committee's disappointment, the executive has chosen not to accept the "invitation" conveyed in the National Commitments Resolution. The executive—not just the present Administration but its recent predecessors as well—has chosen to ignore Congressional expressions of constitutional principle which do not carry the force of law.

Following upon the adoption of the National Commitments Resolution it was hoped that the then newly installed Nixon Administration would take a view different from that of its predecessor. That hope has not been realized. The commitment of American military forces to Cambodia in 1970, and to Laos in 1971, without the consent or even the knowledge of Congress, showed that, like its predecessor, the present Administration believes the President may initiate foreign military actions without reference to the authority of the Congress.

All of the bills introduced, except that of Senator Taft, contained the requirement of advance Congressional authorization for the commitment of the armed forces to hostilities by the President, except in certain designated emergencies, in the event of which the President would be authorized to commit the armed forces to combat for a period not to exceed thirty days unless explicitly authorized by Congress.

Following upon extensive hearings before the Committee, Senators Javits, Stennis, Eagleton, and Spong joined in introducing a synthesized joint bill, S. 2956, on December 6, 1971 and were joined by Senators Taft and Bentsen. It is this bill, representing a synthesis of the major provisions of the prior separate bills offered by the co-sponsors, which the Committee herewith favorably reports with only minor amendments and technical revisions.

Between March 8, 1971 and October 6, 1971, the Committee conducted an historic series of public hearings on the Javits, Eagleton, Stennis and Taft bills before the Committee. The hearings began with testimony from a number of leading scholars and academic authorities on the formation of the Constitution and the early period of our nation's history. These early hearings, combined with the later testimony of eminent contemporary legal scholars, were important in establishing the constitutionality of the war powers legislation before the Committee. Several close advisors of the previous two Presidents testified as to the desirability and workability of the proposed legislation viewed from the perspective of their own experience as Presidential advisors. In this regard, the Committee was particularly impressed with McGeorge Bundy's testimony stating: "I think the essential processes of the Cuban missile crisis would not have been sharply affected by this resolution or this bill or this kind of procedure."

The Committee heard testimony in public session by a total of 24 witnesses, including the Secretary of State speaking for the Administration, 10 Senators, 2 Congressmen, and a number of distinguished historians and legal scholars. Significant additional material and opinion were inserted in the record.

Speaking in favor either of specific bills or the general concept of war powers legislation were the following in chronological order:

(1) Henry Steele Commager, Professor of History, Amherst College.

(2) Richard B. Morris, Professor of History, Columbia University.

(3) Alfred H. Kelly, Professor of History, Wayne State University.

(4) Claiborne Pell, U.S. Senator from Rhode Island.

(5) Jacob K. Javits, U.S. Senator from New York.

(6) Thomas F. Eagleton, U.S. Senator from Missouri.

(7) Alpheus T. Mason, Professor of Political Science, Princeton University.

(8) Robert Taft, Jr., U.S. Senator from Ohio.

(9) Charles McC. Mathias, U.S. Senator from Maryland.

(10) Paul Findley, U.S. Congressman from Ohio.

(11) Frank Horton, U.S. Congressman from New York.

(12) McGeorge Bundy, President, Ford Foundation.

(13) George Reedy, former Press Secretary to President Johnson.

(14) Alexander M. Bickel, Professor of Law, Yale University.

(15) Lloyd M. Bentsen, U.S. Senator from Texas.

(16) William D. Rogers, Arnold & Porter, Washington, D.C.

(17) William B. Spong, Jr., U.S. Senator from Virginia.

(13) John Stennis, U.S. Senator from Mississippi.

(19) Lawton Chiles, U.S. Senator from Florida.

(20) Arthur J. Goldberg, Esq., former U.S. Ambassador to the United Nations.

Speaking in opposition to the war powers legislation were the following also in chronological order:

(1) Barry Goldwater, U.S. Senator from Arizona.

(2) John Norton Moore, Professor of Law, University of Virginia.

(3) William P. Rogers, Secretary of State.

Footnotes at end of article.

(4) George Ball, Lehman Bros. International, New York.

Those supporting war powers legislation emphasized the intent of the framers of the Constitution and the importance of the Congressional war power for a system of government based on the separation of powers and checks and balances. Those testifying against the war powers legislation cited historical instances in which the President has used the armed forces without the consent of Congress and the necessity of rapid action under the conditions of the nuclear age. Meeting in executive session, the Committee marked up S. 2956 on December 7, 1971, adopting clarifying and perfecting amendments. On the same day, by unanimous vote, the Committee ordered the bill reported favorably to the Senate.

COMMITTEE COMMENTS

As Justice Harlan once observed:

We are accustomed to speak of the Bill of Rights and the Fourteenth Amendment as the principal guarantees of personal liberty. Yet it would surely be shallow not to recognize that the structure of our political system accounts no less for the free society we have. The Founding Fathers, said Justice Harlan, "staked their faith that liberty would prosper in the new nation not primarily upon declarations of individual rights but upon the kind of government the Union was to have." "No view of the Bill of Rights or interpretation of any of its provisions," the Justice warned, "which fails to take due account of [federalism and separation of powers] can be considered constitutionally sound.[7]

The Committee concurs in the view expressed by Justice Harlan: that when checks and balances are disrupted in one area of our public policy, all others are affected, and so also are the basic rights of the citizen. As Professor Alpheus Thomas Mason said in his testimony before the Committee, "Separation of powers in war making, constitutionally shared by Congress and the President, has all but vanished. The President is in complete, unqualified control." [8] In the Committee's view, as in the view of the framers of our Constitution, "complete, unqualified control" in one area poses the danger, if not indeed the inevitability, of "complete, unqualified control" over all other areas of our national life.

Advocates of Presidential power point out that the President is a responsible, elected official, the only official indeed who is elected by all of the people. The President's accountability cannot be gainsaid, but of and by itself it is dangerously insufficient. As Madison wrote in *Federalist 51*, "A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." [9]

Despite instances of executive "usurpation" of power, more often unintentional than deliberate, and an even greater number of instances of failure on the part of the Congress to defend and exercise its prerogatives, the major cause of the unhinging of the checks and balances of our political system has been the impact of three decades of almost uninterrupted crisis in foreign policy. In time of emergency there is a natural, powerful tendency to fall in line behind the leadership of the President. When the nation is thought to be in danger, it seems to most people irresponsible, capricious, or even unpatriotic to question the President's word as to the need for action of one kind or another. Secretary of State Acheson summed up this state of mind cogently when he advised the Senate in 1951 that it ought not to quibble over President Truman's claim of authority to station American troops primarily in Europe. Acheson said, "We are in a position in the world today where the argument as to who has the power to do this, that, or the other thing, is not exactly what is called for from America in this very critical hour." [10]

Experience has shown that counsel of this nature is not meant to be taken quite literally: it is not meant to suggest that it does not matter where the power of decision lies, but rather that the power should be left with the President exclusively and Congress ought not to interfere. Similarly, Executive branch lawyers have fallen into the habit of telling us that the Constitution is vague about the division of foreign policy and war powers and that questions as to "who has the power to do this, that, or the other thing" are best left to be resolved according to the requirements of the moment—according, as Mr. Katzenbach put it, to "the instinct of the nation and its leaders for political responsibility. . . ." [11] Or, as Mr. Justice Rehnquist put it when he was Assistant Attorney General,

The Framers here, as elsewhere in the Constitution, painted with a broad brush, and it has been left to nearly two hundred years of interpretation by each of the three coordinate branches of the National Government to define with somewhat more precision the line separating that which the President may do alone from that which he may do only with the assent of Congress.[12]

In practice, the advocates of the "broad brush" have something more precise in mind: they want the President to be left unencumbered to use the armed forces and contract foreign obligations essentially as he sees fit, drawing Congress into the decision-making process insofar as he finds it useful and convenient.

The Committee does not contest the need of "flexibility," nor of adaptability, in our political process in order to accommodate to modern conditions. The Committee does, however, contest the view which holds that the price of adaptability is the repudiation of constitutional precept. The notion of a "living" Constitution ceases to make sense when it is taken as license for nullifying the Constitution's intent—or at least some part of it. The real issue, in the Committee's view, to which the war powers bill purports to address itself, is whether our constitutional process can be reconciled with the requirements of the nuclear age. The Committee believes that it can, that indeed, even as written in 1787, the Constitution made adequate provision for response to a genuine emergency with whatever speed might be required. No responsible citizen questions the right—or even the duty—of the President to take immediate action against a sudden attack, or imminent threat of an attack, upon the United States or its armed forces. What the Committee does contest is that expansive view of Executive prerogative which holds that the President may use the armed forces at will, even in conditions falling short of a genuine national emergency, and that he may sustain that use for as long as he, and he alone, sees fit. Such unrestricted Presidential control of the armed forces is neither necessary or wise in our nuclear age, reconcilable with the Constitution, nor tolerable in a free society.

Far from having been made obsolete by the necessity for dealing with fast-moving events in the nuclear age, the checks and balances of our Constitution have become, in the Committee's view, more essential than ever. Disposing as he does of a vast arsenal of nuclear weapons, ballistic missiles and an enormous number of variety of lesser weapons, the President of the United States has acquired something close to absolute power over the life and death of hundreds of millions of people all over the world. As Alexander Hamilton, even though an advocate of strong executive authority, warned in *Federalist 75:*

The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind as those which concern its intercourse with the rest of the world to the sole disposal of a magistrate created and circumstanced as would be the President of the United States.[13]

A. THE INTENT OF THE FRAMERS

Whatever else they may have painted with a "broad brush," the framers of the American Constitution were neither uncertain nor ambiguous about where they wished to vest the authority to initiate war. The Founding Fathers had been much dismayed by the power of the British Crown to commit Great Britain—and its American colonies—to war. They were also fearful of the danger of large standing armies and of the possible defiance of civilian authority by military leaders. In order to alleviate the threat of militarism and of the possible resurgence of monarchical tendencies in the new Republic, the Article I, Section 8 the framers vested the authority to initiate war in the legislature, and in the legislature alone, and established the framework for tight Congressional control over the military establishment.

The absence of extended debate over the war powers in the Constitutional Convention attests to the near unanimity of the Founding Fathers as to where that authority was meant to be placed. There was some discussion as to whether the war power should be vested in the Congress as a whole or only the Senate, but only one delegate, Pierce Butler of South Carolina, favored vesting the war power in the President.

The Constitutional Convention at first proposed to give Congress the power to "make" war but changed this to "declare" war, not, however, because it was desired to enlarge Presidential power but in order to permit the President to take action to repel sudden attacks. Madison's notes on the proceedings of the Convention report the change of wording as follows: "Mr. Madison and Mr. Gerry *moved* to insert 'declare,' striking out *'make'* war; leaving to the Executive the power to repel sudden attacks." [14] It is noteworthy that the delegates who spoke on this change of wording all expressed concern with the possible enlargement of Presidential power. Elbridge Gerry, for example, declared that he "never expected to hear in a republic a motion to enpower the Executive talons to declare war." George Mason firmly expressed himself as "against giving the power of war to the Executive," on the ground that he was "not safely to be trusted with it."

A closely related concern of the framers was to make it more difficult to start a war than to stop one. It was essentially for this reason that the power to authorize hostilities was vested in the Congress rather than in the President as successor to the British Crown. It was also for this reason that the war power was vested in the two Houses of the Congress rather than in the Senate alone. As Oliver Ellsworth told his fellow delegates, it "should be more easy to get out of war, than into it"; and as George Mason said, he was "for clogging rather than facilitating war; but for facilitating peace." [15]

The division of authority intended by the framers was explicit: the Congress was to "declare"—that is, to authorize the initiation of—war. The President, as Commander-in-Chief, was to respond to sudden attacks and to conduct a war once it had started and command the armed forces once they were committed to action. The powers of the President as Commander-in-Chief were explained by Alexander Hamilton in *Federalist 69*:

The President is to be commander in chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as

Footnotes at end of article.

first General and Admiral of the Confederacy, while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies—all which, by the Constitution under consideration, would appertain to the legislature.[16]

Or as Jefferson put it in a letter to Madison in 1789:

We have already given in example one effectual check to the Dog of war by transferring the power of letting him loose from the Executive to the Legislative body, from those who are to spend to those who are to pay.[17]

The Supreme Court has also declared that the power to initiate war is one which rests solely with the Congress. In the "Prize Cases" of 1862 the Supreme Court said:

By the Constitution, Congress alone has the power to declare a national or foreign war . . . The Constitution confers on the President the whole Executive power. . . . He is Commander-in-Chief of the Army and Navy of the United States. . . . He has no power to initiate or declare a war either against a foreign nation or a domestic state.[18]

In the early years of the Republic, Presidents acknowledged and carefully respected the war power of Congress. President Madison, for example, who had been one of the principal interpreters through his writings in the *Federalist Papers*, sent a message to Congress on June 1, 1812, in which, after recounting the depredations of British ships on American commerce on the Atlantic, he referred the matter to Congress in these words:

Whether the United States shall continue passive under these progressive usurpations and these accumulating wrongs, or opposing force to force in defense of their national rights, shall commit a just cause into the hands of the Almighty disposer of events, avoiding all connections which might entangle it in the contents or views of other powers, and preserving a constant readiness to concur in an honorable reestablishment of peace and friendship, is a solemn question which the Constitution wisely confides to the legislative department of the Government.[19]

The Monroe Doctrine has been erroneously cited as an early precedent for use of the armed forces by the President acting on his own authority. In keeping with the intent of the framers of the Constitution, President Monroe made the appropriate distinction between a statement of policy and the authority to carry it out. When in 1824 the Government of Colombia inquired as to what action the United States might take under the Monroe Doctrine to repel certain European intervention in the Latin American Republics, Secretary of State John Quincy Adams replied:

With respect to the question, "in what manner the Government of the United States intends to resist on its part any interference of the Holy Alliance for the purpose of subjugating the new republics or interfering in their political forms" you understand that by the Constitution of the United States, the ultimate decision of this question belongs to the Legislative Department of the Government.[20]

President Buchanan, to cite another example, acknowledged the war power of Congress quite explicitly in his message to Congress of December 6, 1858:

The Executive government of this country in its intercourse with foreign nations is limited to the employment of diplomacy alone. When this fails it can proceed no further. It cannot legitimately resort to force without the direct authority of Congress, except in resisting and repelling hostile attacks.[21]

Daniel Webster, who served as Secretary of State during the early 1850's, was also a distinguished constitutional lawyer. On July 14, 1851, during his tenure as Secretary of State, he wrote as follows:

Footnotes at end of article.

In the first place, I have to say that the war-making power in this Government rests entirely in Congress; and that the President can authorize belligerent operations only in the cases expressly provided for the Constitution and the laws.[22]

During the course of the nineteenth century it became accepted practice, if not strict constitutional doctrine, for Presidents acting on their own authority to use the armed forces for such limited purposes as the suppression of piracy and the slave trade, for "hot pursuit" of criminals across borders, and for the protection of American lives and property in places abroad where local government was not functioning effectively. An informal, operative distinction came to be accepted between the use of the armed forces for limited, minor or essentially non-political purposes and the use of the armed forces for "acts of war" in the sense of large-scale military operations against sovereign states. In the former category, custom and usage gave a certain informal sanction to unauthorized Presidential action; in the latter, involving full-scale warfare, no President was to claim the right to act without Congressional authorization until the twentieth century.

Nor indeed was it contended by any President until recent years that, because *declarations* of war might be obsolete, so also was the authority of Congress to authorize—or refuse to authorize—the initiation of war. Even if it be granted, as perhaps it must, that the formal declaration of war is no longer a useful instrument in international politics, this is to say no more than that a particular form in which the Congress exercised its constitutional authority in the past is no longer appropriate.

As Richard B. Morris, Gouvereur Morris Professor of History at Columbia University, said in his testimony before the Committee—after citing the provisions of the Constitution relating to Congress's power to declare war and "raise and support armies," the authority of the President as commander-in-chief, and the limitation of appropriations of money for the support of armies to a maximum of two years—

* * * it is a fair inference from the debates on ratification and from the learned analysis offered by the *Federalist* papers that the war-making power of the President was little more than the power to defend against imminent invasion when Congress was not in session.[23]

It is also of great importance to note that the residual legislative authority over the entire domain of foreign policy—not just the war power—was placed in Congress by the Constitution. Members of Congress have themselves perhaps underestimated the authority vested in them by the "necessary and proper" clause of Article I, Section 8, of the Constitution. That clause entrusts the Congress to make all laws "necessary and proper for carrying into execution" not only its own powers but "all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." Strictly interpreted, the "necessary and proper" clause entrusts the Congress not only to "carry into execution" its own constitutional war power, but also, should it be thought necessary, to define and codify the powers of the government as a whole, including those of the President as its principal officer.

B. THE GROWTH OF PRESIDENTIAL POWER

Prior to the Second World War Presidential use of the armed forces without Congressional authorization was confined for the most part to the Western Hemisphere, primarily to Mexico and the Caribbean. President McKinley's participation in the Boxer expedition in China in 1900 was a noteworthy exception. Only since the Second World War have American Presidents claimed, and exercised, the power to commit the armed forces to full-scale and extended warfare overseas. The kind of foreign military intervention we have witnessed in the last quarter century is, in the words of Henry Steel Commager, Professor Emeritus of History, Amherst College, "if not wholly unprecedented, clearly a departure from a long and deeply-rooted tradition."[24]

Professor Alexander Bickel of the Yale Law School made the same point in his testimony before the Committee:

* * * the decisions discussed as early as 1964, made in the first half of 1965, and executed thereafter, to commit the moral and material resources of this Nation to full-scale war in Vietnam seem to me to mark the farthest, and really an unprecedented, extension of Presidential power. Certainly the power of the President in matters of war and peace has grown steadily for over a century The decisions of 1965 may have differed only in degree from earlier stages in this process of growth. But there comes a point when a difference of degree achieves the magnitude of a difference in kind. The decisions of 1965 amounted to an all but explicit transfer of the power to declare war from Congress, where the Constitution lodged it, to the President, on whom the framers explicitly refused to confer it.[25]

The transfer from Congress to the executive of the actual power—as distinguished from the constitutional authority—to initiate war has been one of the most remarkable developments in the constitutional history of the United States. For this change Congress as well as the Executive bears a heavy burden of responsibility.

When President Truman committed the armed forces to Korea in 1950 without Congressional authorization, scarcely a voice of dissent was raised in Congress. Senator Watkins of Utah challenged the President's authority to commit the country to war without consulting the Congress, even in compliance with a resolution of the United Nations Security Council, and said that, if he were President, he ". . . would have sent a message to the Congress of the United States setting forth the situation and asking for authority to go ahead and do whatever was necessary to protect the situation."[26] Senator Taft also challenged President Truman's action but not until January 1951. "The President," he said, "simply usurped authority, in violation of the laws and the Constitution, when he sent troops to Korea to carry out the resolution of the United Nations in an undeclared war."[27]

The isolated voices of Watkins and Taft were ineffectual against the accelerating tide of growing executive power. Secretary of State Acheson virtually threw down the gauntlet to Congress—although few at that time were disposed to pick it up—when he testified before the Committee on Foreign Relations and Armed Services Committee in 1951 in support of President Truman's plan to station six divisions of American soldiers in Europe He said on that occasion:

Not only has the President the authority to use the Armed Forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be interfered with by the Congress in the exercise of powers which it has under the Constitution.[28]

In the course of the Vietnam war, the Johnson Administration reconfirmed the executive's claim to unilateral authority in the use of the armed forces. In his now famous testimony of August 1967, Under Secretary of State Katzenbach contended that the Gulf of Tonkin Resolution was "as broad an authorization for the use of armed forces for a purpose as any declaration of war so-called could be in terms of our internal constitutional process."[29] In fact, the Johnson Administration went farther.

Whereas Mr. Katzenbach at least claimed the existence of legislative authority, the

President himself contended that no such authority was required. Speaking of the Gulf of Tonkin Resolution in his news conference of August 18, 1967, President Johnson said,

We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we're doing. But we thought it was desirable and we thought if we were going to ask them [Congress] to stay the whole route and if we expected them to be there on the landing we ought to ask them to be there on the takeoff.[30]

Making the same claim in more formal language the Legal Advisor to the Department of State had written in March 1966.

There can be no question in present circumstances of the President's authority to commit U.S. forces to the defense of South Vietnam. The grant of authority to the President in Article II of the Constitution extends to the actions of the United States currently undertaken in Vietnam.[31]

The attitude of the present Administration will be explored in greater detail in Subsection C below. It suffices here to point out that the Nixon Administration has shown that its conception of the war power differs in no important respect from that of its predecessor. It could hardly be otherwise, one suspects, if only because the accumulation of precedents of unauthorized Presidential use of the armed forces seems to have had a spurious self-legitimizing effect. A President can hardly be blamed if, coming into office, he supposes himself to be properly vested with all of the powers exercised by his predecessor, however, improperly exercised. A President can hardly be blamed if under such circumstances, he regards an effort by Congress to reassert powers which it has long neglected to exercise as an attempt to infringe upon his own powers.

All of which is by way of making the point that it is far more difficult to reassert a power which has been permitted to atrophy than to defend one which has been habitually used. The Congress accordingly bears a heavy responsibility for its passive acquiescence in the unwarranted expansion of Presidential power. As the late Justice Robert H. Jackson pointed out in his concurring opinion in *Youngstown* v. *Sawyer*, there is a "zone of twilight" between the discrete areas of Presidential and Congressional power. Politics, like nature, abhors a vacuum. When Congress created a vacuum by failing to defend and exercise its powers, the President inevitably hastened to fill it. As Justice Jackson commented, "Congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent Presidential responsibility. . . ."[32]

To assert power is not, however, to legitimize it. As a Supreme Court Justice of the last century commented: "An unconstitutional act is not a law, it confers no rights, it imposes no duties, it affords no protection, it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed."[33] The same principle must apply to action by the executive.

C. THE EXECUTIVE VIEW

The Nixon Administration has shown that it shares the expansive view of the President's power as Commander-in-Chief held by preceding Administrations.

The commitment of American military forces to Cambodia in 1970, and to Laos in 1971, demonstrated the present Administration's determination to initiate new foreign military actions solely on its own authority.

In its public statements as well as in its foreign military operations the Nixon Administration has indicated its belief that the President is at liberty to commit the armed forces substantially as he sees fit. In its comments of March 10, 1969, on the then-pending National Commitments Resolution, the Department of State made the following assertion:

As Commander-in-Chief, the President has the sole authority to command our Armed Forces, whether they are within or outside the United States. And, although reasonable men may differ as to the circumstances in which he should do so, the President has the constitutional power to send U.S. military forces abroad without specific congressional approval.[34]

The same assumptions of executive war-making authority were expressed in the Department of State's comments of March 12, 1970, regarding the proposal then before the Foreign Relations Committee for repeal of the Formosa, Cuba, Middle East, and Tonkin resolutions. Declining either to advocate or to oppose such action, the State Department took the position that ". . . the Administration is not depending on any of these resolutions as legal or constitutional authority for its present conduct of foreign relations, or its contingency plans." More specifically, as to the war in Indochina, the State Department asserted that ". . . this Administration has not relied on or referred to the Tonkin Gulf resolution of August 10, 1964, as support for its Vietnam policy."

On January 12, 1971, President Nixon signed into law a bill which, among other things, repealed the Gulf of Tonkin Resolution. The repeal of that Resolution quite naturally raises the question as to the authority the Administration believes it is acting under its continuing prosecution of the war in Indochina. The Administration, so far as is known to the Committee, has not addressed itself to that question. The repealer went largely unnoticed, apparently because it was thought to be inconsequential.

The President himself has said little on the subject. Asked in a press conference on April 29, 1971, for his opinion of the pending war powers bill, the President replied, ". . . I believe that limiting the President's war powers, whoever is President of the United States, would be a very great mistake." The President went on to say: "We live in times when situations can change so fast internationally that to wait until the Senate acts before a President can act might be that we acted too late."[35]

In its official comments on the war powers bills the Administration placed primary emphasis on historical precedents and the need for speedy action as the basis of its opposition to the bills. As with the previous Administration, emphasis was also placed on what the Executive regards as the imprecision of the Constitution, the need of Presidential flexibility, and the desirability, as expressed in Assistant Secretary Abshire's letter of May 1971, of some sort of undefined "common perspective" between the two branches of Government.

In his definitive presentation of the Administration's views on war powers legislation, presented to the Committee on May 14, 1971, Secretary of State Rogers gave evidence of holding the impression that the war powers bills purported to alter the Constitution. "Any attempt to change it," he said, "should be subjected to long and full consideration of all aspects of the problem."[36] The notion that Congress was somehow undertaking to change the Constitution by asserting its own war powers is one which also bemused the Johnson Administration.

Now, as on previous occasions, the Committee reconfirms its own conviction that, far from purporting to alter the Constitution in any way, the bill herewith reported is designed to restore constitutional practices which have been permitted to atrophy and, as a matter of necessity and propriety under Article 1 of Section 8, "to carry into execution" both the war powers of Congress and those of the President in his capacity as an "Officer" of the Government of the United States.

In his statement before the Committee, Secretary Rogers said he opposed war powers legislation because, in his view, it would attempt to fix in detail, or "freeze," the allocation of power between the President and Congress, and because such legislation would "narrow the power given the President by the Constitution." The exercise of the war powers, the Secretary emphasized, was consigned to the "political process" in a constitutional system "founded on the assumption of cooperation rather than conflict."[37]

The Committee is obliged to contest the Secretary's argument in all its major specifications. First of all, far from attempting to "freeze" the allocation of war powers between the President and Congress, the bill, through the emergency procedures spelled out in Section 3, allows of action by the President under almost any conceivable genuine national emergency, so much so, in fact, that some members of the Committee have expressed apprehension that Section 3 may go too far in the President's direction.

Second, as already noted, the bill would in no respect, "narrow the power given the President by the Constitution;" it does indeed purport to delineate Presidential power, but only because that power in recent practice has extended far beyond the confines of the Constitution.

Third, the Committee reiterates its view that the Constitution is not at all imprecise in allocating the war powers; on the contrary, the Constitution was quite specific in giving Congress the authority to initiate war and in giving the President the authority, as Commander-in-Chief, to respond to an emergency and to command the armed forces once a conflict is underway. In brief, the Constitution gave Congress the authority to initiate war and the President the authority to conduct it.

However, as Senator Spong wrote in a law review article which was included in the Committee hearing record, "The United States has only declared war five times in its history. So what is presently in need of definition is whether the Constitution mandates a role for Congress in the making of decisions to commit military forces without a declaration of war."[38] Sen. Spong and other members of the Committee believe that it does.

There has grown up in recent decades a conception of what is required for a "strong Presidency" which the Committee finds disturbing. According to this school of thought, a "strong President" is not one who strengthens and upholds our constitutional system as a whole but one who accumulates and retains as much power as possible in the Presidential office itself. This outlook appears to have been an important factor in influencing recent Presidents to claim authority as Commander-in-Chief far exceeding the specifications and intent of the Constitution. It appears too to have been a factor in encouraging Executive branch officials to invoke dubious past instances of foreign military operations undertaken by the President without Congressional approval—as if one act of usurpation legitimized another. A leading American historian, Thomas A. Bailey has written:

The bare fact that a President was a strong one, or a domineering one, does not necessarily mean that he was a great one or even a good one. The crucial questions arise: Was he strong in the right direction? Was he a dignified, fair, constitutional ruler, serving the ends of democracy in a democratic and ethical manner?[39]

CONCLUSION

In the perspective of Amercian history since World War II, the war powers bill must

Footnotes at end of article.

be perceived as necessary legislation which should not have been necessary. It would not have been necessary if Congress had defended and exercised its responsibility in matters of war and peace and so prevented the Executive from expanding its power in that "zone of twilight" of which Justice Jackson spoke.

The framers of the Constitution vested the war power in the Congress not primarily because they felt confident that the legislature would necessarily exercise it more wisely but because they expected the legislature to exercise it more *sparingly* than it had been exercised by the Crown, or would be likely to be exercised by the President as successor to the Crown. The framers, it would appear, were concerned with the way in which war would be initiated in making certain that it would not be intiated easily, capriciously, or often.

The provision of the Constitution giving the warmaking power to Congress, was dictated, as I understand it, by the following reasons. Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our Convention undertook to be the most oppressive of all Kingly oppressions; and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.

Whether and to what degree we might have avoided the war in which we are now still engaged is an issue outside of the scope of this Report. It is mentioned here only in connection with the Committee's general belief that, in the long run, even the best conceived legislation for the reassertion of Congressional prerogative will not in and of itself prove sufficient to the maintenance of constitutional democracy in America. As Professor Kelly observed, war and peace in the American constitutional system and in the American value system are separate and distinct; and as Tocqueville observed, war breeds dictatorship. Strongly though it endorses the bill herewith reported, the Committee does not deceive itself that this bill, if enacted, will of itself restore checks and balances in matters of the war power. If the country is to be continually at war, or in crisis, or on the verge of war, or in small-scale, partial or surrogate war, the force of events must lead inevitably toward Executive domination despite any legislative roadblocks that may be placed in the Executive's way. During the Constitutional Convention, James Madison, often regarded as "father of the Constitution," at one point moved to authorize two-thirds of the Senate to make treaties of peace without the concurrence of the President. Although his motion was withdrawn, his argument for introducing it is instructive. "The President," he said, "would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace."

Pending more fundamental decisions, the Congress, in the Committee's view, can take no more useful and needed step toward the restoration of constitutional balance than to enact legislation to confirm and codify the intent of the framers of the Constitution with respect to the war power. The President, as Professor Bickel and as Mr. George Reedy, formerly of the White House staff, pointed out in testimony before the Committee, is in many respects a remote and almost royal figure, shielded from direct personal participation in the adversary politics of democracy. "Under the American system," as one political scientist points out, "the Executive is virtually *prevented* from engaging in public debate on policy by the institutional setting of his office; under the British system he is expected and, in fact, *compelled* to engage continually in it."[40] The processes through which the President reaches decisions are largely personal and private, beyond the reach of direct institutional accountability.

Congress, on the other hand, makes its decisions almost entirely in the open and under public scrutiny. The President is subject to quadrennial plebiscite, but Congress provides the American people with points of access through which they can hold their Government to day-to-day account and thereby participate in it. Inefficient and short-sighted though it sometimes is, Congress provides the only feasible means under the American constitutional system of drawing the President, at least indirectly, into the adversary processes of democracy. The Executive branch is endowed with organizational discipline and legions of experts, but Congressmen and Senators have a unique asset when it comes to playing an effective, democratic role in the making of foreign policy: the power to speak and act frely from an independent political base.

The point the Committee wishes to stress is not that the President—the one now in office or any other—is an untrustworthy person but that all men wielding power must, in the interest of freedom, be treated with a certain mistrust. "Confidence," said Jefferson, "is everywhere the parent of despotism—free government is founded in jealously; . . . it is jealously and not confidence which prescribes limited constitutions to bind down those we are obliged to trust with power . . . In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution. . . ."[41]

The Committee believes that the adoption of the war powers bill would help materially to restore the confidence of the American people in the processes of their government, particularly as they relate to the vital and overriding questions of war and peace. As Senator Stennis, a principal cosponsor of the bill reported favorably by the Committee, said in his testimony: ". . . I believe the overriding issue is that we must insure that this country never again go to war without the moral sanction of the American people. This is important both in principle and as practical politics. Vietnam has shown us that in trying to fight a war without the clear-cut prior support of the American people we not only risk military ineffectiveness but we also strain the very structure of the Republic."

FOOTNOTES

[1] "War Powers Legislation," *Hearings Before the Committee on Foreign Relations*, U.S. Senate, 92d Congress, 1st Session. (Washington: U.S. Govt. Printing Office, 1972), p. 553.

[2] *Orlando* v. *Laird*, 317 F. Supp. 1013 (E.D. N.Y. 1970), affd. 443 F. 2d 1039 (2d Cir. 1971), *cert. den. sub nom Orlando and Caplan* v. *Laird*, 40 Law Week 3166 (1971).

[3] Harvard Law Review, June 1968. Reproduced in *Documents Relating to the War Power of Congress, the President's Authority as Commander-in-Chief and the War in Indochina*, 91st Congress, 2d Session, compiled by Senate Foreign Relations Committee (Washington: U.S. Govt. Printing Office, 1970), p. 68.

[4] *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890).

[5] "Foreign Relations Committee on the National Commitments Resolution." *Reproduced in Documents Relating to the War Power of the Congress, the President's Authority as Commander-in-Chief, and the War in Indochina*, 91st Congress, 2nd Session, compiled by the Senate Foreign Relations Committee (Washington: Government Printing Office, 1970), p. 24.

[6] "National Commitments," Report of Committee on Foreign Relations to accompany S. Res. 85, 91st Cong., 1st Sess., (Washington: U.S. Govt. Printing Office, 1969), pp. 30, 32.

[7] Excerpts from remarks to the American Bar Center, Chicago, Illinois, August 13, 1913, In 49 A.B.A.J. 943 (1963).

[8] "War Powers," Hearings, p. 254.

[9] *The Federalist*, Henry Cabot Lodge, editor (New York and London: C. P. Putnam Sons, 1908), p. 323.

[10] Assignment of Ground Forces of the United States to Duty in the European Area," *Hearing by Committees on Foreign Relations and Armed Services*, U.S. Senate, 82d Congress, 1st Session, on S. Con. Res. 8, Feb. 1–28, 1951 (Washington: U.S. Govt. Printing Office, 1951), pp. 92–93.

[11] "National Commitments" Hearings, pp. 72–73.

[12] Statement by William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel, on the "President's Constitutional Authority to Order the Attack on the Cambodian Sanctuaries," *Documents Relating to the War Power of Congress*, p. 176.

[13] *The Federalist*, pp. 467–468.

[14] *The Records of the Federal Convention of 1787*, 4 volumes (Max Farrand, editor, New Haven and London: Yale University Press, 1966), vol. 2, p. 318.

[15] Summarized by Richard B. Morris, Gouverneur Morris Professor of History, Columbia University, in a statement before the Foreign Relations Committee, March 9, 1971, "War Powers" Hearings, p. 80.

[16] *The Federalist*, pp. 430–431.

[17] *The Papers of Thomas Jefferson*, 17 volumes (Julian P. Boyd, ed., Princeton: Princeton University Press, 1955), vol. 15, p. 397.

[18] 67 USC 635 (1862).

[19] *A compilation of the Messages and Papers of the Presidents*, 10 volumes (James Richardson, ed., Washington: Govt. Printing Office, 1917), vol. 2, pp. 489–490.

[20] John Quincy Adams to Don Jose Maria Salazar, August 6, 1824, quoted in *The Record of American Diplomacy*, third edition (Ruhl J. Bartlett, ed., New York: Alfred A. Knopf, 1954), p. 185.

[21] *A compilation of the Messages and Papers of the Presidents* (New York: Bureau of National Literature, Inc., 1917), vol. 7. p. 3047.

[22] A letter from Daniel Webster to Mr. Severance, July 4, 1851, in *The Writings and Papers of Daniel Webster*, vol. 14, p. 440.

[23] "War Powers" Hearings, p. 81.

[24] "War Powers" Hearings, p. 8.

[25] *Ibid.*, pp. 551–552.

[26] *Congressional Record*, 81st Congress, second session, vol. 96, pt. 7, Senate, June 27, 1950, pp. 9229–9233.

[27] *Congressional Record*, 82d Congress, first session, vol. 97, pt. 1, Senate, January 5, 1951, p. 37.

[28] "Assignment of Ground Forces of the United States to Duty in the European Area," pp. 92–93.

[29] "National Commitments" Hearings, p. 24.

[30] *New York Times*, August 19, 1967, p. 10.

[31] Leonard C. Meeker, "The Legality of U.S. Participation in the Defense of Vietnam," *The Department of State Bulletin*, March 28, 1966, p. 484.

[32] Justice Robert H. Jackson concurring in *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).

[33] Justice Field in *Norton* v. *Shelby County*, 118 U.S. 425 (1886).

[34] "National Commitments" Hearings, p. 25.

[35] *New York Times*, April 30, 1971, p. 18.

[36] "War Powers," p. 486.

[37] "War Powers," p. 498.

[38] William B. Spong, Jr., "Can Balance Be Restored in the Constitutional War Powers of the President and Congress?", *Univ. of Richmond Law Review* Vol. 6, No. 1, Fall 1971, p. 10.

[39] Thomas A. Bailey, *Presidential Greatness* (New York: Appleton-Century, 1966), p. 227.

[40] Alexander J. Groth, "Britain and America: Some Requisites of Executive Leadership Compared," *Political Science Quarterly*, June 1970, p. 218.

[41] Quoted in A. T. Mason, *Free Government in the Making*. (New York: Oxford University Press, 1965), p. 371.

ADDITIONAL VIEWS OF SENATOR FULBRIGHT

Although the bill herewith reported is an excellent one, which I would far rather have enacted in its present form than not have enacted at all, it seems to me that the bill could be improved by two specific alterations.

The first problem lies with Section 3 which catalogues the various conditions under which the President would be permitted to make emergency use of the armed forces. These conditions, in my view, go too far in the direction of Executive prerogative, especially in allowing the President to take action not only to "repel an armed attack" but also to "forestall the direct and imminent threat of such an attack" on the United States or its armed forces abroad. The danger here is that these provisions could be construed as sanctioning a preemptive, or first strike, attack solely on the President's own judgment. Should the President initiate such a preemptive attack, the thirty-day limitation provided for in Sections 5 and 6 of the bill *might prove* to be ineffective, or indeed irrelevant, as Congressional checks on the President. The provisions authorizing the President to "forestall the direct and imminent threat" of an attack could also be used to justify actions such as the Cambodia intervention of 1970 and the Laos intervention of 1971, both of which were explained as being necessary to forestall attacks on American forces.

In their memorandum on war powers legislation the Lawyers Committee on American Policy Toward Vietnam reminded the Foreign Relations Committee that the classical language used to describe the basic power of the Commander-in-Chief to engage in hostilities in the absence of Congressional authorization is as follows: "to repel a sudden attack against the United States, its territories and possessions." This language is much more restrictive than that contained in paragraphs 1 and 2 of Section 3 of the Committee bill, which, in their extensiveness, may have the unintended effect of giving away more power than they withhold. In the view of the Lawyers Committee, the extension of the President's power to use the armed forces to "forestall" an attack before it takes place may well go beyond the President's constitutional authority. Besides a "sudden attack" on United States territory, the only other circumstances identified by the Lawyers Committee as warranting unauthorized Presidential use of the Armed Forces are an attack on the Armed Forces of the United States stationed outside of the country and an imminent threat to the lives of American citizens abroad, the latter of which would justify only a brief military operation for purposes of evacuation.

The bill appears to me to deal satisfactorily in paragraph 3 of Section 3 with the matter of protecting the lives of Americans abroad; it goes too far in paragraph 2, however, in allowing of discretionary Presidential action to "forestall the direct and imminent threat" of an attack on the territory or Armed Forces of the United States. Accordingly, the Senate may see merit in substituting for paragraphs 1 and 2 of Section 3 of the bill the following, more restrictive conditions for Presidential use of the Armed Forces in the absence of Congressional authorization suggested by the Lawyers Committee:

(1) "repel a sudden attack against the United States, its territories, and possessions;

(2) "repel a sudden attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory."

Although I consider the Lawyers Committee's language preferable to paragraphs 1 and 2 of Section 3 of the Committee bill, I am inclined toward an even simpler, more abbreviated provision allowing of emergency use of the armed forces by the President. In practice, it is exceedingly difficult, as the Committee has found, to draw us a list of emergency conditions for Presidential use of the Armed Forces which does not become so long and extensive a catalogue as to constitute a *de facto* grant of expanded Presidential authority. The list of conditions spelled out in Section 3 of the bill is, in my opinion, about as precise and comprehensive a list as can be devised, and its purpose, I fully recognize, is not to expand Presidential power but to restrict it to the categories listed, and, even within those categories, to be exercised for a period not to exceed thirty days. Nevertheless, I am apprehensive that the very comprehensiveness and precision of the contingencies listed in Section 3 may be drawn upon by future Presidents to explain or justify military initiatives which would otherwise be difficult to explain or justify. A future President might, for instance, cite "secret" or "classified" data to justify almost any conceivable foreign military initiative as essential to "forestall the direct and imminent threat" of an attack on the United States or its Armed Forces abroad.

For these reasons I am much inclined toward a simple substitute for paragraphs 1, 2 and 3 of Section 3 of the bill, in which it would simply be recognized that the President, under certain emergency conditions, may find it absolutely essential to use the Armed Forces without or prior to Congressional authorization. This approach too has its dangers, allowing as it would of irresponsible or extravagant interpretation, but at least it would place the burden of responsibility squarely upon the President, where it belongs, and it would also of course be restricted by the thirty-day limitation specified in Sections 5 and 6 of the bill.

Under the language of paragraphs (1), (2) and (3) of the bill the Executive could cite fairly specific authority for the widest possible range of military initiatives. Under the simpler, more general language I propose, the President would remain free to act but without the prop of specific authorization; he would have to act entirely on his own responsibility, with no advance assurance of Congressional support. A prudent and conscientious President under these circumstances, would hesitate to take action that he did not feel confident he could defend to the Congress. He would remain accountable to Congress for his action to a greater extent than he would if he had specific authorizing language to fall back upon. Congress, for its part, would retain its uncompromised right to pass judgment upon any military initiative taken without its advance approval. Confronted with the need to explain and win approval for any use of the Armed Forces on the specific merits of the case at hand, a wise President would think carefully before acting; he might even go so far as to consult with members of Congress as well as with his personal advisers before committing the Armed Forces to emergency action. For these reasons, it appears to me that a general, unspecified authority for making emergency use of the Armed Forces, though superficially a broad grant of power, would in practice be more restrictive and inhibiting than the specific grants of emergency power spelled out in paragraphs (1), (2) and (3) of Section 3 of the bill.

A related consideration, called to the attention of the Committee by the Federation of American Scientists, is the danger of a President, on his own authority, escalating conventional hostilities into a nuclear war. The United States has not, like the People's Republic of China, announced that it will never make first use of nuclear weapons. Accordingly, the Federation of American Scientists proposes that Congress require the President to secure its consent before using nuclear weapons except in response to their use or irrevocable launch by an adversary. So enormous is the significance of nuclear war that the conversion of any conventional conflict into a nuclear conflict cannot realistically be considered a mere change of tactics in a continuing conflict. In effect, the introduction of nuclear weapons would constitute the beginning of a whole new war. This being the case, I concur wholly with the Federation of American Scientists that Congress must retain control over the conventional or nuclear character of a war.

In order to meet these various contingencies, I propose, in lieu of the introductory clause and paragraphs 1, 2 and 3 of Section 3 of the bill—the provisions spelling out Presidential emergency use of the Armed Forces—the following substitute:

SEC. 3. In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be employed by the President only—

(1) to respond to any act or situation that endangers the United States, its territories or possessions, or its citizens or nationals when the necessity to respond to such act or situation in his judgment constitutes a national emergency of such a nature as does not permit advance Congressional authorization to employ such forces; but the President may not under any circumstances use nuclear weapons first without the prior, explicit authorization of the Congress; or.

Paragraph 4 of Section 3 of the Committee bill, spelling out the conditions for use of the Armed Forces "pursuant to specific statutory authorization," seems to me to be well and carefully drafted in its present form. I recommend its retention as paragraph 2 of a revised Section 3.

Another problem arises with respect to Section 9 of the bill, which states that the bill would "not apply to hostilities in which the Armed Forces of the United States are involved on the effective date of this Act." The effect of this provision would be of course the exemption of the current war in Indochina from the application of the bill. I understand quite well the importance of keeping the controversial matter of Vietnam separate from the general issue of the war powers, but I should not wish to resolve this difficulty by going so far as to give negative or implicit sanction to the continuation of the war in Indochina. My own view is that the war in which we are now engaged is unconstitutional as well as unwise. I would not wish, even by indirection, to have it suggested in a major piece of legislation that this war warrants exemption from rules of legality which would be applied to future wars. As the Committee Report correctly points out, the war powers bill is not an attempt to alter the Constitution but a reassertion and codification of the war powers provisions of the Constitution. To exempt any war from the bill's provisions is, in effect, to exempt it from the Constitution. In order to deal with this problem I propose the following substitute for Section 9 of the bill, dealing with its effective date and applicability:

SEC. 9. This Act shall take effect on the date of its enactment. The preceding sentence, however, shall not be deemed in any manner to confer upon the President any authority to use the Armed Forces of the United States not otherwise conferred upon the President under the Constitution or other provision of law.

J. W. FULBRIGHT.

INDIVIDUAL VIEWS OF SENATOR JOHN SHERMAN COOPER

I submit my individual views in order to join with others in a deserved tribute to Senator Javits for his leadership and magnificent work in developing and presenting to the Senate the historic legislation embodied in S. 2956. As the Report so properly states, much credit should go to other members of the Senate, whom the Report names, who have submitted bills and their views upon the purpose of S. 2956 "to make rules

governing the use of the armed forces of the United States in the absence of a declaration of war by the Congress". And, as the Report states, great credit is due Senators Stennis, Spong, and Eagleton for their active participation with Senator Javits in the final development of the bill.

I desire also to raise some questions about the provisions of the bill and about one theme of the Report, excellent and comprehensive as it is.

Senator Javits and his co-workers have done a remarkable and invaluable work in codifying the constitutional powers of the President and the Congress respecting the engagement of the armed forces of the United States in war. Assisted by the testimony and views of eminent constitutional authorities, S. 2956 may be the most authoritative and incisive delineation of these powers.

Despite my support of the bill, I have difficulty with Sections 5 and 6 which read as follows:

THIRTY-DAY AUTHORIZATION PERIOD

SEC. 5. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act shall not be sustained beyond thirty days from the date of the introduction of such Armed Forces in hostilities or in any such situation unless the continued use thereof in such hostilities or in such situation has been authorized in specific legislation enacted for that purpose by the Congress and pursuant to the provisions thereof.

TERMINATION WITHIN 30-DAY PERIOD

SEC. 6. The use of the Armed Forces of the United States in hostilities, or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances, under any of the conditions described in section 3 of this Act may be terminated prior to the thirty-day period specified in section 5 of this Act by an Act or joint resolution of Congress.

The Committee Report, quoting the late Justice Robert H. Jackson's concurring opinion in *Youngstown Sheet and Tube Company* v. *Sawyer*, 343, U.S. 579, states there is a "zone of twilight" between the distinct areas of Presidential and Congressional war powers. I believe this statement, reinforced by many authorities, to be correct and that it is impossible to determine in every case the exact limits of the President's power to engage the armed forces of the United States in hostilities.

For this reason I doubt that the Congress has the authority to limit the exercise of Presidential authority to an exact term, such as the "30 days" prescribed by Sections 5 and 6 of the bill. If the President's exercise of authority is constitutional under Article II, Section 2 of the Constitution, that is—

The President shall be Commander in Chief of the Army and Navy of the United States and of the Militia of the several States, when called into the actual service of the United States—

I do not believe S. 2956—a statute—could prevail over his constitutional authority if he should determine that a period of time longer than 30 days would be necessary to carry out his responsibility as Commander-in-Chief of the armed forces of the United States to protect the armed forces, and the security of our country. My study of the powers of the Congress to limit the action of the President of the United States indicates that the denial of funds by the Congress is its only certain powers.

On this issue, Professor Alexander Bickel of the Yale University Law School, in his excellent testimony stated:

I am open to questions, Mr. Chairman, naturally, concerning specific provisions in the bills the committee has under consideration. I will say in general only—on the one hand—that I don't think the President can be deprived of his power to respond to an imminent threat of attack—as well as to the attack itself—on the United States or on troops of the United States lawfully stationed wherever they may be, nor I believe can he be deprived of the power to continue to see to the safety of our troops once they are engaged, even if a statutory 30-day period has expired. In these respects, the Javits and Eagleton bills raise constitutional problems, if one can call them that, which are, however, soluble I believe by simple redrafting. I do think that Congress can govern absolutely, absolutely, the deployment of our forces outside our borders and that Congress should undertake to review and revise present dispositions. In this fashion, the eventuality of an attack or threat of attack against our forces can be indirectly provided for.

On the other hand, I think that a generalized, prospective delegation by Congress to the President of the power to go to war in aid of our allies pursuant to treaty commitments gives away more of its own power than Congress may constitutionally give away by so broad a delegation—or at any rate, a delegation which it is possible to construe all too broadly. In this respect, I would favor amendment of the Javits bill.

When S. 2956 was under final consideration in the Senate Foreign Relations Committee, it was agreed that members who desired to offer amendments would do so in the Senate when the bill became the pending business. I propose three amendments which I believe would strengthen the purposes its sponsor intended.

The first amendment I suggest is that the language "by statute, or concurrent resolution of both Houses of Congress, specifically authorizing the use of the armed forces of the United States", should be incorporated in Section 3(4). This language supports the National Commitments Resolution, S. Res. 85, which was passed by the Senate on June 25, 1969, by a vote of 78–16, and the purpose of the bill.

The second amendment I propose is based upon the position that the War Powers Act should take force immediately upon enactment. I therefore suggest that Section 9 should be amended to provide only that "This Act shall take effect on the date of its enactment". If the bill states correctly the separate constitutional powers of the Executive and the Congress, it should apply to the hostilities in which the United States is now engaged in Southeast Asia.

The third amendment would propose a procedure by which the Congress would be called into session to consider the use of the armed forces of the United States in hostilities. This procedure would require that the Congress meet promptly to consider situations which involve the use of United States forces in hostilities, or could involve the use of United States forces in hostilities. I have stated above that there is a constitutional question as to whether the Congress can limit action by the Executive to 30 days, or any period of time, except by the denial of funds, but the requirement by law for a prompt meeting and consideration by the Congress of any involvement in hostilities is the power and the duty of the Congress. (A proposed procedure for calling Congress into session in the form of a joint resolution will be found at the conclusion of my individual views.)

Although I question the constitutionality of Sections 5 and 6, S. 2956 would express by legislative enactment the position of the Congress that action beyond 30 days should not be undertaken without resort to the Congress for further authority. It would have the value of inhibiting military action which did not clearly represent the exercise of the constitutional authority of the President.

There is another issue to which I would like to direct attention. Section 3 of the bill states that the bill applies to all treaties "in force at the time of the enactment of this Act". This is of great importance because it is in the provisions of these treaties that the United States is most likely to become involved militarily, not only for the defense and for the security of the United States but for the defense of other countries.

I support this provision, but I consider it important that the words "constitutional processes" used in existing and in any future bilateral or multilateral defense treaties to which the United States may become a party, be interpreted in S. 2956 to affirmatively require that the engagement of United States forces in hostilities beyond the emergency authority of the Executive shall not be undertaken without the approval of the Congress. This is the purpose of the first amendment which I have discussed above in this statement.

Existing post-World War II defense treaties are under attack today, and I think it proper to recall the background and events under which they were entered into following World War II, and to state that at the time they had practically unanimous support of the Congress, the news media, and the people.

The collapse of Nazi Germany brought the Soviet armies into Eastern Europe at the close of World War II. The Communist coup in Czechoslovakia in 1948, the fall of Nationalist China, the attack upon South Korea and the possibility of a thrust from Communist China toward Southeast Asia, caused great concern in the United States, Europe and Southeast Asian countries as to their security and led to the negotiation of the treaties. There were 8 of these treaties and they included 43 nations. Among them are NATO, SEATO, ANZUS, Inter-American, and bilateral treaties with Japan, Korea, the Philippines and Nationalist China.

While these treaties differ in certain respects—particularly NATO, which recites that an attack upon a vast area defined by the treaty shall be considered an attack upon all the parties—they are similar in substance. Typical is the language of the SEATO Treaty, which provides in Article I, Section 1, that:

Each Party recognizes that aggression by means of armed attack in the treaty area against any of the Parties * * * would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional process.

The term "constitutional processes" is not defined in the treaties. And the reports of the committees and the debates in the Congress on its meaning show disagreement, without definition. It was not settled whether the requirement of "constitutional processes" meant that the President, acting as Commander-in-Chief, could commit the forces of the United States to the military assistance of another treaty party, or meant that the President should consult with the Congress to determine jointly whether the commitment of military forces was essential to the security of the United States as well as that of other parties to the treaty and that the Executive would not commit our forces until the Congress had given its approval, either by a declaration of war or by a joint resolution.

During the Senate's consideration of the Korean Defense treaty in 1954, several Senators, including myself, but particularly Senator John Stennis and former Senator Watkins of Utah, insisted that the proper interpretation of the term "constitutional processes" as used in that treaty required the authorization of the Congress. There was no authoritative answer. I support such an interpretation.

The record of the hearing before the Senate Foreign Relations Committee and the debates in the Senate disclose that all of these

treaties were approved by the Senate Foreign Relations Committee and the Senate with little opposition and without precisely determining the interpretation of "constitutional processes" and the commitment of the United States. Resolutions approved by Congress—some implementing certain of these treaties—uniformly provided to the Executive broad powers to involve the armed forces of the United States in hostilities, whether in the administrations of Presidents Truman, Eisenhower, Kennedy or Johnson. President Eisenhower was particularly insistent upon Congressional approval for military movements that might have involved the United States in a war. He was supported by Secretary of State John Foster Dulles who stated, in response to Committee inquiries, that the Executive would seek approval by the Congress for any such involvement. No involvement in war occurred during the Administration of President Eisenhower.

In fact, reservations offered in Committee and on the Senate floor during the consideration of several of these treaties, and amendments offered to Executive resolutions—Formosa, Middle East, Berlin, Cuba, and Tonkin Gulf—to prohibit the use of the armed forces of the United States without Congressional approval were consistently opposed and rejected in the Foreign Relations Committee and in the Senate.

I present these facts because I do not concur in one underlying theme of the Committee's report—which was never discussed in Committee and never voted on—that the Executive has taken from the Congress its powers. The record, if studied, discloses that the Congress, particularly since World War II, has not only acceded to but has supported Executive resolutions requesting Congressional authority to use the armed forces of the United States, if necessary, in hostilities.

These are settled facts of history. We can change our course but we cannot revise and rewrite history.

Now the wheel has turned and, for several years, the Senate Foreign Relations Committee, the Senate, and many in the House of Representatives have been seeking to define the Constitutional basis for the appropriate powers of the Executive and the Congress. In this respect, tragic as it has been, the war in Vietnam has had a profound influence

The "War Powers Act" of Senator Javits and his colleagues is a landmark legislation. It will do much to define the situations that could result in the engagement of United States forces in hostilities, and to limit involvement. No one can foresee all the ways in which this country might become involved in war. But this bill is a significant advance, and it serves to emphasize once again that one of the purposes that the framers of the Constitution had in mind when they constructed the system of checks and balances for the Legislative and Executive branches was to make it difficult for the United States to enter into war. With the advent of the use of nuclear weapons, hostilities could quickly lead to a nuclear exchange—a consequence that can bring an end to civilization as we know it. The War Powers Act for these reasons, is all the more important as it addresses the necessity to implement the provisions of the Constitution which were written to forestall entry of the United States into war except after full and considered judgment by the Executive and the Congress and only when vital United States interests are at stake.

JOHN SHERMAN COOPER.

JOINT RESOLUTION

Regarding the use of the Armed Forces of the United States in hostilities in the absence of a declaration of war by the Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, in the absence of a declaration of war by the Congress, the President uses the Armed Forces of the United States in armed hostilities in any foreign country or whenever he believes that circumstances exist that make the use of such Armed Forces in a foreign country imminent, he shall immediately notify the Congress, if the Congress is in session, or shall immediately notify the President pro tempore and the majority and minority leaders of the Senate and the Speaker and the majority and minority leaders of the House of Representatives, if the Congress is not in session, of the use or imminent use of such Armed Forces, as the case may be.

SEC. 2. Whenever the Congress has been notified by the President, or whenever the Congress has been convened under section 3 of this joint resolution after notification to those officers of the Congress referred to in the first section of this joint resolution, both Houses of the Congress shall proceed immediately to the consideration of the question of whether the Congress shall authorize the use of the Armed Forces of the United States and the expenditure of funds for purposes relating to those hostilities or imminent hostilities regarding which the Congress (or its officers) has been notified.

SEC. 3. Whenever the President pro tempore of the Senate and the Speaker of the House of Representatives receive notification from the President under the first section of this joint resolution and the Congress is not in session at the time of such notification, they shall (1) have authority to reconvene the Senate and the House of Representatives, respectively, for consideration of the question referred to in section 2 of this joint resolution, and (2) reconvene such Houses, after notice to all Members of Congress, not later than twenty-four hours after the President has notified the President pro tempore and the Speaker of the House of Representatives under the first section of this joint resolution.

SEC. 4. Sections 2 and 3 of this joint resolution are enacted by Congress—

(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

Mr. EAGLETON. I am pleased and honored to join again with Senators JAVITS and STENNIS in introducing this important legislation.

The sponsors of the War Powers Act are joined together in a purpose which transcends partisan and ideological lines. We have of course, been motivated by the tragedy of our involvement in Vietnam—an involvement that has never received the unqualified support of the American people. While each of us has his own view as to how to end that involvement, we share the common belief that our experience in Vietnam has exposed a breakdown in the institutions of our Government. Most importantly, we are concerned that Congress has failed to assert its constitutional mandate to decide whether America goes to war.

Much has transpired since this body last considered the War Powers Act of 1972—passing that Act on April 13, 1972 by an overwhelming 68 to 16 vote.

After elevating the hopes of the American people with the now famous peace-is-at-hand statement in October, President Nixon conducted one of the most brutal bombardments in the history of aerial warfare over Hanoi and Haiphong in December. I am sure that the President made his decision because he felt that it was in the best interest of the country. But even now, after the bombing has been halted, the President has refused to come to the American people to explain why such action was necessary. If decisions of such moment as to involve war and peace are made in secrecy and kept from the arena of public opinion, the democratic process will be undermined.

The air bombardment of North Vietnam has made Americans more aware than ever of the dangers of permitting a single man to retain excessive power. But as American citizens have turned to Congress for action, they have become even more frustrated as they realize that our system of checks and balances has, to a significant degree, been compromised.

The President's recent announcement that bombing would be halted above the DMZ and the various news reports that a negotiated settlement is near have given us new cause to be hopeful. If we are again disappointed, however, and if the President again decides that military escalation is necessary, the burden for ending this long and tragic war would belong to the Congress of the United States.

But because we in Congress have forfeited our responsibility to decide by a simple majority vote the geographic limitations and the duration of our involvement in Indochina, we now must end that involvement by a two-thirds majority to override the expected Presidential veto. Congress must be involved at the outset in the decisions that could lead our Nation to war, not after our troops have been committed. That is what the War Powers Act is intended to accomplish.

Congress has failed in the past to assert its constitutional war powers because, quite frankly, the individual members of this body have preferred to avoid the more difficult questions facing our Nation. The temptation for those of us in political life to avoid such decisions is a natural tendency that cannot be condoned but must be considered as we seek to improve the institutions that guard us against human weakness. What we ask today is that this Congress establish a procedure which will obligate its Members to fulfill their responsibilities in making the most awesome decision that our Nation must face—the decision to go to war.

The history of the drafting of this legislation represents an exceptional chronology of Congress growing awareness of its own powers—an awareness that has brought us today on the brink of serious constitutional confrontation with the Executive in a variety of areas.

The Zablocki bill which passed the

House of Representatives by unanimous consent on August 2, 1971, was the very first war powers measure considered by Congress. This bill, introduced as a Joint Resolution expressed the sense of Congress that whenever feasible the President should seek appropriate congressional consultations before involving the Armed Forces of the United States in armed conflict. This somewhat timid approach would have ceded to the President powers of discretion which he does not possess today even in the absence of specific war powers legislation. Congressman ZABLOCKI's effort in 1970 did indicate, however, that the House of Representatives recognized the erosion of the congressional war power.

My distinguished colleague from New York (Mr. JAVITS) deserves great credit for introducing the first war powers bill in the U.S. Senate in June 1970. Senator JAVITS' bill provided a vehicle for Members of Congress and prominent constitutional scholars to discuss the parameters of congressional authority.

In February 1971, Senator JAVITS submitted a revised and superior version of his war powers legislation of the previous year. This bill was designed to make rules respecting military hostilities in the absence of a declaration of war. In this bill, Senator JAVITS introduced for the first time the concept of placing a quantifiable limitation on the authority of the President to act in certain emergency situations spelled out in the bill.

The justification for establishing a 30-day period—within which the Congress must act to authorize the President to continue his use of forces in an emergency—is still applicable in the bill we introduce today. While recognizing the authority of the Commander in Chief to take emergency action—to repel an attack on the United States, or on U.S. Forces stationed abroad, or to rescue under carefully circumscribed conditions American citizens in foreign countries—we establish a procedure whereby Congress must be immediately notified of the emergency circumstances that justify the commitment of American Forces.

By placing a 30-day limitation on the President's emergency authority we recognize that a defensive emergency action can develop the offensive character of war. If Congress is to be involved in the decision to pursue, define, or, alternatively, to reject that war, it must be notified immediately of any emergency and convene to determine, first, whether such action was legitimate in the first instance, and second, if continued action of a retaliatory nature is either necessary or prudent.

In a recent New York Times article entitled "Making War, Not Love," Tom Wicker has the following to say about the War Powers Act:

> The so-called War Powers Act now pending, for example, would require a President who had sent the Marines to the Dominican Republic or the B-52's to Hanoi to report to Congress within thirty days and to ask for its approval. This would give the President thirty days of war-making license not now specified in the Constitution. Worse, it wraps the President in the flag, gives him the initiative as a Commander in Chief who has acted in what he will surely call the national interest, and puts the onus on Congress to declare that he was wrong and ought not to have done it.

This interpretation of our bill is inaccurate. The President is required to report promptly to Congress if he commits American forces in an emergency action. Congress in addition can act before 30 days if it wishes to remove the authority granted by the emergency provisions of the bill. This action can be taken with or without a report from the President.

Some critics seem to deny the President any emergency authority whatsoever to repel attacks. While it is true that the measure we introduce today would grant the President authority he does not now technically have under the Constitution—to repel attacks on American forces legally stationed abroad and to rescue American citizens who are threatened in foreign countries—I submit that these two carefully specified authorizations of power are simply a logical and necessary extension of the Commander in Chief's authority to repel attacks. This authority, which is clearly established in the legislative history of the Constitutional Convention, has been accepted throughout our history by both the legislative and judicial branches of our Government.

I would ask the critics of this approach if they would deny the President the authority to act expeditiously in an emergency to defend our forces stationed abroad or to rescue American citizens in a foreign country. I do not believe such a denial is either warranted or desired. I do believe, however, that Congress must carefully control this authority.

In March 1971 I introduced Senate Joint Resolution 59, a joint resolution for the purpose of defining the constitutional rules of Congress and the executive in war-making. This resolution adopted the format of Senator JAVITS' bill to the extent that it established certain emergency situations in which the President could act without prior congressional approval. Authority to continue action under these situations would be limited to 30 days, the limit proposed by Senator JAVITS.

But my bill modified the codification of these situations to carefully delineate and tighten the President's emergency powers. Senate Joint Resolution 59, for instance, excluded the proposal offered by some that the President could act to protect American property overseas in case of emergency. I did not feel that the risk of a larger war was justified in the absence of any threat on human life. I simply could not see granting the President authority to commit American forces to protect American business enterprises under threat of expropriation.

In addition, my resolution questioned a basic premise of post World War II foreign policy—that our treaty commitments are self-executing. The power to declare war was assigned to both houses of Congress. Treaties are, of course, ratified only by the Senate and cannot represent even an implicit American commitment to wage war at the discretion of the Commander in Chief alone.

Our treaties are also to be implemented only in accordance with the constitutional processes of the signatory nations. The constitutional processes of the United States specify that Congress—not the President—has the authority to declare war.

Prior war powers proposals were unclear as to whether appropriations measures could be interpreted as legitimate congressional authorization for the continuance of hostilities. Senate Joint Resolution 59 took the position that appropriations measures could not imply such authorization. This contention has become increasingly obvious as some Members of Congress attempt to end our involvement in Vietnam.

We now need a two-thirds majority to override a presidential veto to cut off funds for military activity in Indochina. This factor clearly gives the Commander in Chief power that was not intended by the Founding Fathers. The President theoretically could wage war with impunity while confidently challenging each House to attempt to muster a two-thirds of its membership in order to stop him. Such a situation is not only extremely dangerous; it in effect turns our carefully devised system of checks and balances on its head.

Senate Joint Resolution 59 also went further in defining the areas in which affirmative congressional action would be necessary. It defined "hostilities" as including the deployment of U.S. forces outside the United States under circumstances where an imminent involvement in combat activities is a reasonable possibility. It also included the assignment of U.S. soldiers to accompany, command, coordinate, or participate in the movement of regular or irregular armed forces of any foreign country when such forces are engaged in any form of combat activity.

There was well-founded precedent for such limitations. In the absence of limiting congressional legislation, presidential power to move Armed Forces of the United States in international waters and to station them on territory of our allies has generally been accepted, except where such action could reasonably be expected to lead to hostilities. Only once has this principle flagrantly been abused. In 1846, after the annexation of Texas, President James Polk ordered American troops to enter the disputed territory between the Nueces and Rio Grande Rivers. Hostilities immediately broke out and Congress thereafter declared war against Mexico. However, some 18 months later, the House of Representatives concluded that the President had unconstitutionally begun the war and, in effect, Polk was justly censured.

Presidential power to move the Armed Forces of the United States is not, and

should not, be viewed as extending to place American men in situations where combat is almost inevitable.

And, as Vietnam has illustrated, limited deployments of U.S. military advisers to countries where combat activities are in progress or could be expected to commence shortly has become increasingly more dangerous in an era when "brushfire" wars and guerrilla warfare are becoming even more common.

Senate Joint Resolution 59 added new ingredients to the by now raging debate over the war powers of Congress and the President. Never before had the Congress of the United States undertaken such a detailed examination of its own constitutional prerogatives.

I am proud to say that the concepts encompassed by my resolution—first considered to be a too-strict, too-energetic approach to Congress' war powers—were adopted by the Foreign Relations Committee and were included with the excellent provisions of Senator JAVITS' bill to make up the bill passed by the Senate on April 13, 1972.

No historical analysis of war powers legislation would be complete without a discussion of the outstanding contribution made by the distinguished chairman of the Armed Services Committee, Senator JOHN STENNIS. Senator STENNIS has not only submitted his own excellent resolution to define the war powers of Congress and the President, he has participated for more than 20 years in the effort to assure that the prerogatives of Congress are protected.

An example of Senator STENNIS' great concern that Congress not abrogate its responsibilities in the warmaking area was his careful questioning in 1954 of Senator Wiley of the Foreign Relations Committee, who managed the Mutual Defense Treaty between the United States and Korea. During that colloquy, Senator STENNIS made clear that the phrase "constitutional processes" should be interpreted to mean that Congress alone would have to make the decision to implement the warmaking provisions of the treaty.

Senator STENNIS has been consistent in the view that he has held concerning the Congress' war powers and in his strict constructionist view of the Constitution. It is difficult today for advocates of a strong executive who supported Presidents Franklin D. Roosevelt, Harry S Truman, and John F. Kennedy to concede that, in the area of war powers, strict constructionism always was the proper approach. We now realize after going through the trauma of our experience in Vietnam, however, that men like Senator JOHN STENNIS were correct in their untiring efforts to assure that Congress uphold its constitutional responsibilities.

Presidents have alleged a long list of powers to justify the commitment of American Forces in Indochina. The Gulf of Tonkin Resolution, the SEATO Treaty, congressional appropriations, and the powers of the Commander in Chief have all been cited at various times as legal authority for our presence in Vietnam.

President Nixon has, however, in statements attributed to him and to his administration, relied almost exclusively on the powers of the Commander in Chief. Such a reliance, of course, does not in any way necessitate the involvement of the Congress of the United States. If this claim of power is allowed to stand without challenge, Congress will continue to lose its powers by attrition and our Constitution will undergo a major restructuring.

Alexander Hamilton, our most eloquent defender of increased executive power at the Constitutional Convention, gave his interpretation of the powers of the Commander in Chief in Federalist Paper No. 69:

> . . . would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy; while that of the British King extends to the declaring of war and to the raising and regulating of fleets and armies—all which by the Constitution under consideration, would appertain to the legislature.

This body must implement the provisions of the Constitution as described by Alexander Hamilton and James Madison in their Federalist Papers and as interpreted by a number of benchmark Supreme Court decisions. To do this we will have to use the authority assigned to Congress to make all laws necessary and proper to carry out the provisions of the Constitution. The War Powers Bill we submit to this body today is intended to do just that.

It is unfortunate that we in Congress, and Americans in general, have a tendency to overlook serious situations until they erupt into crisis. There should be little doubt that the gradual erosion of congressional war powers has grown to crisis proportions. If we fail to act now after the horrors of Vietnam have so clearly exposed the danger of individual war-making, we may never again see the questions of war and peace being decided by the sobering and deliberative processes inherent in the concept of collective judgment.

I ask this body to consider this legislation in an expeditious but thorough manner so that we can act quickly to restore balance within our system.

Mr. MUSKIE. Mr. President, I am pleased today to cosponsor the war powers bill. I do so for two reasons. In the first place, the bill commends itself on its own merits. But more importantly, the bill is a first step toward reforming the role of the President in the making of U.S. foreign policy.

First, as to the bill itself. The earliest draft of the bill was introduced by Senator JACOB JAVITS of New York during the 92d Congress. He deserves the thanks of the Senate and the Nation. Other Senators introduced similar proposals. The Foreign Relations Committee conducted a long and serious study of the bills. It heard a number of distinguished witnesses. With only a few exceptions, the witnesses before the committee supported the need for legislation of this type, to redress the imbalance in the warmaking power between President and Congress. Then, after extensive discussion within the committee itself, we voted the bill out unanimously.

The committee report summarized the purpose and effect of the bill this way. The bill, according to the report, requires "advance congressional authorization for the commitment of the Armed Forces to hostilities, by the President, except in certain designated emergencies, in the event of which the President would be authorized to commit the Armed Forces to combat for a period of not to exceed 30 days unless explicitly authorized by Congress—Senate Report 92–606, page 7.

The bill thus confirms the President's right and duty to act quickly in specifically defined emergencies. He may, and must, defend the Nation, its Armed Forces or its citizens, when they are truly threatened. This statement of unilateral Presidential authority, most agree, accommodates our historical experience and the constitutional balance of power.

Beyond that, the legislation engages Congress in all decisions which would commit us to hostilities. The legislature must act, or the President's hand is stayed. And Congress is compelled to speak directly. It may not weasel. It may not avoid the issue, as it has in the past, and there can be no argument as to whether Congress has spoken—whether appropriations, resolutions, and treaties have authorized the President to fight a war.

The bill further requires that when the President seeks the congressional authorization required by the act, and after such authorization is given, he must make full reports to the Congress on the situation. This would be an important step forward in improving the flow of information to the Congress on issues of war and peace.

I, therefore, consider the bill to be a long overdue effort by the Congress to regulate the exercise of the war power of the Nation.

The Constitution, of course, provides that Congress is to declare war and carry out other vital functions related to our Armed Forces. The President is the Commander in Chief. The exercise of the war powers is thus a matter for collective judgment, wisdom, and responsibility.

But recent decades have witnessed an increasing preemption of the war power to the Presidency. In part because of congressional failure to assume its full constitutional responsibilities; in part because of the quite natural willingness of Presidents to gather the reins of power; in part, because of the nature of the age in which we live, Presidents have caused, and Congress has tolerated, the commitment of this Nation to foreign hostilities.

With this legislation, Congress is attempting to write and end to that chapter of our experience and to start anew. In doing so, Congress is carrying out—for the first time in history—its duty to enact such legislation as is necessary and proper to the discharge of its war-declaring power and the President's Commander in Chief responsibilities.

It is not altering the Constitution. It is implementing it. No reallocation of function or duty is involved, only the

ordering and regulating of the cooperative powers of these two vital constituent elements of our Government. By this legislation Congress is saying that war—if this Nation is to commit itself to war again—will be the joint responsibility of both elected organs of the National Government, both the Congress and the President. The day of unilateral Presidential war will at last have come to a close.

It is for this reason that I support the bill. I do not think it is the last word; indeed, as I have said, it is only a first effort toward the implementation of such sharing of constitutional responsibilities. And I am convinced that if Congress is indeed to take up the new tasks it is legislating for itself in this bill, Congress had best consider quite promptly what measures are necessary to reform itself. There are a host of things we must do to strengthen this body if we are truly to join hands with the President and carry out our constitutional warmaking responsibilities: improved committee staffing, improved organization of foreign affairs legislation, improved consultation within the Congress, and so forth. We are in some ways inadequate to the task at the moment. Therefore, I hope we can quickly turn to congressional reform. It would be wrong and misleading to the Nation to declare Congress a part in the making of war, and yet refuse to undertake the reforms which are necessary if we are to carry out that function as well as we should.

I am convinced that with a modernized Congress, prepared to shoulder these responsibilities, and with an Executive ready to cooperate with Congress, the Nation will be better off. I am fearful, however, that the present administration is not prepared to cooperate. Secretary of State Rogers was one of the few witnesses who counseled against the bill before the committee. In the Cambodian and Laos invasions, in the Bay of Bengal, and elsewhere, President Nixon has seemed intent on preserving, protecting, and enhancing for himself a unilateral extension of personal power including the war powers and all the lesser powers over foreign policy, with little regard to Congress, the public, or the foreign affairs professionals. I believe this trend is a national danger, which must be corrected.

This leads me to my second and broader reason for supporting the legislation. There has been a steady White House preemption of foreign policy in this century, and not just in matters verging toward hostilities. The White House is more and more drawing all major foreign policy issues into itself.

The trend did not begin with the Nixon administration. Matters began to go awry during World War II. The wartime grasp on foreign affairs in the White House was carried forward through the postwar crises. President Truman ignored the Congress in Korea, John Foster Dulles created the structure of security treaties with little attention to Capitol Hill—except for senatorial ratification and congressional appropriation. The tendency toward more and more White House monopolization of our foreign affairs continued through the administrations of President Kennedy and President Johnson—highlighted by their habit of unilateral decisions in Vietnam.

President Nixon has brought the process of Presidential monopolization of foreign affairs to a real culmination. The ceremonial trappings, the trips, and the personalized rhetoric are its symbols.

The consequences of this White House preemption of foreign affairs are palpable:

Deliberations on anything of importance confined to a small circle;

Inefficient Presidential preoccupation with the details of foreign policy, to the detriment of Presidential leadership on domestic affairs;

Immunization of foreign affairs questions from congressional debate—except on trade, or during the debates over aid and military appropriations when the Congress must expend almost all its foreign affairs energies;

Increased anger that Congress cannot question the real makers of foreign policy—particularly the President's Assistant for National Security Affairs—because of Executive privilege claims, although surely the Constitution provided that a dialog between the Congress and those making our foreign policy should take place;

The demoralization of the Department of State and the Foreign Service—witness Secretary Rogers' exclusion from the meeting with Mao;

Delight in surprise diplomacy, which dramatizes the personality of whoever happens to be in the White House, but dismays allies, unnerves the rest of the world, and makes it hard to argue that we have a coherent policy, a steadiness of purpose, or a capacity for restrained commitment;

Increasing White House secrecy about foreign policy; and

A sense of moral certainty within the White House circle which makes it difficult to distinguish between honest debate and disloyalty—or between political advantage and national interest.

This is the temper of monarchs. It is not the way to conduct the foreign relations of the United States.

The war powers bill I take to be one step in the path back toward a better balanced, more democratic, less imperial conception of the role of the Presidency.

We must, I am convinced, begin that return journey. We must depersonalize our foreign relations. There is a coherence to U.S. policy which is above the accident of our domestic politics and the circumstances of election victories. It should be our purpose to demonstrate this to the world.

We must restore the professional service to its rightful role of advice and operation. The State Department must be made to work effectively.

Congress has a vital role to play, in consultation with the executive branch. Ways must be found to bring the serious minds in the Congress to bear on foreign affairs in a creative and constructive fashion, with hearings, advice, and a constant challenge to participation.

We have a duty to the Nation. It is our task to provide more information, earlier and fuller debate, narrower claims of executive privilege and the opening of the miles of secret file drawers to the scrutiny of the press and of the public.

All these measures, and others, are necessary to reform the role of the President, and bring our foreign affairs more closely into line with the original constitutional scheme and our historic experiences. The Constitution did not contemplate that the White House should act like the Court of Versailles or the participants at the Congress of Vienna. This is a democracy, in its foreign relations and in its domestic business. As we act like a royal court, so we depart from our essential genius. We must return. The war powers bill is a first step.

Mr. CHILES. Mr. President, I am delighted to join with my distinguished colleagues in introducing this bill to make rules governing the use of the Armed Forces in the absence of a declaration of war. I think it is significant that the Senate passed this measure last session and I would like to take this opportunity to recognize the key role Senator STENNIS played in working out a bill which was able to pass in the spring of 1972 by a vote of 69 to 16.

During the last Congress I offered testimony before the Senate Committee on Foreign Relations expressing my deep interest in setting some kind of ground rules to reiterate and elaborate upon our Constitution's command that the Nation's forces be committed to war only by decision of Congress. I felt that the abdication of these constitutional responsibilities contributed to the power shift from the Congress to the Presidency. Lawful powers of Congress have been consistently given up by that branch in recent years and thrust upon the Presidency simply because Congress has not been willing to carry the responsibility of exercising those powers itself. Power has not been usurped by the Presidency as much as it has been given up by the Congress. By giving up its constitutional responsibilities the Congress has helped create a belief that the demands of the nuclear age are such that the Constitution is obsolete and problems of foreign affairs and warmaking must necessarily be left to the President. And I do not believe that to be true.

We need only look at our involvement in Southeast Asia to see that we are losing our sense of constitutional balance between a strong and independent Congress and the Executive. One of our most serious mistakes concerning the Vietnam situation was to allow one man to bear the burden for policymaking and control. The inaction of the Congress resulted in a situation where responsibility for military commitment was not shared between the Congress and the President; where no opportunity for national debate or public forum existed; and where four individual men and their administrations decided foreign involvement policy instead of the President with the deliberative will of the people expressed through the Congress. We must now show that we have learned a painful lesson from the Vietnam conflict. Defining the President's warmaking powers is one way to avoid a similar tragedy in the future.

In my testimony back in 1971 I urged legislation that would give a detailed explication of the war powers of Con-

gress and the President and specifically cite rules and procedures that ought to be followed in circumstances where hostilities are to be initiated without congressional declaration of war. I later cosponsored S. 2956 and am pleased to add my name to the bill offered today.

I believe a reaffirmation of faith in the doctrine of separation of powers and checks and balances entails a simultaneous reaffirmation of faith in the people themselves. Conditions in the modern world do not render obsolete the devices built into our Constitution by the framers to avoid tyranny—neither do these conditions impel us to give the President additional authority. What these conditions do encourage, however, is a concerted effort to reestablish constitutional balance and reassert congressional responsibility.

Mr. Justice Jackson's words capsulize my thoughts on this subject:

> With all its defects, delays and inconveniencies, men have discovered no technique for long preserving free government except that the executive be under the law, and that the law be made by parliamentary deliberations.

The War Powers Act is an effort to fulfill—not alter, amend, or adjust—the intent of the framers of the Constitution in order to insure that the collective judgment of both the Congress and the President will be brought to bear in decisions involving the introduction of the Armed Forces of the United States in hostilities or in situations where imminent involvement in hostilities is indicated by circumstances.

I believe the Congress has learned from the Korean and Southeast Asian experiences that it must design a new means to insure its own exercise of the war powers reserved to it in article I, section 8, of the Constitution. This bill is designed to do that. No one man can be expected to bear the burden of committing this Nation to war with only tacit authorization of the legislature. And no Congress can constitutionally allow one man to exercise war powers—powers given to the Congress in the Constitution.

COSPONSORSHIP OF THE WAR POWERS ACT

Mr. NUNN. Mr. President, in my opinion, the framers of the Constitution, in article I, section 8, clearly placed this country's war declaration powers in the Congress. The duty of implementing this power was placed upon the President in his capacity as Commander in Chief—article II, section 2.

Without being critical of this administration or any previous administrations, I feel that this Nation will survive as a democratic institution only so long as the checks and balances created by the framers are scrupulously followed by the executive and judiciary branches, as well as this legislative branch. The power utilized by the President in committing our troops in undeclared wars, without specific congressional approval, except under emergency circumstances, tends to disrupt the delicate balance between our three branches of Government. The proposed War Powers Act is intended, not to take away any Presidential power, but merely to clarify and reassert the congressional prerogative to declare war or authorize military action in undeclared conflicts. Since I feel that a strong legislative branch is essential to the well-being of our Nation, I support legislation implementing this goal.

To avoid the disunity that has in the recent past split this country down the middle, it is essential that American troops, except in emergencies, be committed to combat only with the joint concurrence of the President and the Congress.

Even the most diligent effort ever put forth by Congress to end the war, the so-called end-the-war amendment which cuts off funds for the Vietnam war, shows on its face the great frustration Congress experiences in trying to end, as opposed to prevent, an undeclared war, even if such a resolution were passed.

The war powers bill would not in any way deal with our present dilemma in Vietnam, but would help prevent these undeclared wars in the future, or in the alternative, assure the backing of the legislative branch for necessary military action. Mr. President, I am pleased to cosponsor this bill.

SUPPORT OF THE WAR POWERS ACT

Mr. HUMPHREY. Mr. President, I wish to announce my firm support of the War Powers Act being introduced today by the Senator from New York (Mr. JAVITS).

I commend the Senator from New York for his leadership on this important measure. His tireless efforts in perfecting this legislation and in gathering bipartisan support for it deserve our thanks.

The War Powers Act is being introduced at an important juncture in our history. Hopefully, the war which initially caused the Congress to reexamine the war powers of the President is at last coming to an end. And with the termination of the war has come a needed critical evaluation of the relationship between the legislative and executive branches of Government—not only in the foreign policy field, but in the area of domestic issues.

The War Powers Act is precedent setting. It is designed to regulate by statute for the first time the conduct of the shared executive and legislative power with respect to war and the entry into war. I believe that the War Powers Act would enable the Government of the United States to react responsibly and democratically in times of crisis.

Mr. President, there are many lessons to be learned from our involvement in Vietnam. And one of them is that the genius of our system of Government is undone when power is shifted beyond the tolerance allowed by the Constitution.

James Madison wrote in the Federalist, No. 47, that—

> The accumulation of all powers, legislative, executive, and judicial in the same hands, whether of one, a few or many, whether hereditary, self-appointed, or elective may justly be pronounced the very definition of tyranny.

We are living at a time when Chief Executives have accumulated power in unprecedented amounts in the name of "greater efficiency," in the name of "national emergency," in the name of "greater executive authority," in the name of "speed and quick reaction."

The words of James Madison written nearly 200 years ago seem to vanish when the President takes charge, alerts a nation to danger, and then acts. Unfortunately, there are those in our Republic who believe that his actions though taken in the national interest may not always be in the national interest, that actions taken in haste often need deliberation and that Presidential actions require the consent of the people's representatives assembled in Congress.

It is clear that what is needed for now and for the future are not blanket restrictions of Presidential authority, but definitions which explain and clarify the constitutional limits of Presidential power. We are in the midst of a constitutional crisis. To solve this crisis will mean that the powers of the President and the powers of the Congress do not need to be reshaped—or altered. Rather, they must be redefined and then respected by each branch of Government.

I believe that the War Powers Act is an important instrument to deal with this constitutional crisis in the area of foreign policy.

Still needed is a Joint Congressional Committee on National Security to oversee the entire scope of executive branch national security policies. I introduced legislation creating such a committee in the last session of Congress and will introduce it again in the coming weeks.

Critics of the War Powers Act and of a reassertion of congressional authority in domestic and foreign policy areas often tell us that Congress is lethargic—its actions are too slow to meet the modern needs for immediate response and it does not have enough information to act. I do not agree with this thesis.

First of all, if consulted and provided with information, Congress can and has acted in haste. Second, the avoidance of deliberation which underlies the assumption in greatly expanded Executive warmaking authority needs to be questioned. The history of American foreign policy since the end of the Second World War is full of examples of Presidential initiatives taken without congressional approval or consultation which were detrimental to our national interests. Speed in responding to a belligerent act by a foreign country or initiating a military action against another nation cannot be a substitute for rational policy judgment and approval by the Congress. The risk of loss of life and the tremendous expenditure of funds not to mention the foreign policy implications of a military response demand that the Congress share in this responsibility.

Third, those who shout loudest that the Congress lacks the necessary information to make sound judgments and share in executive branch warmaking authority are often the very same people who continually devise ways to deny the Congress the information it needs.

I think that the American public must understand that when a President takes powers unknown to him—as this and other Presidents have tried to do—he

must take those powers from somewhere. And that somewhere is the Congress of the United States.

Some people compare the doctrine of shared power between Presidents and Congresses to the swing of a pendulum. They say that we need not worry when it moves nearer to the Executive, because someday it will retrace its route in favor of the Congress. The great problem with this analogy is that the balance of power is set forth in our Constitution. This great document allows some shifting back and forth. But it sets outer limits for the pendulum's movements. It is these outer limits which have been ignored by Presidents in their accretion of warmaking authority.

And it is these same outer limits that the War Powers Act seeks to define, and in some needed ways, to restrict.

Mr. ROTH. Mr. President, I am pleased to join so many of my distinguished colleagues in cosponsoring the War Powers Act, particularly the junior Senator from Mississippi, the senior Senator from New York, and the junior Senator from Missouri who have been so instrumental in shaping this legislation. During the last session, I had joined Senator STENNIS in introducing one of the original war powers measures, because I believed it was vital that Congress assert its constitutional authority in this area. The essential features of our bill were incorporated in the legislation being offered today, legislation that we debated extensively last spring and passed by a vote of 68 to 16.

After carefully exaluating all the arguments—both pro and con—I became more and more convinced that this legislation is vitally needed and will strengthen our democratic institutions without in any way jeopardizing our national security.

Increasingly there is a feeling in this country that the system of checks and balances between Congress and the Executive has been eroded. More and more, the executive branch appears to be able not just to determine the framework within which interaction on policy takes place, but has come to assume legislative functions as well. This trend is not simply the result of Executive over-initiative, but is also a consequence of the failure of Congress to discharge its constitutional responsibilities on many important issues and decisions. Perhaps this is no where more evident than on the vital issues of war and peace.

The War Powers Act, by providing a sharper definition of the respective war powers of the Congress and the Executive and by establishing clear procedures whereby Congress must give its authority to any protracted use of U.S. Armed Forces, will insure that Congress faces up its responsibility for policymaking in this area.

As statute, the war powers legislation can in no way infringe upon the constitutional powers of the President as Commander in Chief of the Armed Forces. It is evident that such powers presume that the President should be able to respond immediately in any serious emergency threatening the national security or the lives of American citizens. This need for quick response and flexibility, implied in the Constitution and derived from good commonsense, is incorporated in this legislation, particularly in sections 2 and 3.

It should be just as evident that the use of the Armed Forces in a situation that is not a clear direct threat to our national security or which requires an extended engagement in hostilities implies a need for a policy decision, requiring the judgment of Congress. Surely the war powers invested by the Constitution in Congress, as the sole body with the power to declare war, demands that Congress give its authority to any such use of the Armed Forces.

I have no doubt that should the vital national interests of the United States be threatened, the President and Congress would not hesitate to act together to protect those interests. But if a President were to ask for authority to use the Armed Forces and the Congress refused to give such authority, it would suggest to me that there must be very serious reservations as to whether armed force was prudent or necessary. In such a case, certainly the collective judgment of 535 Members of Congress should have as much weight as the individual judgment of the President.

Finally, Mr. President, our most recent experience with war has demonstrated how very important it is that the people know that if we engage in hostilities, it reflects the combined wisdom and judgment of both the President and a majority of the elected Representatives in Congress that we should do so. Of course, had we had the war powers legislation in 1965 and had our involvement followed a recourse to that legislation, it would not mean that there would be no controversy on how or when to get out. But, I doubt that we would have today so many recriminations for getting in or the belief, in many quarters, that our involvement was not just ill advised, but also illegal.

I believe that there is a strong current of public opinion that the Congress ought to reassert its authority with respect to war powers. It is ingrained in the American political tradition not to invest such powers in one man, nor indeed in one branch, but that they be subjected to a system of checks and balances. We have a responsibility and it is time for us to face up to that responsibility. The American people expect and deserve no less from us.

WAR POWERS ACT

Mr. BENTSEN. Mr. President, during the 92d Congress a number of bills were introduced seeking to reaffirm the Congress' authority to participate in the formulation of U.S. foreign policy. Some of those bills were specifically directed at restoring the rightful role of Congress in committing U.S. troops abroad. I was one of those sponsoring such legislation, and I am pleased to be a cosponsor of the so-called war powers bill introduced today by my distinguished colleague, the Senator from New York.

We are all aware of the erosion of the balance of powers within our Government. There are those who would try to say that the balance of powers is really not an efficient form of Government; but I would quote the comments of Justice Brandeis when he said that the Convention of 1787 really was not striving for the most efficient form of Government, but by setting up the three branches of Government was trying to insure that we would not have an arbitrary exercise of power.

This has been the subject of considerable discussion of late and indeed of recrimination. But let me point out that it is not entirely the fault of the Executive. Congress, to a large degree, has not only stood silently by and watched its powers erode; it has also actually given its authority away and acquiesced in various Executive actions tending toward usurpation of congressional prerogatives. The Gulf of Tonkin Resolution and our present involvement in Vietnam are examples which leap immediately and tragically to mind.

We must now repair this erosion of the delicate executive-legislative balance in order to restore respect for the very institution of government. It is not just the balance of power that is vital to our survival as a democracy; we must restore a balance of trust. There will be and there should be disagreement between the President and the Congress but there need not be distrust.

The fact that a policy is carried out in secrecy and remoteness does not necessarily insure its success. The public business must be conducted in an atmosphere of mutual respect and confidence that will in turn inspire the respect and confidence of every citizen.

If we are going to understand why a decision was made then it is necessary that we know the rationale and the logic that went into making that decision. I believe one of the most powerful disciplines we can have on a Cabinet officer is the understanding that he will be called before an appropriate congressional committee to explain why he made that decision. It is that kind of discipline that insures that those decisions will always be made in the public interest.

As a step toward restoring the people's shaken confidence in its representative institutions, I suggest that Congress assume its responsibility to the electorate and indicate that we are prepared to meet our constitutional obligations in the formulation of foreign and domestic policy. We will not leave vital decisionmaking solely to the Executive, whether through default, inefficiency, lack of will or Executive usurpation.

There are those who have said if we had been faced with the issue of war or no war in South Vietnam, the Senate, Congress would have gone along. That may be the case, but what the War Powers measure would do would be to say that the Senate, Congress must face that issue squarely; that a Member will not be able to waffle his position; that he will have to bite the bullet and decide if he is voting for America's sons to go to war or not. The founders of this country came here with the idea that no one man, no matter how wise or benevolent he might be, could decide whether or not his son went to war, that this must be the collective judgment of the representatives of the people.

When Congress exercises its rightful powers and meets its full responsibilities, when it insists on full deliberation and sharing in decisions—that is, if the proper constitutional procedures are followed—the democratic process is strengthened. We must not allow a growing lack of confidence in the institutions of democratic government to call into question the viability of these institutions. We have a fundamental obligation: To keep our Government strong and make our Nation whole again.

It is imperative that we insure that responsibility for future foreign policy decisions be shared. Democratic government "derives its just powers from the consent of the governed."

It is a question of communication between the executive branch, between Cabinet officers and Congress if we are to make the system viable. If the people do not know what the decisions are or what the processes of decisionmaking are, then that executive is not held accountable. The momentous decisions of war and peace must be made by the elected representatives of the people.

This proposed legislation does not challenge the President's authority as Commander in Chief nor his constitutional right to conduct the war in the way he sees fit. It does not intend to tie the President's hands for we realize that there are circumstances under which a President may have to respond in defense without explicit congressional approval, and this bill so provides.

But the Congress would be negligent of its own constitutional responsibilities if it relegated to one man the decision to send our sons to war. What confronts us is one of the most significant questions to emerge from the continuing debate over the Indochina conflict: The question of who decides when and where America goes to war. There is little question that Congress is vested with the sole right to initiate war. This is clearly spelled out in article 1, section 8 of the Constitution. We must never again permit an extended commitment of American lives to be made unless the representatives of the people explicitly authorize it.

Assumption of congressional responsibility is a burden we must pick up again for without it the institutions of government will remain in disrepute. The democratic process is at stake. It cannot thrive under a strong executive with a weak legislature any more than it can thrive when the executive falters and the legislature *dominates*. The constitutionally guaranteed balance between the Executive and legislative branches in the making of foreign policy is delicate and we must make special efforts to strengthen it, thereby reaffirming the belief of the American people and the world in the efficacy of our particular form of government.

Assumption of our responsibility in the foreign policymaking process is a burden we in Congress must pick up again. I believe Congress has awakened to the dangers inherent in the current imbalance between the executive and the legislative branches and I am convinced that the "war powers" bill is a much-needed and long overdue step toward rectifying that imbalance.

By Mr. HARTKE (for himself, Mr. HANSEN, Mr. BAKER, Mr. BEALL, Mr. DOMINICK, Mr. EASTLAND, Mr. FANNIN, Mr. GOLDWATER, Mr. GURNEY, Mr. HRUSKA, Mr. MCCLURE, Mr. PACKWOOD, Mr. SCOTT of Virginia, Mr. SPARKMAN, Mr. THURMOND, and Mr. YOUNG):

S. 444. A bill to amend the Social Security Act to provide for medical, hospital, and dental care through a system of voluntary health insurance including protection against the catastrophic expenses of illness, financed in whole for low-income groups through issuance of certificates, and in part for all other persons through allowance of tax credits; and to provide effective utilization of available financial resources, health manpower, and facilities. Referred to the Committee on Finance.

HEALTH CARE INSURANCE ACT OF 1973

Mr. HARTKE. Mr. President, it is no secret that the health care system of this country is not operating effectively. A number of things are wrong with it.

Health care grows more expensive year by year, and at a rate that outstrips the rest of the economy. Worse yet, the costs of health care have already outstripped the ability of millions of Americans to pay for them.

The Nation depends heavily on health insurance. But the policies sold in the marketplace range from the good to the atrocious in their capacity to cushion the costs of illness. Premiums rise inexorably, and even the affluent can be wiped out financially by a severe, enduring illness.

We are short of health manpower. There are rural areas of Indiana—and indeed, rural areas in every State—where the people are unable to attract a single doctor. There are cities where a physician willing to practice in a slum is nearly impossible to find.

We have areas in which too many hospitals, with too many empty beds, seek to serve too few people. But we also have areas in which the hospitals are so overcrowded that the patients are being treated in beds placed in the hallways.

Meanwhile, we inform one another that health care is a right, not a privilege; that quality health care should be available to everyone, regardless of his ability to pay for it; that the inability to pay for care should not stand between the patient and the health care system.

We do, indeed, have problems. The question is, How do we go about solving them?

A number of suggested solutions directed either at some particular aspect of the problem or, in other cases, at solving all problems with a single piece of legislation have been introduced in the Senate over the years.

I accept, Mr. President, the sincerity and concern of Senators who believe that the only way to make national health insurance work is to relegate our present system to the junk pile and start anew, but I doubt the wisdom of that approach.

The estimate I have seen of the cost of one such measure works out to roughly one-third of the present Federal budget. Even setting aside cost, we are much better off if we tackle the separate components in the complicated health equation on a one-by-one basis, rifle-shooting at each problem rather than scattergunning at the whole array of problems.

In any case, Mr. President, we must rank highest on the list of priorities for improving our health care system the priority of financing. The finest health personnel and facilities in the world are worthless if people cannot afford to pay for them.

It is on this basis that I am today introducing with Senator HANSEN a national health insurance bill which directs itself primarily to the problem of how Americans are to pay for the health care they require.

This measure—called medicredit—was first introduced in the 91st Congress. In an improved version, it was reintroduced in the 92d, and sponsored by 174 Members of the House and Senate.

Its benefits have again been broadened this year, and there is little doubt in my mind that, once again, medicredit will be the most broadly and widely supported health insurance bill before Congress.

Medicredit is based on the assumption that the people of this country can be roughly divided into three categories, in terms of their relative abilities to buy comprehensive health insurance.

First, there are those who simply cannot afford it.

Second, there are those who can afford to pay a part of it.

And third, there are those who can afford to pay all, or most of it.

Thus the problem is approached from the standpoint that the cost of care should be no barrier to anyone's ability to receive it; but that those who can pay for part of it without undue hardship should pay what they can reasonably afford.

For the poor, the Government would provide the individual or head of the family with a certificate with which to pay for basic comprehensive health coverage. That coverage would be a two-part insurance package: hospital care and physicians' services, wherever rendered. In other words, the Government would pay 100 percent of the premium.

For those in the second two categories, the Government would provide scaled participation, ranging from 99 to 10 percent—favoring the lower-income groups, naturally—in the payment of premiums for basic coverage.

A table of these allowable percentages is included in the bill.

The extent of the Government's participation would be determined by the individual's income tax liability in a given year. Those with whom the Government would be sharing the cost of the premium could either elect between a credit against their income tax, or a certificate. As for the carrier, as defined in the bill, he would present the certificates he had received in payment or premiums to the Federal Government for redemption.

To participate in this program, a carrier would be required to qualify under

State law, provide certain basic and catastrophic coverage, make coverage available regardless of pre-existing health conditions, and guarantee annual renewal. An assigned risk insurance pool among carriers would be used as appropriate.

A qualified policy would offer comprehensive insurance against the ordinary and catastrophic expenses of illness. I shall say more about the catastrophic features of this bill a little later.

Basic benefits each year would be: 60 days in a hospital—or in a skilled nursing facility, on a 2 days for 1 basis—all medical or surgical services, diagnostic, therapeutic, and preventive, whether in or out of the hospital; all hospital emergency or outpatient services; and home health services.

Also provided would be comprehensive dental care for children and emergency dental care for all. Preventive care would be stressed—physical examinations, well-baby care, inoculations, and X-ray and laboratory work within or without the hospital.

These basic benefits are subject to a $50 deductible per hospital stay per person; and 20-percent copayment of family expenses—with a single, $100 ceiling for each of the following:

First, medical and surgical care;

Second, emergency room, outpatient and home health care; and

Third, dental care.

So much for the basic coverage that would be provided under medicredit.

Earlier, Mr. President, I said that I would deal with the subject of catastrophic illness protection at greater length. To me, one of the most important features of medicredit is its catastrophic illness feature.

I have been appalled, as have most of us, by the medical horror stories that have been brought to our attention. Hardly a week passes without news of yet another family pauperized by catastrophic illness.

Only the very rich can withstand the financial burden of these illnesses. And few Americans are very rich.

Under medicredit, the tragedy of catastrophic illness would no longer be worsened by the threat—or the actuality—of financial catastrophe. No American family would ever again face the prospect of losing its savings, or its home, or its solvency because of health or medical bills.

The point at which a hospital or medical bill represents a financial catastrophe will vary according to each family's income. Accordingly, catastrophic benefits will be subject to a deductible based on the family's taxable income—that is, the income remaining after all tax deductions and personal exemptions. The deductible would be 10 percent of taxable income, but reduced by any amounts paid by the family toward its basic benefits.

Catastrophic benefits would be:

All expenses in excess of the basic coverage, including hospital, extended-care facilities up to 120 days, in-patient drugs, blood, prosthetic appliances, other specified services including physicians, and psychiatric care without limit.

We may be powerless to prevent serious, enduring illnesses, but we are not powerless to prevent the wiping out of a family's savings, the loss of a family home, the reduction of a family to bankruptcy. Medicredit's catastrophic illness protection is a long overdue floor of protection for every American family against the crippling costs of extended illness.

The bill also creates a health insurance advisory board. Eleven members, including the Secretary of Health, Education, and Welfare and the Commissioner of Internal Revenue, would be appointed by the President, with the approval of the Senate. A majority of the Board members would be practicing physicians, and other members would be selected by reason of their education, training, or experience.

It would be the responsibility of the Board to establish minimum qualifications for carriers and to develop programs, after consultation with carriers, providers, and consumers, to maintain quality health care and effective use of financial resources, health manpower, and facilities. The Board would be required to report annually to the President and to Congress.

Medicredit would replace medicaid, Mr. President, and that is all to the good. Some States presently offer adequate medical benefits under medicaid, others offer substandard medical care, and at least two States do not even participate in the program for their poor citizens. Furthermore, many State Governors have been claiming that medicaid—also known as title XIX of the Social Security Act—is bankrupting their respective States.

Thus medicredit would have the effect of replacing a costly program, standardizing benefits in every State of the Union, and guaranteeing to the poor of every State an adequate level of health care, since the voucher system to which I referred earlier clearly provides that the Federal Government would totally finance the cost of the basic, stated set of benefits I have described—and do so for the citizens of every one of our States.

Mr. President, medicredit will revolutionize the standard of American health care. I ask unanimous consent that the text of the bill be printed in the RECORD at the conclusion of my remarks.

Mr. President, the first year cost of the Health Care Insurance Act will be approximately $12.1 billion, although the Department of Health, Education, and Welfare last year estimated the cost to be only $6.3 billion in new money. This is a modest expenditure to make to assure that all Americans have access to quality health care.

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

S. 444

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

SECTION 1. This Act may be cited as the "Health Care Insurance Act of 1973".

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. (a) The Congress finds:

(1) that the resources of many individuals are inadequate to meet the expenses of major illness;

(2) that private health insurance coverage is an appropriate mechanism for insuring against such expenses in that through competition incentives are provided for the lowering of health care costs, the introduction of innovations in the delivery of health care, and the maintenance of quality health care;

(3) that such coverage for all persons is a desirable national objective;

(4) that health insurance should be made available to all residents regardless of previous medical history; and

(5) that it is in the public interest to provide Government assistance and encouragement to individuals who seek the protection of insuring against the expenses of illness.

(b) The purpose of this Act is to make it possible for every individual to obtain comprehensive health care insurance of his choice, including coverage for hospital, medical and dental services, to protect against ordinary and catastrophic expenses of illness regardless of prior medical history and on a guaranteed renewable basis.

VOLUNTARY HEALTH CARE INSURANCE FINANCED IN WHOLE OR IN PART BY INCOME TAX CREDITS OR INSURANCE CERTIFICATE REDEMPTIONS

SEC. 3. The Social Security Act is amended by adding after title XIX the following new title:

"TITLE XX—FEDERAL FINANCING OF VOLUNTARY HEALTH INSURANCE

"PART A—HEALTH CARE INSURANCE

"Sec. 2001. Establishment of the benefit program.
"Sec. 2002. Beneficiaries.
"Sec. 2003. Certificates for health care insurance for the low-income group.
"Sec. 2004. Tax credits for health care insurance.
"Sec. 2005. Allowable premium.
"Sec. 2006. Registration number required.
"Sec. 2007. Health care insurance certificate of entitlement.
"Sec. 2008. Qualified health care insurance policy.
"Sec. 2009. Coverage for Hospital, Medical and Dental Care.
"Sec. 2010. Catastrophic Expense Coverage.
"Sec. 2011. Hospital, Medical, Dental, and other Services Defined.

"PART B—MISCELLANEOUS PROVISIONS

"Sec. 2020. Establishment of Health Insurance Advisory Board.
"Sec. 2021. Duties of Advisory Board.
"Sec. 2022. Qualification of carriers.
"Sec. 2023. Prohibition against any Federal interference.
"Sec. 2024. Federal Health Insurance Redemption Fund.
"Sec. 2025. Participation by States.
"Sec. 2026. Public Information.

"PART A—HEALTH CARE INSURANCE

"ESTABLISHMENT OF THE BENEFIT PROGRAM

"SEC. 2001. (a) FOR THE LOW-INCOME GROUP.—For the purpose of providing assistance on behalf of individuals and their dependents whose income and resources are insufficient to meet the expenses of necessary hospital, medical and dental services, there is hereby established a program of comprehensive hospital, medical and dental benefits (including protection against catastrophic expenses of illness) for any eligible beneficiary and his dependents meeting the requirements of sections 2002 and 2003, through the issuance of health insurance certificates of entitlement (section 2007), in full payment of allowable premium (section 2005) on a qualified health care insurance policy or plan of his choice (section 2008).

"(b) FOR ALL OTHER PERSONS.—Further, for the purpose of making it possible for every individual to obtain comprehensive health care insurance of his choice (including pro-

tection against catastrophic expenses of illness), there is hereby established for any eligible beneficiary and his dependents, who on the basis of individual or family income do not qualify under subsection (a) for full payment under this title of the cost of allowable premium, a program of Federal income tax credits and issuance of health insurance certificates of entitlement which operate to reduce the cost to such individuals for protection under a qualified health care insurance policy or plan of his choice (section 2008). Alternatively, an eligible beneficiary who qualifies under subsection (a) can elect to qualify under this subsection.

"(c) Health insurance certificates of entitlement shall be redeemable by the carrier through payment from the Federal Health Insurance Redemption Fund established in section 2024.

"BENEFICIARIES

"SEC. 2002. (a) Benefits under this title shall be provided for all persons who are residents of the United States and who qualify as 'eligible beneficiaries' or 'dependent beneficiaries'.

"(b) Eligible beneficiaries for this purpose shall include:

"(1) A husband and wife, both under age 65, living together; and

"(2) Any person, under age 65, other than a married person living with his or her spouse where both are under age 65, who is not a dependent beneficiary (as defined in subsection (c)).

"(c) A dependent beneficiary shall be any child or stepchild of an eligible beneficiary who, during the base year of such eligible beneficiary, receives more than 50 percent of his support from such eligible beneficiary, and at the close of such taxable year has not attained the age of twenty-one, or, if he is a full-time student, has not attained the age of twenty-three.

"CERTIFICATES FOR HEALTH CARE INSURANCE FOR THE LOW-INCOME GROUP

"SEC. 2003. Every individual who is an eligible beneficiary under section 2002, whose income results in no individual income tax liability under the Internal Revenue Code during his base year (as defined in section 2004(e)(1)), whose dependent beneficiaries have no such tax liability for any taxable year which ends during his base year, and who is not eligible to receive military medical care, shall be eligible to receive a health insurance certificate of entitlement (as defined in section 2007) which certificate shall be applicable in full payment of allowable premiums for a qualified health care insurance policy or plan described in section 2008. Such policy or plan shall provide protection to such eligible beneficiary and his dependent beneficiaries, if any, for a benefit year (as defined in section 2004(e)(2)), against the expenses of health care, including catastrophic expenses of illness, as set forth in sections 2009 and 2010. Benefits claimed under this provision shall not be claimed under any other program financed in whole or in part by the Federal Government.

"TAX CREDITS FOR HEALTH CARE INSURANCE

"SEC. 2004. (a) Every individual who is an eligible beneficiary under section 2002, and is not eligible for the special provisions for the low-income group in section 2003, and who is not eligible to receive military medical care, shall be allowed at his election—

"(1) a credit against his income tax liability under the Internal Revenue Code for his taxable year which ends in his benefit year, or

"(2) a health insurance certificate of entitlement (as defined in section 2007) acceptable by a qualified carrier in payment toward premium under a qualified health care insurance policy or plan.

Benefits claimed under this provision shall not be claimed under any other program financed in whole or in part by the Federal Government.

"(b) The amount of credit against tax or the value to be assigned to the health insurance certificate of entitlement for any year shall be the sum of the following:

"(1) The allowable premium (as defined in section 2005) paid for basic coverage for his benefit year, multiplied by the applicable percentage factor (as determined under subsection (f)), and

"(2) 100 percent of the allowable premium paid for the catastrophic expenses coverage for his benefit year.

The credit or assigned value of the certificate of entitlement shall be determined annually, based on the individual Federal income tax liabilities of the eligible beneficiary and his dependent beneficiaries, if any, in a base year (as defined in subsection (e)(1)) and shall be applied in payment of premium for the benefit year (as defined in subsection (e)(2)).

"(c) If an eligible beneficiary's payment to a carrier (by certificate of entitlement and other form of payment) for coverage for his benefit year should result in an overpayment of premium by the eligible beneficiary, such overpayment shall be recoverable by the eligible beneficiary from the carrier.

"(d) If an individual's credit against tax under this section exceeds his income tax liability for his taxable year in which such credit is applicable, he may claim such excess as though he had made an overpayment of income tax.

"(e) For the purposes of this title—

"(1) a base year of an eligible beneficiary shall be any taxable year in respect to which his applicable percentage factor for computing his credit against tax or his certificate of entitlement is determined, and

"(2) the benefit year of an eligible beneficiary shall be the twelve-month period beginning immediately after the close of his base year.

"(f) The applicable percentage factor referred to in subsection (b)(1), based on Federal income tax liability of the eligible beneficiary and his dependent beneficiaries in a base year and made applicable in the computation of credit against his Federal income tax liability in his benefit year, shall be determined from the following table:

"Percentage of Allowable Basic Coverage Premium Credited Against Income Tax or Used for a Certificate of Entitlement

Income tax liability in base year:	*Percentage factor*
$0	100
$1 to $10	99
$11 to $20	98
$21 to $30	97
$31 to $40	96
$41 to $50	95
$51 to $60	94
$61 to $70	93
$71 to $80	92
$81 to $90	91
$91 to $100	90
$101 to $110	89
$111 to $120	88
$121 to $130	87
$131 to $140	86
$141 to $150	85
$151 to $160	84
$161 to $170	83
$171 to $180	82
$181 to $190	81
$191 to $200	80
$201 to $210	79
$211 to $220	78
$221 to $230	77
$231 to $240	76
$241 to $250	75
$251 to $260	74
$261 to $270	73
$271 to $280	72
$281 to $290	71
$291 to $300	70
$301 to $310	69
$311 to $320	68
$321 to $330	67
$331 to $340	66
$341 to $350	65
$351 to $360	64
$361 to $370	63
$371 to $380	62
$381 to $390	61
$391 to $400	60
$401 to $410	59
$411 to $420	58
$421 to $430	57
$431 to $440	56
$441 to $450	55
$451 to $460	54
$461 to $470	53
$471 to $480	52
$481 to $490	51
$491 to $500	50
$501 to $510	49
$511 to $520	48
$521 to $530	47
$531 to $540	46
$541 to $550	45
$551 to $560	44
$561 to $570	43
$571 to $580	42
$581 to $590	41
$591 to $600	40
$601 to $610	39
$611 to $620	38
$621 to $630	37
$631 to $640	36
$641 to $650	35
$651 to $660	34
$661 to $670	33
$671 to $680	32
$681 to $690	31
$691 to $700	30
$701 to $710	29
$711 to $720	28
$721 to $730	27
$731 to $740	26
$741 to $750	25
$751 to $760	24
$761 to $770	23
$771 to $780	22
$781 to $790	21
$791 to $800	20
$801 to $810	19
$811 to $820	18
$821 to $830	17
$831 to $840	16
$841 to $850	15
$851 to $860	14
$861 to $870	13
$871 to $880	12
$881 to $890	11
$891 or over	10

"ALLOWABLE PREMIUM

"SEC. 2005. (a) The allowable premium which under section 2004 shall be taken into account in the determination of credit against tax or in the assignment of value to a health insurance certificate of entitlement (as defined in section 2007) shall be that portion of the aggregate amount of premiums paid by an eligible beneficiary for one or more qualified health care insurance policies or plans providing coverage for such eligible beneficiary and his dependent beneficiaries during a benefit year (as defined in section 2004 (e)) that represents the premium required for a qualified health care insurance policy or plan. Allowable premium shall be separately determined with respect to basic coverage and catastrophic coverage.

"(b) Aggregate amounts of premium on more than one qualified health care insurance policy shall be allowable only to the extent that such combination of policies does not provide duplicate coverage of health care costs for an eligible or dependent beneficiary.

"(c) If a qualified health care insurance policy or plan provides coverage for an individual not entitled to benefits under this

title, then in determining the aggregate amount of premiums there shall be included only that portion of the premium for such policy which bears the same ratio to the amount of the premium as the number of eligible and dependent beneficiaries of such policy bears to the total number of beneficiaries of such policy.

"(d) Hospital insurance taxes payable under sections 1401(b), 3101(b), 3111(b), 3201, 3211, and 3221 of the Internal Revenue Code of 1954 shall not be deemed to be allowable premiums.

"(e) Any eligible beneficiary may include as allowable premium 80 per centum of the amounts contributed by his employer for coverage of such eligible beneficiary and his dependent beneficiaries under that portion of a health care insurance policy or plan which meets the requirements of a qualified health care insurance policy or plan (as defined in section 2008).

"REGISTRATION NUMBER REQUIRED

"SEC. 2006. An individual who elects to take the credit under section 2004 for a taxable year with respect to premiums paid for a qualified health care insurance policy or plan shall, under regulations prescribed by the Secretary or his delegate, affix to his income tax return the registration number of the carrier which has provided the qualified health care insurance policy or plan.

"HEALTH CARE INSURANCE CERTIFICATE OF ENTITLEMENT

"SEC. 2007. (a) A health insurance certificate of entitlement means a certificate issued by the Secretary to an eligible beneficiary to apply toward payment of premium on a qualified health care insurance policy or plan, which may be redeemed only as provided in subsection (c).

"(b) Any individual eligible for a health insurance certificate of entitlement in full payment of allowable premium, or in part payment of such premium by election of such certificate in lieu of an income tax credit (as provided in section 2004), shall make application therefor to the Secretary. Such application shall be filed in such place and on such form and contain such information as the Secretary may by regulations prescribe, including:

"(1) The name, address, date of birth, social security number, and marital status of the applicant and the spouse of the applicant, if any.

"(2) The name, address, date of birth, social security number, marital status, and relationship to the applicant of each of the dependents of the applicant for whom coverage is claimed.

"(3) The gross income and Federal income tax liability of the applicant, his spouse, and the dependents named in the application for the base year and the place where each filed his last income tax return.

"(c) The Secretary shall issue regulations which shall provide for the redemption of health insurance certificates of entitlement which have been certified to have been accepted by an insurance carrier in full or part payment for a qualified health care insurance policy or plan.

"QUALIFIED HEALTH CARE INSURANCE POLICY

"SEC. 2008. (a) A qualified health care insurance policy or plan shall be a contractual agreement specifying benefits under a program offered by a carrier qualified under section 2022, which carrier and program have been registered by the State insurance department or by such other agency as may be authorized by the State, and which provides basic institutional, medical and dental coverage as described in section 2009 and catastrophic expense coverage as described in section 2010.

"(b) Each such qualified health care insurance policy or plan shall be noncancellable and guaranteed renewable so long as the carrier continues to offer to the public one or more qualified health care insurance policies or plans, and shall provide protection against the expenses of health care without regard to any preexisting conditions, and shall provide for payment under this title of usual and customary charges for services covered under the policy or plan.

"COVERAGE FOR HOSPITAL, MEDICAL AND DENTAL CARE

"SEC. 2009. A qualified health care insurance policy or plan shall provide protection against the expenses of institutional, medical and dental care, as defined in section 2011. Such policy or plan shall cover the basic benefits set forth in subsections (a) to (f), subject to deductibles and coinsurance provided in subsection (g), and catastrophic expense benefits set forth in section 2010, to include:

"(a) Inpatient care in a hospital or skilled nursing facility during a 12-month policy or plan period for a combined total of 60 days of inpatient care in a hospital or skilled nursing facility, counting each day of care in a skilled nursing facility as one-half day for the purpose of the 60-day limit, to be provided as basic coverage under this section (all additional days of inpatient care in a hospital and up to 30 additional days in a skilled nursing facility to be provided as catastrophic expense coverage under section 2010).

"(b) Any emergency or outpatient services customarily provided by a hospital on an outpatient basis.

"(c) Any medical care provided by or under the direction of a doctor of medicine or a doctor of osteopathy, including diagnostic, therapeutic and preventive medical services, regardless of where such services are provided.

"(d) All home health services during the policy or plan period provided to an individual under the care of a physician in the place of residence used as such individual's home.

"(e) Dental care provided by a doctor of dentistry for diagnosis, therapy and treatment of children from two through six years of age; and emergency dental services and oral surgery for all persons. Provided, however, beginning on the first day of the calendar year following enactment, the maximum age at which children shall be entitled to dental care as provided in this subsection shall be increased to include children through age seven, and such maximum age shall be further increased by one additional year at the beginning of each succeeding calendar year until dental care so provided shall be made available to all children who have not reached eighteen years of age at the commencement of coverage under a policy or plan term under this title.

"(f) Ambulance service.

"(g) *Deductibles and Co-insurance.* Expenses incurred by an eligible beneficiary and his dependent beneficiaries during each policy or plan period for basic benefits as provided in this section shall be subject to deductibles and coinsurance as follows:

"(1) $50 for each stay in a hospital or skilled nursing facility. (A stay for this purpose shall be any continuous period as an inpatient in a hospital and/or skilled nursing facility commencing during such policy or plan period, except that a stay shall not be deemed to be interrupted by reason of an absence from the hospital and skilled nursing facility for any period of less than 15 days.)

"(2) 20% coinsurance on expenses incurred during a 12-month policy or plan period by an eligible beneficiary and his dependent beneficiaries for

"(A) The first $500 of charges for hospital emergency room or outpatient services, ambulance services, and home health services as provided in subsections (b), (d), and (f);

"(B) The first $500 of charges for medical services as provided in subsection (c); and

"(C) The first $500 of charges for dental services as provided in subsection (e).

"CATASTROPHIC EXPENSE COVERAGE

"SEC. 2010. In addition to the basic coverage provided in section 2009, a qualified health care insurance policy or plan shall, subject to the deductible in subsection (d), provide coverage against the catastrophic expenses of illness consisting of—

"(a) Any inpatient care in a hospital and up to 30 days of care in a skilled nursing facility during the policy plan or period, after utilization of the 60 days of care provided under section 2009(a).

"(b) Blood and plasma furnished in connection with outpatient medical services, except for the first three pints furnished to an individual in a 12-month policy or plan period. Provided, however, that any blood or plasma so furnished shall not be in lieu of any blood or plasma furnished as inpatient hospital services described in section 2011(a).

"(C) Prosthetic aids based on medical need, as ordered by a physician.

"(d) *Deductible.* Benefits payable under subsection (a) shall be subject to a deductible of—

"(1) an amount representing 10 percent of the combined taxable income of the eligible and dependent beneficiaries, reduced by—

"(2) the total of deductibles and coinsurance incurred under the basic coverage as provided in section 2009(g).

Taxable income for this purpose shall be taxable income as defined in section 63 of the Internal Revenue Code of 1954, as amended, and the combined taxable income to be taken into account shall be the aggregate of the taxable incomes of the eligible and dependent beneficiaries, if any, in the base year.

"HOSPITAL, MEDICAL, DENTAL, AND OTHER SERVICES DEFINED

"SEC. 2011. For the purposes of the provisions of coverage in Section 2009 and 2010—

"(a) Inpatient care in a hospital shall mean all inpatient services customarily furnished and charged for by a hospital, including a general, psychiatric and tuberculosis hospital, except for convenience items such as telephone and television, including (but not limited to):

"(1) bed and board and nursing services,

"(2) drugs, oxygen, blood and plasma (except for the first three pints furnished in the 12-month policy period), biologicals, supplies, appliances, and equipment furnished by and used in the hospital,

"(3) use of the hospital facilities ordinarily furnished for the care and treatment of inpatients, including the surgery or delivery room, recovery room, intensive care units, coronary care units, rehabilitation care units, and supplies,

"(4) care for pregnancy or any of its complications, and

"(5) psychiatric care.

"(b) Inpatient care in a skilled nursing facility shall mean all inpatient services customarily furnished and charged for by a skilled nursing facility, including (but not limited to):

"(1) bed and board and nursing services,

"(2) physical, occupational, or speech therapy, and

"(3) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients.

"(c) Emergency and outpatient services shall mean all services customarily provided by a hospital on an outpatient basis and billed for by the hospital, including (but not limited to):

"(1) outpatient diagnostic services, such as X-rays, electrocardiograms, laboratory

tests, and other medically recognized diagnostic tests,

"(2) use of operating, cystoscopic, and cast rooms and their supplies, and

"(3) use of emergency room and supplies when needed for medical and surgical emergencies.

"(d) Medical care shall mean all medical services (including diagnostic, therapeutic, and preventive) provided by or under the direction of a doctor of medicine or a doctor of osteopathy, regardless of where such services are provided, including (but not limited to):

"(1) diagnosis or treatment of illness or injury,

"(2) psychiatric care,

"(3) well-baby care,

"(4) inoculations and immunizations of infants and adults against communicable diseases,

"(5) physical examinations,

"(6) diagnostic X-ray and laboratory services,

"(7) radiation therapy,

"(8) consultation,

"(9) services for pregnancy and complications of pregnancy, including prenatal, obstetrical, and post partum care, and

"(10) anesthesiology services.

Cosmetic surgery shall not be included as medical care for the purpose of this provision, except when related to defects, burns, and scars due to injuries and illness.

"(e) Home health services shall mean all items and services furnished to an individual who is under the care of a physician under a plan established and periodically reviewed by a physician, which items and services are provided on a visiting basis in a place of residence used as such individual's home, including:

"(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse,

"(2) physical, occupational, or speech therapy,

"(3) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan.

"(f) Dental care (for children as provided in section 2009(e)) shall mean all services prescribed by a doctor of dentistry as preventive, diagnostic, therapeutic, services, excluding, however, orthodontics and cosmetic surgery, except when furnished in connection with covered dental services. Emergency dental service shall mean the control of bleeding in life-hazardous oral conditions, relief of severe pain through immediate palliative treatment only, treatment of injuries to the teeth and supporting tissue, and initial treatment for elimination of major acute infection of the oral cavity. Oral surgery shall mean surgery related to the jaw or any structure contiguous to the jaw, or the reduction of any fracture of the jaw or any facial bone.

"PART B—MISCELLANEOUS PROVISIONS

"ESTABLISHMENT OF HEALTH INSURANCE ADVISORY BOARD

"SEC. 2020. There is hereby created a Health Insurance Advisory Board (hereinafter referred to as the 'Board') which shall consist of eleven persons including the Secretary of Health, Education, and Welfare and the Commissioner of Internal Revenue. The remaining members, not otherwise in the employ of the United States, shall be appointed by the President, with the advice and consent of the Senate, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service. The Secretary of Health, Education, and Welfare shall serve as Chairman. The appointed members of the Board shall be selected from persons who are specifically qualified to serve on such Board by virtue of their education, training, or experience, and shall include at least six persons who are practicing doctors of medicine or osteopathy and at least one person who is a practicing doctor of dentistry, and the remaining members of the Board shall be members of the general public. Each of the appointed members shall be appointed for a term of four years except that, when appointments are first made, three shall be appointed for terms of two years, three for terms of three years, and three for terms of four years, and except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. The Secretary of Health, Education, and Welfare may appoint such special advisory professional or technical personnel or committees as may be needed to carry out the purposes of this title. Members of the Board and other personnel or members of any advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Board or of a committee, shall be entitled to receive compensation at rates fixed by the Secretary of Health, Education, and Welfare, but not exceeding $100 per day, including traveltime, and while so serving away from their business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Board shall meet as frequently as the Chairman deems necessary but not less than once annually. Upon request of four or more members, it shall be the duty of the Chairman to call a meeting of the Board.

"DUTIES OF ADVISORY BOARD

"SEC. 2021. The Health Insurance Advisory Board shall:

"(a) Prescribe such regulations as may be necessary to carry out the purposes and provisions of this title,

"(b) Establish minimum Federal standards for the use of State insurance departments in determining whether an insurance company and plan are qualified under this title,

"(c) In consultation with carriers, providers of services, and consumers, plan and develop programs whose purposes are to provide for maintaining the quality of medical care, and the effective utilization of available financial resources, health manpower, and facilities, through utilization review, peer review, and other means which provide for the participation of the insurance carriers and the providers of services,

"(d) Review the effectiveness of the tax credit program and file, by December 31 of each year, with the President and the Congress an annual report:

"(1) on the operation and status of the program during the past fiscal year and on its expected operation during the current and next two fiscal years, with

"(2) any recommendations for changes in the law designed to improve the effectiveness of the program.

The Board is authorized to request from any department, agency (or independent instrumentality of the Government), any information it determines is necessary to carry out its functions under this title, and each such department, agency, or independent instrumentality is authorized to cooperate with the Board and, to the extent permitted by law, to furnish such information to the Board upon request made by the Chairman.

"QUALIFICATION OF CARRIERS

"SEC. 2022. (a) The State insurance department or other agency designated by the State shall determine the qualification of each carrier which plans to offer a qualified health care insurance policy or plan to residents of that State, and, when a carrier is determined to be qualified to offer such a policy or plan, shall issue to said carrier a registration number.

"(b) A qualified carrier may be a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of health services under individual or group insurance policies, plans, or contracts, medical or hospital service agreements, membership or subscription contracts, or similar arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.

"(c) A carrier offering a qualified health care insurance policy in any State shall participate in an assigned-risk pool which may be established in such State by the State insurance department or by such agency as may be authorized by the State. The carrier shall accept from the pool such risks under this program as may be assigned to it.

"(d) Each qualified carrier offering basic coverage, as provided in section 2009, shall also offer catastrophic expense coverage as provided in section 2010, and shall determine the premium for each separately.

"(e) Each carrier shall provide two enrollment periods in each year for the purchase of a qualified health care insurance policy or plan, one during the month of November for the purchase of coverage to become effective January 1 immediately following, and the other during the month of May for the purchase of coverage to become effective July 1 immediately following. Except, however, that an individual, upon becoming an eligible beneficiary within the meaning of section 2022(b), may within 30 days thereafter purchase a qualified health care insurance policy or plan to provide coverage commencing on the first day of the calendar month immediately following the date of purchase; and, further, that an eligible beneficiary who at the time of purchase is already covered by a qualified health care insurance policy or plan may at any time purchase a new qualified health care insurance policy or plan to provide for continuation of such qualified coverage without interruption.

"PROHIBITION AGAINST ANY FEDERAL INTERFERENCE

"SEC. 2023. Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the practice of dentistry or the manner in which dental services are provided, or over the selection, tenure, or compensation of any officer or employee or any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

"FEDERAL HEALTH INSURANCE REDEMPTION FUND

"SEC. 2024. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Health Insurance Redemption Fund" (hereinafter referred to as the "fund"). The fund shall consist of such amounts as may be deposited in, or appropriated to, it as provided in this part.

"(b) There is authorized to be appropriated, from time to time out of moneys in the Treasury not otherwise appropriated, to the fund an amount equal to the aggregate amount of premiums paid under this title through the redemption of health insurance certificates issued pursuant to sections 2003 and 2004. Sums authorized to be appropriated pursuant to this section shall be considered premiums payable under this part and deposited in such fund. Such certificates upon presentation to the Secretary of Health, Education, and Welfare shall be redeemed through payments from the fund.

"PARTICIPATION BY STATES

"SEC. 2025. The Secretary of Health, Education, and Welfare shall, at the request of a State, enter into an agreement with such State pursuant to which all beneficiaries eligible under this title and who are eligible for participation under the program established under title XIX of this Act in effect in that State may subscribe to a qualified health care insurance policy or plan."

"PUBLIC INFORMATION

"SEC. 2026. The Secretary shall provide for a continuing program of public education on the importance and need for individual and family protection against the expenses of illness and the provision of federal assistance under this Act for obtaining such protection, using such methods of communication, including the development and dissemination of information through schools, public agencies, and public and private organizations, as he deems appropriate.

INCOME TAX AMENDMENTS

SEC. 4. Part IV of subchapter A of chapter I of subtitle A of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by redesignating section 42 as section 43, and by inserting after section 41 the following section:

"COST OF HEALTH CARE INSURANCE PREMIUMS

"SEC. 42. There shall be allowed as a credit against tax imposed by this subtitle allowable premiums paid for the cost of a qualified health care insurance policy or plan to the extent provided in section 2004 of the Social Security Act."

SEC. 5. Part VII of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1954 is hereby amended by adding a new subsection (g) to section 213, as follows:

"(g) If an individual elects to take the credit against tax provided in section 42 for any taxable year with respect to premiums paid in such year for a qualified health care insurance policy or plan, such premiums paid shall not be a basis for deduction under this section."

SEC. 6. Part IX of subchapter B of chapter 1 of subtitle A of the Internal Revenue Code of 1954 (relating to items not deductible) is hereby amended by adding after section 279 the following new section:

"LIMITATIONS ON DEDUCTIONS FOR EXPENDITURES FOR EMPLOYEE HEALTH CARE

"SEC. 280. (a) Except as provided in subsection (b), no deductions shall be allowed for one-half of any amount otherwise allowable as a deduction for the taxable year under section 162, 212, or 404 for any amount paid or incurred by the taxpayer for health care of any employee of the taxpayer or of any dependent or relative of such employee.

"(b) The limitations of subsection (a) shall not apply for any portion of any taxable year during which the taxpayer has in force a qualified employee health care insurance policy or plan covering all his employees except for those engaged in purely casual or temporary employment which satisfies all the requirements of section 2008 of the Social Security Act."

STATE PAYMENT OF DEDUCTIBLES AND CO-INSURANCE FOR THE POOR AND DISABLED

SEC. 7. (a) Section 1902 (a) of the Social Security Act defining mandatory requirements of a State plan under title XIX is amended by adding at the end thereof, the following new paragraph:

"(32) provide for payment on behalf of each individual or family which is eligible for cash assistance pursuant to titles I, X, XIV, and XVI, or part A of title IV, of the amount of any deductible or co-insurance expense incurred by such individual or family in connection with institutional, dental or medical services rendered to any member of such family as benefits to which such member was entitled under title XX, as added to the Social Security Act by the Health Care Insurance Act of 1973.

(b) Section 1905 (a) of the Social Security Act defining "medical assistance" for which Federal payments may be made under section 1903 is amended by—

(1) redesignating paragraph (17) as paragraph (18); and

(2) inserting after paragraph (16) the following new paragraph:

"(17) amounts paid on behalf of individuals or families for deductions and co-insurance incurred under title XX; and"

SEC. 8. The amendments made by sections 2 through 7 shall become effective for benefit years beginning after December 31, 1972.

HEALTH CARE INSURANCE: TO HELP ANSWER A NEED

Mr. HANSEN. Mr. President, I am pleased to introduce the Health Care Insurance Act of 1973, better known as "medicredit."

I was a principal sponsor of this legislation in the 92d Congress, and I am introducing it today along with a number of my colleagues in the Senate and a substantial number of Members in the House. The distinguished Senator from Indiana (Mr. HARTKE) is joining me today in the introduction of this bill and serves as the principal sponsor in the 93d Congress.

Medicredit is aimed at several specific problems which face us in our goal of providing quality medical care for all people:

First, it would provide a mechanism under which persons too poor to pay for their own health insurance would be provided with comprehensive protection.

Second, it would protect all Americans against the cost of a serious accident or long-term illness—a so-called medical catastrophe.

Third, it would provide a measure of assistance to everyone in providing health insurance—the amount of Federal assistance to be based on the individual's need.

Medicredit is not an attempt to destroy or restructure a medical care system that provides most Americans with the highest quality medical care in the world. Rather, it acknowledges that this high level of care is not available to everyone.

It recognizes that a large percentage of Americans have health insurance, that medicare gives a significant measure of protection to persons over 65, and that medicaid has not adequately provided for the health care needs of the poor.

Under medicredit, there would be no change in the medicare program. Medicredit would provide for persons under 65. Medicredit would not disturb the many employer-employee group health plans which have been negotiated at the bargaining table in virtually every industry.

It would not destroy the health insurance industry, as would other legislation; and it would not require a tremendous Federal bureaucracy to administer the program.

Medicredit would do many positive things to help solve the problems of delivering health care.

Let me list some of them.

First. Preventive care: Medicredit would help keep people well because it would require that insurance policies provide for well-baby care, dental care for children, immunization and inoculation, psychiatric care and counseling, and physical exams for both children and adults. The present health care system in this country has been criticized as being "sickness oriented." It certainly is true that we want health insurance to help pay the doctor and hospital bills when we are sick, but many health insurance policies now cover the benefits I have just listed. Under medicredit all participating policies would have to provide these same benefits as a minimum.

Second. Catastrophic insurance: Due primarily to the increased cost of hospital care, which the American Hospital Association has just indicated now exceeds $100 per day in the average American hospital, there is a possibility that a long, serious illness or a bad or disabling accident could result in medical bills in the thousands of dollars or even tens of thousands of dollars. Hospital costs are generally 60 to 70 percent labor costs, and the salaries of previously underpaid workers in the health field are just beginning to catch up. The result has been an increase in hospital costs. Also there are new lifesaving techniques and devices which are costly to purchase and maintain. Under medicredit, every family and individual would be protected against the costs of a long, serious hospitalization. There is no ceiling on the benefits under medicredit. It would pay hospital care as well as the bills for the physician and surgeon.

Third. Avoiding hospitalization: It has been said that the existence of hospital insurance is an incentive for a person to be hospitalized. Perhaps this is so. Under medicredit however, care in less expensive settings would be covered as well as hospital care. For example laboratory and X-ray bills would be paid whether the work was done in or out of a hospital. Surgery would be covered whether it was in a hospital on an inpatient basis, in a hospital on an outpatient basis, or even in some of the new ambulatory surgical facilities, sometimes known as surgicenters.

Under the basic portion of the medicredit benefits, each participating family or individual would be entitled to 2 days in an extended care facility in lieu of 1 day's coverage in a hospital. I am pleased that in the new 93d Congress version of medicredit, home health care is now included as a benefit when ordered by a physician. This might be the services of a visiting nurse or it might be something of a therapeutic nature.

Fourth. Choice for the patient: Under medicredit the patient would have a choice of physician or dentist. He would be free to change doctors, to seek consultations, and to see specialists of his choice. The individual could enroll in a Blue Cross/Blue Shield plan which offers the required benefits or with a private insurance company whose policies offer the required basic and catastrophic benefits. If the individual so wishes, he may enroll in a prepaid plan such as the well-known Kaiser Foundation plan on the west coast and elsewhere. The patient can select a doctor in solo practice, group

practice or in a clinic. The choice is entirely up to the patient.

Fifth. Assistance based on need: Certainly one of the most attractive and sensible parts of medicredit is that it would not pay for health insurance for those people who are able to afford it or whose employers are providing such insurance, although there is a built-in incentive for the employer-employee plans to continue. As I have indicated, the poor would have the same comprehensive benefits as everyone else, and their policies would be paid for by the Federal Government. Rather than abruptly ending benefits when individual or family income reaches a certain level, medicredit phases down the Federal benefits as the individual or family income rises.

The amount of Federal assistance is based on the amount of income taxes paid by the family.

While we all recognize there are some inequities in the present tax system, it is nevertheless an excellent barometer of the ability to pay. If there is a fault in using the amount of income taxes owed as a measure of family economic status, it is not the fault of medicredit but instead resultant upon the imperfections in the present tax laws.

I would like to emphasize the fact that benefits under medicredit must be broad in order to enable the individual to receive comprehensive health care. The basic benefits would include 60 days of hospital care or 120 days in an extended care facility. Following a deductible—based on income—hospital benefits would be provided for the catastrohic illness without limit.

Hospital services would include all care customarily provided in a hospital, including bed, board and nursing services; drugs and oxygen; blood and plasma—after the first three pints—biologicals and supplies; appliances and equipment furnished by the hospital; surgery or delivery room; recovery room; intensive care or coronary care unit; rehabilitation unit; care for pregnancy or any of its complications and psychiatric care.

Inpatient extended care facility services cover all care customarily provided in an extended care facility, including bed, board and nursing services; physical, occupational or speech therapy; and drugs, biologicals, supplies, appliances and equipment furnished by the extended care facility.

It is worthy of special note that only medicredit, among the more than one dozen health insurance plans presented in the last Congress, makes no distinction between physical and mental illness. Mental illness is covered under medicredit; psychiatric care and counseling are covered; hospitalization for psychiatric illness is covered.

I would be remiss if I did not mention the fact that medicredit is a product of many ideas, but the primary impetus came from the American Medical Association.

I am pleased that this organization of physicians has taken the lead in presenting a piece of legislation such as medicredit. The wide range of psychiatric benefits provided under this bill bespeaks the physician's desire to treat illness—physical or mental—without discrimination.

It is also important to realize that no one piece of legislation will solve all of the problems that face us in the health field. Many of the problems are not subject to legislation. How can we—as much as we might want to—legislate effectively to prevent automobile accidents due to careless or drunken driving?

How can we legislate against heart attacks which are caused by too much eating or drinking, too little exercise and too much tension? How do we legislate and prevent deaths from an overdose of drugs?

Some will use statistics to try and show that the health care in this country is inferior. We should not be interested in these statistics; rather, we should be interested in doing something about the problem. We will not improve the mortality rate for slum children until we improve housing, sanitation, health education and pollution. There are many programs of the AMA, other private groups and the government to educate the public about proper nutrition and exercise, drug abuse and similar problems which are added to our statistics. But we have not yet found out how to reach the individual citizen and inspire him to take better care of himself.

I believe that medicredit is definitely a step in the right direction toward the enactment of health insurance legislation which will be equitable for all. I am hopeful that Congress will enact reasonable health care legislation during this 93d session, and I strongly urge consideration of this proposal.

Mr. President, I ask unanimous consent to place in the RECORD at this point a brief summary of the Health Care Insurance Act of 1973, followed by statements made by Dr. Russell Roth, Congressman JOEL BROYHILL, and myself at the press conference on medicredit held today prior to the introduction of this legislation:

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

HEALTH CARE INSURANCE ASSISTANCE ACT OF 1973—MEDICREDIT—A PROPOSAL FOR FEDERAL FINANCING OF HEALTH INSURANCE

Medicredit would: (1) pay the full cost of health insurance for those *too poor* to buy their own; (2) help those who can afford to *pay a part*—if not all—of their health insurance premium (the less they can afford to pay, the more the Government would help out); and (3) see to it that no American would have to bankrupt himself because of a long-lasting, catastrophic illness.

(This bill addresses itself only to *financial* health care; other legislation and programs involve medical manpower supply and distribution, the method of delivering care, and other problems such as environment, health education, and peer review.)

ANALYSIS

Federal contribution

The Government would pay 100% of the premium for low-income beneficiaries (an individual and his dependents whose combined income for a taxable year would not give rise to any income tax liability). For others, the Government would provide scaled participation ranging between 99% and 10%, favoring lower-income persons, in the payment of premiums for basic coverage. For all persons the Government would pay in full the premium for catastrophic expenses. A table of allowable percentages for related income tax liabilities is included in the bill.

The extent of Government participation would be determined with reference to federal income tax liability of any individual in a particular year.

Incentives are contained in the bill to encourage the continuation of group coverage.

Health insurance certificates; income tax credits

A beneficiary eligible for full payment of premium by the federal Government would be entitled to a certificate acceptable by carriers for health care insurance for himself and his dependents. Eligible beneficiaries with whom the Government would be sharing the cost of premium could elect between a credit against income tax or a certificate. The carrier, as defined in the bill, would present certificates received in payment of premium to the federal Government for redemption.

Qualification of participating carriers

To participate in the plan, a carrier would have to qualify under state law, provide basic and catastrophic coverage, make coverage available without pre-existing health conditions, and guarantee annual renewal. An assigned risk insurance pool among carriers would be utilized as appropriate.

There would be open enrollment for individuals upon becoming newly eligible under the program, or to continue coverage without interruption. In other cases there would be two 30-day general enrollment periods each year during which qualified coverage might be purchased.

Health insurance coverage

A qualified policy would offer comprehensive insurance against the ordinary and catastrophic expenses of illness (which would include all physicians and hospital services). As *basic* benefits in a 12-month period: 60 days in a hospital (or in a skilled nursing facility, on a two days for one basis); all medical and surgical services (diagnostic, therapeutic, and preventive) in or out of the hospital; any hospital emergency or outpatient services and home health services. Also, comprehensive dental care for children and emergency dental care for all. As *catastrophic* benefits: any hospital days in excess of the 60 basic days, and up to 30 additional skilled nursing facility days; outpatient blood (inpatient blood is a basic benefit); and prosthetic appliances.

Deductibles and copayments

Basic benefits will be subject to a $50 deductible per hospital stay; and 20% copayment on the first $500 of expenses of the family for each of the following three categories: (1) medical and surgical care; (2) emergency room, outpatient, and home health care; and (3) dental care.

Catastrophic benefits will be subject to a deductible based on the family's taxable income, that is, income remaining after all tax deductions and personal exemptions. The catastrophic deductible will be 10% of such taxable income. reduced by any deductibles and copayments paid by the family toward its basic benefits.

Families under federal cash assistance programs will be eligible for payment by the State of any deductibles or copayment.

Health insurance advisory board

A health insurance advisory board of eleven members, including the Secretary of HEW and the Commissioner of Internal Revenue, would be appointed by the President, with Senate approval. A majority of the Board would be practicing physicians, and other members would be qualified by virtue of

education, training, or experience. The Board would establish minimum qualifications for carriers, and in consultation with carriers, providers and consumers, would develop programs designed to maintain the quality of health care and the effective utilization of available financial resources, health manpower, and facilities. It would report annually to the President and Congress.

STATEMENT BY RUSSELL B. ROTH, M.D., PRESIDENT-ELECT, AMERICAN MEDICAL ASSOCIATION

The 1973 Medicredit proposal for national health insurance is a new and expanded version of the Bill introduced in Congress during the 91st and 92nd sessions.

Hallmark of the Medicraft concept is its flexibility. Each version has been modified and altered to keep pace with the changing needs of our people. You may be assured that we will continue to be flexible and offer suggestions for future improvements as they become apparent. We consider Medicredit a base upon which to build.

Major additions to the new Bill include dental care for children, emergency dental care for all ages, and home health services. Still included in this Bill is comprehensive insurance against the ordinary expenses of illness plus catastrophic coverage.

The AMA estimated the cost to the Federal government of last year's version of Medicredit at $12.1 billion, although HEW set the figure at $6.3 billion. The newest version of Medicredit, which will be introduced today, should cost about the same amount as its predecessor—despite the benefits that have been added—because of slight modifications in the deductible and coinsurance features.

We feel Medicredit '73 offers the greatest amount of benefits at the lowest possible cost.

STATEMENT BY REPRESENTATIVE JOEL T. BROYHILL

"Medicredit is based on the principle of tax credits to help finance the purchase of high quality health insurance for everyone. The lower an individual or family's income, the greater the government's financial assistance. For those Americans who pay little or no income tax, the government would pay all of their health insurance premium. As income tax liability goes up, the extent of the government's assistance decreases. But to encourage all Americans to buy health insurance, *some* government assistance would be given to *all* taxpayers.

"To qualify under the Medicredit program, health insurance plans would have to be comprehensive and offer minimum standard benefits. All Americans would qualify for full coverage to protect against the expenses of catastrophic illness.

"Medicredit would stress preventive care. A qualified health insurance plan would include coverage for the costs of physical examination, well baby care, inoculations, X-ray and laboratory services in and out of the hospital, dental care for children, home health services, and psychiatric care without limit.

"Medicredit is designed to distribute the high costs of medical care fairly, on the basis of each American's ability to pay.

"In my opinion, Medicredit, unlike some other national health insurance proposals, will provide high quality care to all Americans without creating an unwieldy and unresponsive federal health bureaucracy."

STATEMENT BY SENATOR CLIFF HANSEN

Medicredit is designed to solve the most immediate and most pressing problems of the nation's health care system. It does not pretend to make the system perfect in one fell swoop by attempting to establish a great monolithic federal health bureaucracy.

This is what Medicredit will accomplish:

It will unlock the financial doors that bar many Americans from high quality medical care.

It will bring uniformity to the various types of health insurance plans now being offered to the general public.

It will assure every American that he will not be wiped out financially by a catastrophic illness or injury.

It will stress preventive care—annual check-ups, out-of-hospital diagnostic services, well baby care, dental care for children, and home health services.

It will provide psychiatric care without limit.

It will preserve your freedom to select the doctor and the hospital of your choice, and in the health care setting you believe best for you and your family.

Its cost will be shared fairly on the basis of each American's ability to pay.

I am confident that Medicredit can provide high quality care to all Americans and at a price the nation can afford.

By Mr. CASE:

S. 445. A bill to cut off funds for the implementation of the Azores base agreement with Portugal until that agreement is submitted to the Senate as a treaty. Referred to the Committee on Foreign Relations.

S. 446. A bill to require all agreements with foreign governments for U.S. military bases abroad to be submitted to the Senate as treaties. Referred to the Committee on Foreign Relations.

Mr. CASE. Mr. President, I am today reintroducing two amendments on executive agreements which passed the Senate last year but then were rejected in conference by the House.

Because no compromise could be worked out in the Senate-House conference, the 1972 Foreign Military Assistance Act died, and military aid programs have been funded the last 2 months under a stopgap continuing resolution. This continuing resolution expires on February 28, so the Senate will presumably soon be voting on a new foreign aid bill.

Despite the unacceptability of my executive agreement amendments to the House conferees, I intend to ask the Foreign Relations Committee again to include them in the foreign aid bill. I strongly believe that the continued abuse of executive agreements by the executive branch to be a sufficiently important issue to warrant my persistence and Senate persistence in reasserting our constitutional responsibility.

My first amendment would cut off all funds to implement the December 1971 executive agreement with Portugal for the use of American military bases in the Azores. Under this pact, the United States promised to provide Portugal with $436 million in assistance and credits in return for the stationing of American military forces in the Azores. Congress was not informed of the agreement until after it was concluded, and the Senate was never asked to give its approval. The Senate obviously felt that it should not have been bypassed on this important matter, for by a 50-to-6 vote on March 3, 1972, it approved my resolution calling on the President to submit the Azores agreement to the Senate as a treaty. When the administration refused to heed this sense of the Senate resolution, I introduced a further amendment which would have cut off all funds for implementing the Azores agreement until it had been submitted to the Senate as a treaty. The Senate approved this amendment 41 to 36 on June 19, 1972, as part of the foreign military aid bill, as I have already indicated.

My second amendment would require—speaking in general terms as to foreign governments—that in the future all agreements with foreign governments for the establishment or the renewal of American military bases overseas would have to be submitted to the Senate as treaties, or no U.S. Government funds could be spent to implement those agreements. This amendment would insure that we would not again be faced with a fait accompli—as we were in the Azores case—and then told by the executive branch that the Senate must go along because the agreement was already in force. If my amendment becomes law, foreign governments will quickly realize that agreements with the United States for the stationing of American troops in their countries will not be valid until the Senate has given its advice and consent.

This second amendment also was approved by the Senate as part of last year's foreign aid bill. Although it deals specifically with executive agreements concerning foreign military bases, it in no way suggests that this is the only kind of executive agreement that should be submitted to the Senate as treaties.

Since the Constitution requires Senate approval of all treaties and nowhere mentions executive agreements, it should not be necessary for me to introduce legislation reaffirming the need for Senate approval. But unfortunately, under the last six Presidents the practice has grown increasingly common for the executive branch, completely on its own, to enter into pacts with foreign governments which vitally affect the security of the United States. When this occurred three decades ago with destroyers for bases and lend lease, I supported President Roosevelt's goal of strengthening the democracies against Nazi Germany, without careful consideration of the constitutionality of the methods he used. But faced with more recent executive agreements which permitted without Senate approval the basing of American troops in Spain, American funding of Korean and Thai mercenaries in Vietnam, and a contingency plan for possible U.S. intervention in Thailand, I came to see the great dangers inherent in permitting the President—any President—unilaterally to tie the United States into far-reaching commitments.

Our Founding Fathers saw this same danger when they wrote into the Constitution the requirement for Senate approval of all treaties. This was one of the checks and balances they considered indispensable in preventing any one branch of the Government—no matter how wise—from usurping the functions of the other two. They did not foresee that the treaty provision of the Constitution would be circumvented by the use of executive agreements, as it has been so regularly in recent years. They probably would be shocked to know that the executive branch has gotten into the habit

of deciding, for reasons of its own, which agreements with foreign countries should be treaties and which should be executive agreements. And in this decision process, the executive branch has consistently left for Senate approval comparatively unimportant matters such as copyrights, tariffs. civil aviation, and industrial design. Questions that touch on our national security have usually been taken care of with the stroke of a diplomat's pen as executive agreements—and hence immune from congressional scrutiny.

The sending of American troops overseas is an extremely critical matter and one that unquestionably should be closely reviewed by Congress. Even in peacetime, American soldiers abroad can lead the United States into a commitment toward the host country. Ultimately, such a commitment can bring our country into war.

From a practical point of view, Congress must scrutinize agreements of this sort if it is to play any meaningful role in our foreign policy. And from a constitutional point of view, the Senate is required to give its approval to these agreements as treaties.

If the Senate does not insist on carrying out its constitutional responsibility, we will only have ourselves to blame for our own impotence.

True, Congress has largely abdicated its powers to a strong Executive in the foreign policy field, but there seems to be a widespread recognition—especially in the Senate but also in the House—that the balance must be restored. Perhaps we needed the shock of Vietnam to make us recognize the wisdom of our Founding Fathers in placing the congressional check on unlimited Presidential powers. In any case, the Senate last year passed the Javits-Stennis bill to clearly limit and define the President's war-making powers. And on several occasions, the Senate voted in favor of my proposals to limit the abuses of executive agreements.

The Senate cannot and should not conduct relations with foreign governments. But we can use the constitutional powers granted to us—backed up, if necessary, by the power of the purse—to insure that we play a meaningful part in the conduct of our country's foreign policy.

As I emphasized in my colloquy with the Senator from New York earlier this afternoon, we are not relying just on the power of the purse, that ancient historical weapon; we do have that power available, but in addition we have the specific mandate of the Constitution in regard to the necessity for congressional declaration of war and in regard to Senate confirmation of treaties.

There is no way the Congress can compel the executive branch to submit important agreements as treaties. But Congress does not have to vote any money to pay for the cost of implementing those agreements.

The fact remains that the constitutionally mandated balance between Congress and the Executive will not be restored until Congress takes forceful action to restore it.

Mr. President, I ask unanimous consent that an October 16, 1972, Washington Post editorial which explains the parliamentary situation at the end of last session be printed in the RECORD.

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

THE SENATE TAKES THE AID BILL HOSTAGE

The Senate has taken the military aid bill hostage to an initiative meant to reclaim from the President a congressional prerogative that should never have been allowed to erode in the first place. Mr. Nixon had asked $2.3 billion in military aid. Both houses authorized lesser sums; the Senate added two Clifford Case amendments, the first requiring the President to submit the rightfully controversial Azores base agreement as a treaty, the second compelling him to submit all future base agreements as treaties. The amendments reflect the modest concensus the Senate has achieved in its years-long effort to regain some of its war-related constitutional rights from a succession of power-happy Chief Executives.

So determined is President Nixon to clutch every wisp of Executive foreign-policy authority, however, that he enlisted docile Democrats and loyal Republicans in the House to fight the Senate off. The proprietary interest of the House Foreign Affairs Committee in its own aid bill—aid is the only substantive item it handles all year long—may also have firmed up its position. We note that mutual esteem does not exactly flourish between the highly publicized, independent-minded Senate Foreign Relations Committee and the often-overlooked, politically cautious Foreign Affairs Committee of the House.

In conference, the Senate reluctantly compromised, offering to drop the Azores provision altogether and to treat future base agreements not as treaties fit only for Senate ratification but as agreements subject to House as well as Senate majority approval. Appalled at even this limited prospect of exercising independent judgment, House conferees drew back yet another step; in their counter-offer they asked in effect merely that the President obey the existing law requiring him to inform Congress of Executive agreements with foreign states. Senate conferees, evidently not thinking it necessary to pay a price for a presidential pledge to obey the law, turned the counter-offer down. And there, with no agreement on its policy amendments, the aid bill sits.

Mr. Case and the Senate majority supporting him haven't won. But to defeat the Case amendments, the President has been willing to lose or at least to put at severe risk several hundred million dollars worth of foreign military aid. Military aid is a program which Mr. Nixon has repeatedly declared crucial to the "Nixon Doctrine"—the idea that American allies should rely for their defense on their own manpower but American supplies. Unless the deadlock over policy is broken, there will likely be invoked an emergency financing procedure that would make available "only" about $1.5 billion for military aid; Mr. Nixon had asked $2.3 billion. This reduction would be regarded by many of the President's Senate adversaries as something of a compensation for their loss on the policy amendment.

It remains the case that congressional attempts to gain a larger institutional role in foreign policy have fared poorly. The House seems unable to focus on the matter, the Senate to impose its will. The most conceivable changes which the election could make in the composition of Congress might as easily strengthen the Nixon position on this issue as weaken it. If and as the sting of Vietnam goes out of public life, stimulus for a righting of the congressional-Executive balance may further fade. The Senate's war power bill, designed to clarify the guidelines for Executive consultation with Congress on the taking of military action abroad, is practically the last rampart; a characteristically weaker version has gone through the House. It would be a national misfortune if the opportunity were lost to make the necessary institutional changes to reduce the possibilities of presidential actions leading to involvements of the sort that carried us, by a series of seemingly innocuous steps, into the war in Vietnam.

Mr. CASE. Mr. President, I also ask unanimous consent that the two amendments be considered by the Senate as separate bills and that their texts be printed in the RECORD.

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

S. 445

A bill to cut off funds for the implementation of the Azores base agreement with Portugal until that agreement is submitted to the Senate as a treaty

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That commencing thirty days after the date of enactment of this Act, no funds may be obligated or expended to carry out the agreement signed by the United States with Portugal, relating to the use by the United States of military bases in the Azores, until the agreement, with respect to which the obligation or expenditure is to be made, is submitted to the Senate as a treaty for its advice and consent.

S. 446

A bill to require all agreements with foreign governments for United States military bases abroad be submitted to the Senate as treaties

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no funds may be obligated or expended to carry out any agreement entered into, on or after the date of enactment of this Act, between the United States Government and the government of any foreign country (1) providing for the establishment of a military installation in that country at which units of the Armed Forces of the United States are to be assigned to duty, or (2) revising or extending the provisions of any such agreement, unless such agreement is submitted to the Senate for its advice and consent and unless the Senate gives its advice and consent to such agreement. Nothing in this Act shall be construed as authorizing the President to enter into any agreement relating to any other matter, with or without the advice and consent of the Senate.

Mr. JAVITS. Mr. President, I think the initiative respecting executive agreements is a critically important one. Here too, is an area which has been utilized extensively. The whole thing now has gotten to the point where major foreign policy commitments and moves come to us almost at the choice of the Executive as treaties or executive agreements, notwithstanding that their concern far more than providing for Marine guards at a given embassy, which was originally the idea of the working of this practice, and other minor matters, which should not necessarily come before the Senate as a subject for executive agreements. This is a question of degree.

But the Senator from New Jersey is to be highly commended for endeavoring to deal with this particular area which our investigations through the subcommittee dealing with American

commitments abroad and deployments of our tremendous forces in many parts of the world have indicated represents agajn a very important abdication of power by Congress.

I thank my colleague from New Jersey for the privilege of joining him.

Mr. CASE. I appreciate very much indeed the remarks of the Senator from New York and his collaboration in this matter.

Mr. HARRY F. BYRD, JR. Mr. President, the Senator from New Jersey has raised a most important point. I agree with him that the Senate needs to come to grips with the question of executive agreements dealing with military forces, and executive agreements dealing with foreign nations which have the effect of making the United States vulnerable to the possibility of use of our Armed Forces in various sections of the world.

I think this is an extremely important subject. The Senator from New Jersey has pressed this issue for several years and I have supported most of his endeavors.

I have not been willing to go as far as voting to eliminate appropriations for agreements which have already been made, mainly the one with Portugal with regard to the Azores, the Spanish bases agreement, and the agreement with Bahrain. But I am in agreement with the Senator from New Jersey that the Senate should take firm steps in regard to subsequent agreements which are not submitted to the Senate in the form of a treaty.

During confirmation hearings on the new Secretary of Defense, Mr. Elliot Richardson, I queried him at some length to get his thinking on this question of treaties versus executive agreements, especially where the stationing of American military personnel is concerned. I might say it was difficult to pin down the new Secretary of Defense on this question. If I had to sum up his views, I would say he is not in agreement with the senior Senator from New Jersey or the senior Senator from Virginia in regard to the necessity of doing something about this matter. As Secretary of Defense, he will play an important role in negotiating agreements.

But the point the Senator from New Jersey has been making, and the point the Senator from Virginia now makes, is that the agreements, once negotiated—and both of us recognize they must be negotiated by the executive branch—should come to the Senate in the form of a treaty for ratification or rejection.

Mr. CASE. I want to thank my colleague from Virginia for his statement. I understand his position fully. On the basis of the constitutional authority of the Senate in these matters, we are fully in agreement. I am gratified that my amendment on future executive agreements has his support.

Mr. HARRY F. BYRD, JR. I thank the distinguished Senator from New Jersey.

By Mr. BUCKLEY:

S. 448. A bill to amend title 45, United States Code, in order to provide that a State may act in the case of labor disputes involving a railroad industry primarily engaged in intrastate operations and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. BUCKLEY. Mr. President, I introduce for appropriate reference a bill to amend the Railway Labor Act to provide that a State is not precluded in the case of a labor dispute affecting a carrier which is primarily engaged in intrastate commerce from invoking its own procedures and remedies for the settlement of such a labor dispute.

The amendment gives the State the option to first invoke and exhaust the procedures for the settlement of labor disputes contained in the Railway Labor Act but the State is not obligated to exercise the option.

This legislation was prompted by the existence of a strike affecting an intra- which has done great injury to hundreds state carrier, the Long Island Railroad, of thousands of New Yorkers since November 30, and as to which the State of New York has been powerless to act.

The reason for this is that the Railway Labor Act has been interpreted by the Supreme Court as having preempted the field, thus stripping the States of their ability to invoke their own remedies and procedures to resolve labor disputes involving intrastate carriers.

Mr. President, my legislation will return to the States the power to handle their own internal labor problems in a manner best suited to the needs of their own people.

Happily, the emergency which first prompted this legislation has now been resolved, thanks to the effective mediation efforts of the Secretary of Labor designate, Mr. Peter Brennan. That emergency, however can recur on Long Island in 90 days' time. Similar emergencies drastically affecting the public convenience can also concur in other States which have intrastate carriers. I therefore urge that this legislation be given immediate consideration.

By Mr. DOMINICK:

S. 449. A bill to amend the Wild and Scenic Rivers Act of 1968 (82 Stat. 906) by designating a portion of the Colorado River, Colorado, for study as a potential addition to the National Wild and Scenic Rivers system. Referred to the Committee on Interior and Insular Affairs.

Mr. DOMINICK. Mr. President, the bill I am introducing today for appropriate reference would amend the Wild and Scenic Rivers Act by designating a portion of the Colorado River in Colorado for study as a potential addition to the National Wild and Scenic Rivers system. The provisions of this bill are similar to the provisions of a bill which I introduced on October 13, 1972, during the closing days of the 92d Congress.

This bill would authorize a study of a 12.5-mile segment of the river with a report to be made to the President and Congress within 1 year with its recommendations regarding suitability for protective classification under the Wild and Scenic Rivers Act.

As all of my colleagues are aware, the purpose of the Wild and Scenic Rivers Act is to help preserve some of the most valuable natural resources this country possesses—our remaining rivers which have not yet been encroached upon by man. Section 2 of the act sets out its policy:

> Certain selected rivers of the nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

Mr. President, I support this policy fully, and believe the portion of the Colorado River which would be studied under this bill meets the criteria set out in the act. The 12.5 mile segment flows free and essentially undisturbed between Loma, Colo., and the Colorado-Utah border.

The river flows through highly scenic Ruby Canyon in a remote area of western Colorado. The narrow cut, varying from one-quarter to three-quarters of a mile, made by the river through the north edge of the Uncompahgre Uplift, reveals interesting geologic formulations. The canyon's steep walls expose several sedimentary beds laid down during the Triassic and Jurassic Ages. These colorful formations are dominated by sandstone, with some black metamorphic rock outcroppings. There are several interesting and scenic side canyons. One of these, Horsethief Canyon, which was a favorite hideout for cattle rustlers, is of interesting local historical significance. Another, Rattlesnake Canyon, contains several large natural arch formations.

The area is rich in wildlife. The river and its surrounding area provide excellent habitat for deer, elk, coyotes, bobcats, Chukka partridge, Canadian geese, and wild ducks. Although there is a stretch of Denver and Rio Grande railroad track, and one small unimproved access road, most of the canyon is accessible only by footpath or boat. Excellent opportunities exist for canoeing, kayaking, rubber raft float trips, camping, bicycling, photography, and canyon hiking. For white water enthusiasts, the Black Rock Rapids offer an exciting challenge. By raft, the float trip through the canyon to Westwater, Utah, can be made in one day during high water, and 2 days during low water. Since about 80 percent of the land along the river is currently administered by the Bureau of Land Management, classification under the Wild and Scenic Rivers Act would have minimal impact on private ownership. However, the rights which vest as a result of private ownership are recognized under the provisions of the Wild and Scenic Rivers Act.

Mr. President, a large portion of this country's water resources are found in Colorado. Colorado is the only State in the continental United States into which no appreciable water flows. Snowbanks

high in the Colorado Rockies form the headwaters of all its rivers and streams which then flow downward through the mountains and out across its borders. Several of our major river systems originate in Colorado—the Colorado, the Rio Grande, the Arkansas and the Platte. These rivers and their tributaries pass through some of the most beautiful and unspoiled areas in the United States. Yet, at present not a single mile of river in Colorado is included in the Wild and Scenic Rivers System. Senator Moss has introduced S. 30, which would designate a segment of the Colorado River in Utah as a part of the National Wild Rivers System. I am hopeful that these bills will be considered and reported from committee at the first opportunity so that this stretch of the Colorado River joining Colorado and Utah will remain protected.

I am reviewing other stretches of rivers in Colorado for possible inclusion under the Wild and Scenic Rivers Act and intend to introduce additional legislation when that review is completed.

Mr. President, I would be delighted if the study authorized by this bill results in the designation of a small portion of the upper Colorado River for preservation under the Wild and Scenic Rivers Act.

Mr. President, I ask unanimous consent that the language of my bill be printed in the RECORD at the conclusion of my remarks.

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

S. 449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following:

"(28) Colorado River, Colorado: The segment from the Colorado-Utah boundary line to a point 12.5 miles upstream near the town of Loma, Colorado."

SEC. 2. The study authorized by this Act shall be conducted in accordance with the provisions of the Wild and Scenic Rivers Act: *Provided,* That such study shall be completed and submitted to the President and the Congress no later than one year from the date of enactment of this Act.

By Mr. HUGHES (for himself, Mr. ABOUREZK, Mr. CLARK, Mr. CRANSTON, Mr. HART, Mr. HATFIELD, Mr. HUDDLESTON, Mr. MANSFIELD, Mr. MCGOVERN, Mr. METCALF, Mr. MONDALE, Mr. PELL, Mr. STEVENSON, Mr. TUNNEY, and Mr. WILLIAMS):

S. 450. A bill to require the public disclosure of certain information relating to U.S. military activities in Southeast Asia. Referred to the Committee on Armed Services.

AIR WAR DISCLOSURE ACT

Mr. HUGHES. Mr. President, I am today introducing, for myself and 12 of my colleagues, a modified version of the Air War Disclosure Act which I first presented to the Senate last spring. This legislation, if approved, would provide the American people with regular and consistent information on the extent of our military involvement in Southeast Asia.

At the present moment we do not know how much longer the United States will be conducting air operations and suffering casualties in this troubled region of the world. We all hope and pray that peace comes quickly.

But even if the long-sought peace comes soon, I believe that this legislation will still be needed. First, American people deserve the historical facts on the nature and extent of our air activities so that they can help in evaluating the effectiveness of the bombing campaigns over the years.

Second, we need a guarantee of information in case we begin to be involved in renewed air activities in Southeast Asia or in case Americans continue to be killed or wounded in hostilities there. I am thinking in particular of the danger to Americans in Laos and Cambodia if a cease-fire in Vietnam is not accompanied by a simultaneous one in those countries. Furthermore, I want to be sure that we know when and if the thousands of Americans now in Thailand become involved in the growing insurgency there.

In other words, Mr. President, we need a full disclosure of what has happened in this war and a public warning signal in case we start slipping into "another Vietnam."

So long as the war continues, the American people deserve to be told the facts. The old yardsticks of U.S. troop strength in Vietnam and the weekly death toll there are no longer meaningful, especially since about three times as many Americans are now stationed in Thailand and off the coast of Vietnam as in Vietnam itself. Instead of incomplete dribbles of data—or the complete blackout imposed last month—we need regular and consistent reports.

At the present time, the only unclassified information on the air war consists of monthly figures on U.S. air sorties inside South Vietnam. Monthly bomb tonnages for all of Indochina are available only after persistent calls to the Pentagon, rather than from periodic news releases. U.S. casualty figures in Laos and Cambodia are hidden in the total Southeast Asia figures rather than being identified regularly when they occur.

Still classified are the figures on air strikes in Laos, Cambodia, and North Vietnam—both sorties and tonnages. Even the data for the early years of the war are still labeled "secret"—long after they could be of any conceivable benefit to our opponents.

For several months I have been trying to get the Defense Department to remove the classification from this information so that we all would have a monthly measure of the air war.

In hearings last year before the Armed Services Committee, I asked the Defense Department: Since enemy intelligence is assumed to know the level of bombing, what reason is there for continuing to keep these figures classified?

The official answer was:

The enemy may be developing precise data concerning our air activity in SEA through his own system. But public release of such information would tend only to fill the gaps and eliminate errors in the enemy's system and we do not believe it prudent to provide confirmation and validation to the enemy. This policy applies as well to after-the-fact discussions of specific numbers of aircraft, sortie rates in specific target areas, and other specific or air tactics. The disclosure of this detailed information would enable the enemy to confirm trends, patterns and capabilities and would greatly aid enemy air defense planners.

I find that answer difficult to accept, Mr. President. Information on years prior to 1973 certainly can have no bearing on enemy defense planners now. And as for current data, I wonder if the daily announcements out of Saigon—such as "350 missions yesterday against targets in North Vietnam just above the DMZ" or "20 B–52 missions near Kontum"—might not be far more valuable to the other side than monthly figures for each country. The trouble with the daily figures is that they are not comprehensive or complete. Only monthly figures would provide the necessary yardstick without jeopardizing the men involved in these activities.

I would have preferred that this matter of declassification be settled without resort to legislation, but so far the Defense Department remains unmoved.

I am also hopeful that Secretary Elliot Richardson will look favorably on this request for information. In his confirmation hearings before the Armed Services Committee he was open-minded in the following colloquy with me.

Senator HUGHES. Mr. Secretary, I proposed legislation requiring the declassification of certain information on U.S. military activities in Indochina. Do you believe the American people have the right to know the monthly figures on U.S. air sorties, the bomb tonnages that are dropped, and the casualties for each separate country of Southeast Asia? Now certainly the people of those countries know what is happening to them. The people of North Vietnam know what happened in Hanoi and Haiphong. The embassies of the other nations of the world have informed their own people what we have been doing there but we, the American people, have no information relative to what we have been doing there.

Do you believe we have the right to know?

Secretary RICHARDSON. In general, Senator Hughes, I certainly do believe in the right to know. I believe that the American people should be kept as fully informed as possible.

As I said earlier in answer to a question by the Chairman, I believe that our ability to obtain public support for needed levels of military expenditure is going to depend upon public understanding and knowledge.

This committee has had available to it pretty much as it required it information about what we have been doing and I am not in a good enough position at the moment to know what are the considerations that have been behind any restriction on publication of information to be able to say that as Secretary of Defense I would make more available than has been made available.

This committee itself has seen where the line is drawn, and I, if it has not been given out there must be some reasons for it that I don't fully know but would want to know more about it.

I might add, Mr. President, that no issue of executive privilege is involved here since the information in question is already furnished to the Congress. But

until we strip away the "secret" label, we cannot discuss the significance of these figures and what they reveal.

Monthly data will enable us to judge by how much the war is winding down or heating up and whether it is shifting from one area to another. Breakdowns by country are also necessary if we are to judge whether existing legislative restrictions on U.S. involvement and commitments are being observed.

What I propose, Mr. President, is a law declaring that certain information now given the Congress is unnecessarily classified and that public disclosure would not be harmful to the national defense or foreign relations of the United States. The law would then direct the President to remove the security classification from this information back through 1965 and to begin regular monthly disclosure of the number of aerial combat sorties conducted by U.S. aircraft against targets in North Vietnam, South Vietnam, Laos, Cambodia, and Thailand as well as the tonnage of munitions expended in each country. Disclosure of monthly casualty figures for U.S. personnel in each country would also be required.

In order to provide a timelag necessary to insure that no tactical benefit will accrue to our opponents, the law would declare that figures need not be released until 10 days following the end of each month.

Mr. President, if we are to assure the accountability of the executive branch to the Congress and to the people, we need to have these figures available for scrutiny and debate. We can no longer rely on assurances and on statistics conveniently cloaked in secrecy.

If we are to make informed and intelligent decisions on how to end this war and how to avoid another one, we need to know the facts.

I hope that this Air War Disclosure Act will receive prompt and favorable consideration by the Senate.

Mr. President, I ask unanimous consent that the text of this 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. 450

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that the classification imposed on certain information reported to the Congress is unnecessary and that public disclosure thereof would not be harmful to the national defense or foreign relations of the United States. Accordingly, the President shall, within 30 days after the date of enactment of this Act, take such steps as may be necessary to remove the security classification from, and publicly disclose (1) the number of aerial attack sorties conducted each calendar month after December 31, 1964, through the end of the calendar month immediately prior to the month in which this Act is enacted by United States aircraft against targets in each of the following countries: the Republic of Vietnam, the Democratic Republic of Vietnam, Laos, Cambodia, and Thailand, (2) the tonnage of munitions expended in each such country in each such calendar month, and (3) the number of American personnel killed and wounded in hostile and non-hostile incidents in each such country in each such calendar month. Beginning on the tenth day of the calendar month following the month in which this Act is enacted, and not later than the tenth day of each calendar month, thereafter, the President shall publicly disclose (1) the number of aerial attack sorties conducted by United States aircraft during the preceding calendar month in each of the countries named above, (2) the tonnage of munitions expended in each such country in each such calendar month, and (3) the number of American personnel killed and wounded in hostile and non-hostile incidents in each such country in each such calendar month.

By Mr. HART (for himself, Mr. GRIFFIN, Mr. MONDALE, Mr. HUMPHREY, Mr. PROXMIRE, Mr. NELSON, Mr. PERCY, Mr. STEVENSON, Mr. SAXBE, Mr. TAFT, Mr. HARTKE, and Mr. BAYH):

S. 452. A bill to designate certain lands in the Isle Royale National Park in Michigan as wilderness, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

ISLE ROYALE NATIONAL PARK: PRESERVATION OF A UNIQUE WILDERNESS AREA

Mr. HART. Mr President, for myself and my colleague, the junior Senator from Michigan (Mr. GRIFFIN), I introduce a bill to designate portions of Isle Royale National Park for preservation as wilderness. We are delighted to be joined in the sponsorship of this conservation measure by the Senators from Minnesota (Mr. MONDALE and Mr. HUMPHREY), the Senators from Wisconsin (Mr. PROXMIRE and Mr. NELSON), the Senators from Illinois (Mr. PERCY and Mr. STEVENSON), the Senators from Indiana (Mr. HARTKE and Mr. BAYH) and the Senators from Ohio (Mr. SAXBE and Mr. TAFT)—the entire delegation of Senators from the Great Lake States.

PURPOSE OF ISLE ROYALE NATIONAL PARK

Mr. President, Isle Royale National Park is one of the outstanding natural places in North America. Situated in Lake Superior, its very character as a series of islands adds the extra dimension of remoteness and insularity to its outstanding natural and ecological values.

In the early 1930's, the Department of the Interior undertook a series of studies of Isle Royale to determine its scientific values and to gather knowledge about its natural features. One of the earliest experts to make field studies of the values of Isle Royale for the National Park Service was Dr. Adolph Murie, the renowned ecologist. In his report in 1935, he concluded:

Isle Royale is practically uninhabited and untouched. The element of pure wilderness which it contains is rare and worth the best care. True wilderness is more marvelous (and harder to retain) than the grandiose, spectacular features of our outstanding parks. It alone labels Isle Royale as of park calibre.

Isle Royale could either be developed as a populous summer resort or left in a wilderness state, buffeted by all the elements of nature—wind, lightning, lightning fires, beetles, and storm waves—as is the past. Since there are many favorable areas in northern Michigan and other lake states which can serve the summer resorters, the island need not be used for this purpose. Furthermore, summer resort development would ruin most of the features of the island which we hope to maintain. Isle Royale today is a wilderness unit; to develop it would be gross misuse.

Throughout all of the early Government survey reports, this same theme was emphasized: That Isle Royale's most significant value to the American people lies in its character as an undeveloped wilderness. In a later 1935 report to the Director of the National Park Service, four park service officials found:

The statements that the island is particularly valuable as an example of the north-central fauna and flora is not correct. It really has more significance than that. Isle Royale is an isolated land mass significant in the studies of the dispersal of plants and animals and the movement of plants and animals from one land mass to another. Furthermore, because of its position between the boreal and southern life zones, it forms a particularly unique place of study for the ecologist . . . there are few places where one can better study the life history of a bog or of the marginal vegetation to interior fresh water lakes. Note should be made of the large number of moose on the island, evidence of which was observed everywhere. Particularly convincing of the biological values was the experience of the committee as it came to the shore of Lake Richie where an old bull moose was found feeding shoulder high in water and a cow and her calf were seen moving along the shore line. Such scenes are available to any visitor to the island without serious disturbances of the animals.

As a matter of policy, this committee of National Park Service officials, including the Assistant Director, the Chief Forester and the Chief Architect, concluded:

It is essential that the wild character of this island be maintained and all plans should keep this objective in view.

They emphasized, again and again, the crucial need not to "spoil the vital wilderness character."

From these broad studies of the values of the island, attention was turned to planning for its administration as a national park. On this subject, another 1935 Park Service report said:

The island with all its charming wilderness and intriguing possibilities as a wilderness park is no less delicate itself than the complex faunal setup which first drew national attention. Any plan for its future use must be predicated on careful studies which will inhibit heavy pressure from being placed on most of the island area. Probably whatever developments are permitted can best be in one or two of the better harbors and then be concentrated in small areas at these locations. The island will be useful and appeal only to the type of people who love the isolation and wilderness retreat which can be found on Isle Royale. Probably, therefore, the number of people who visit the island each year will be quite small and will not require large or highly developed facilities for their use. Situated as Isle Royale is it offers a wilderness retreat for certain types of people which cannot be duplicated in the United States, the opportunity to preserve yet use this wilderness tract will be inversely proportional to the permitted development.

Dr. Murie gave the same advice:

To administer Isle Royale as a wilderness area, it is important to secure a personnel which has a feeling for wilderness and an understanding of wilderness values otherwise the desire to be doing something to the area will be hard to curb. The administrators should be told that their success and achievements will be measured, not by projects accomplished, but by projects sidetracked. In the management of a wilderness

area, we must somehow depart from the 20th Century tempo of activity.

Based on these early studies and plans, officials of the National Park Service drafted a summary analysis of Isle Royale National Park, and they concluded:

The comparative isolation and physical characteristics of Isle Royale have combined to prevent continued exploitation or settlement. Because of the island's size and unusual biota, this absence of development results in the most important insular wilderness in the continental United States. This wilderness characteristic is the island's most important single value.

A NATIONAL WILDERNESS PARK

Mr. President, Isle Royale was established as a national park for the central purpose of preserving its most significant value, its value as wilderness. In the years since the park was established, the park has, by and large, been managed and protected in keeping with this high purpose. Yet, with all of our parks, we know that their great popularity as recreational resources is attracting more and more use, leading to pressures for more and more facilities and developments. As the earliest Park Service reports predicted, Isle Royale is increasingly in danger of the kind of slow erosion by which a true wilderness becomes a summer resort, and the "vital wilderness character" is diluted and ultimately lost. We must take every precaution to hold fast to the wilderness value for which this national park was established.

In passing the Wilderness Act in 1964, and applying it to national park areas, the Congress has provided a mechanism which can help to prevent erosion of the wilderness values of our parklands. The framers of the Wilderness Act recognized that the very idea of a national park is, in large part, the idea of wilderness, but they recognized, too that wilderness values would be lost unless the park administators could be backed up by strong measures for the sure protection of the wilderness itself.

ORIGIN OF WILDERNESS PROPOSAL

As directed by the Wilderness Act, the National Park Service completed a study of the wilderness potential of Isle Royale National Park, including public hearings on the subject which were held in Michigan early in 1967. After some delay, the Department of the Interior submitted to Congress its official proposal for designating portions of Isle Royale as wilderness, recommending that approximately 120,588 acres receive this strong statutory protection. Excluded by this first proposal were more than 13,000 acres, spotted all around the island in nonwilderness exclusions ranging up to 6,000 acres in one unit.

The question of securing the preservation of wilderness on Isle Royale has, from the start, engaged a great deal of citizen interest in Michigan. When the National Park Service proposal was released, conservation groups in northern Michigan got together to analyze the plan carefully. They found it seriously deficient, and felt that most of the 13,000 acres of exclusions were not justifiable.

On the basis of their deep concern, these citizen groups worked together to conduct their own studies, including detailed field studies and surveys on the island. Involved in this coalition effort have been such groups as the Off-The-Beaten-Pathfinders, of Houghton, Mich., the Save the Lake Superior Shoreline Association, the Soo Ecology Club, of Sault Ste. Marie, Mich., the Mackinac Chapter of the Sierra Club, the Michigan United Conservation Clubs, and many individuals, including members of the leading national conservation groups. Field studies on the island involved these groups, as well as other individuals intimately familiar with the park, including ecologists and other scientists from Northern Michigan University, the University of Michigan, and Michigan State University.

A Sierra Club task force made a number of special survey trips to the island, and the national Council and staff experts of the Wilderness Society made a thorough reconnaissance of the entire area. All of these efforts were coordinated by the Northern Michigan Wilderness Coalition, an independent coalition of citizen groups throughout the Upper Peninsula and northern Lower Peninsula of Michigan. Special recognition should go to Mrs. John Clark, Mr. Fred Rydholm, Mr. and Mrs. Robert Hanson, Dr. John Tanton, Roger Harbin, Dr. Virginia Prentice, Miss Lucinda Thomson, and Mr. Tom Bailey for the detailed work they contributed to this effort.

Ultimately, this coalition of conservationists and sportsmen, motivated by their concern for this wilderness area, developed their own "citizen alternative proposal" for wilderness designation in Isle Royale National Park. Their proposal appeared to be superior to the plan recommended by the Department of the Interior. Officials of the State of Michigan reached the same conclusion, and Gov. William Milliken, his Natural Areas Advisory Council and our Department of Natural Resources have all endorsed the "citizen alternative proposal." Senator GRIFFIN and I first introduced legislation to implement that proposal late in 1971, as S. 2539.

PRINCIPLES OF WILDERNESS DECISIONS

Behind support for the citizen alternative proposal lies basic agreement on two fundamental principles: First, that the great significance of Isle Royale, the very reason for its designation as a national park, is its "vital wilderness character." Thus, the burden of proof for any exclusion from full wilderness protection should fall on those who advocate that exclusion. Second, we question the policies on which most of the large National Park Service exclusions were based, policies which do not seem directly related either to the Wilderness Act or to the physical circumstances of Isle Royale. At stake here is the future management of a very special, internationally significant island, and in this setting policies about excluding "wilderness thresholds" and "non-wilderness enclaves" do not gibe with that higher purpose.

OFFICIAL PROPOSAL REVISED

Last May 5, the Senate Subcommittee on Public Lands held hearings on S. 2539. The Department of the Interior submitted a report urging that its 120,588-acre proposal be adopted, not our larger one. Among other things, they said their proposal was,

Based upon a balanced wilderness plan for Isle Royale National Park which provides for a realistic variety of recreational and park management needs.

I will simply leave it for the record to compare that conclusion with the spirit of the earlier National Park Service that,

It is essential that the wild character of this island be maintained and all plans should keep this objective in view.

The subcommittee brought to a focus the policy issues which differentiated the citizen proposal from the larger exclusions in the Park Service plan. As a result of clarifications of some of these matters, the Committee directed the Department of the Interior to revise its recommendations to conform to the Wilderness Act.

This process was considerably delayed, to the point that the revised recommendations only were submitted to the Congress last October, too late, for final action by the committee. It is important to note, however, that the National Park Service plan was greatly revised. The "nonwilderness enclaves" were dropped, and most of the "wilderness threshold" areas were removed, allowing some 9,000 acres to be added to the earlier recommended wilderness area. In its revised proposal, the National Park Service recommends that 129,573 acres be designated as wilderness.

This is, of course, a significant improvement in the proposal, for which I certainly want to commend the Department of the Interior, and particularly Assistant Secretary Nathaniel Reed and his staff.

FURTHER REVISION NEEDED

Now the question is: Is the revised Park Service proposal acceptable, or are further additions to the wilderness in order? Once again, as they have obtained the revised plan and studied it, the Michigan citizens' coalition has applied its two basic criteria. First, is there a specific and necessary justification for each remaining exclusion from wilderness? Second, do the policies behind the remaining exclusions conform to the requirements of the law and the needs of this wilderness park?

On the basis of their further studies and discussion of the revised proposal, these groups have now told us that the revised official proposal, as welcome as it is, is still not adequate. On the basis of the refinements in policy which resulted from the May 5 hearings, these groups have made some necessary revisions in their own "citizen alternative plan," but they continue to feel it is superior to the Park Service plan.

The National Park Service revised plan is nothing more, thus far, than a map and an acreage total. Looking at the map, we find very large exclusions at several points which do not appear to have justification in terms of the nature of the land involved or in the existing or planned development of the national park. Thus, Senator GRIFFIN and I and our cosponsors are introducing a bill to-

day which again embodies the citizen alternative proposal.

DESCRIPTION OF HART-GRIFFIN BILL

Mr. President, the bill we are introducing today is essentially the same as S. 2539, our bill in the last Congress. However, there have been several minor changes in the citizen proposal and in the text of the bill, which I want to specify.

First, the language of the bill has been improved, particularly in section 1, where provision is made for designating certain small tracts of land which will be part of the wilderness, but only when present nonconforming improvements have been removed. In addition, the number of tracts subject to this procedure has been reduced. It developed at the May 5 hearings that "existing private rights" can be included within a wilderness boundary, inasmuch as section 4(c) of the Wilderness Act makes the restrictive provisions of that Act applicable "subject to existing private rights." Thus, we have included directly within the wilderness proposal those small tracts which temporarily contain private rights, such as small cottages. These existed prior to establishment of the park, and the private owners hold life-tenure rights to continue the use of their cottages. These tracts can be included directly as part of the designated wilderness, with the full understanding that the private rights and uses which exist shall continue until they terminate.

Second, we have included directly in this bill, in section 4, provision for adding a small group of islands to the national park. The Gull Islands presently lie just outside the park, and are administered as vacant public domain by the Bureau of Land Management. They are, however, a part of the Isle Royale archipelago, and should be part of the park. Last year, I introduced an amendment to accomplish this, and I have now simply incorporated that language into this bill.

Mr. President, I have endeavored to give here a basic outline of the background and present situation of this important wilderness legislation. It is our hope that this matter will receive prompt attention in the Committee on Interior and Insular Affairs.

By Mr. MOSS:

S. 453. A bill to establish a National Minerals Processing Institute for research investigation, information and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. MOSS. Mr. President, there are severe problems facing extractive metallurgy in the years ahead. Needed metals must be produced with less environmental damage. We must find new and better processes. New and better technology would improve metal yields and clean up environmental pollution problems.

According to a report of the National Materials Advisory Board issued in August of 1972, the United States lags behind other industrial nations in the development and utilization of new and improved processes for metallurgical extractions.

I therefore introduce today, a bill to establish a National Minerals Processing Institute as a joint venture of industry, Government, and the universities with an aim toward the most efficient utilization and conservation of ores, and the replacement of obsolete mineral extraction facilities with new technologies under proper constraints for protection of the environment.

By Mr. MOSS:

S. 454. A bill to establish a corporation for the development of new energy sources, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

ENERGY SOURCES CORPORATION

Mr. MOSS. Mr. President, I have had the opportunity of participating in the hearings pursuant to Senate Resolution 45 for the last 2 years and I am deeply concerned about the direction this country is taking in its attempts to develop an energy policy.

Critical decisions are facing us which can no longer be pushed under the rug or made the object of continuous study.

Over the years, the deficit in this country's energy trade has steadily risen. By every count, future petroleum demand and supply indicate a greatly accelerated dependence of U.S. petroleum imports from the Middle East.

Decisions must be made, and now, on a vast array of energy problems touching almost every facet of our national concern.

The present posture of our domestic production is dismal. We have tremendous reserves but we have utterly failed to plan ahead and put forth the necessary incentives for exploration or to develop additional refinery capabilities. Of necessity, we must depend on foreign energy sources for the short-term haul.

In the long haul, we must take appropriate steps in the Congress to secure the American position in energy supplies. In my view, this means simply protecting our flank against the vagaries of foreign supply. We can shore up our chances for a continuing domestic supply of oil and gas by providing an appropriate climate for exploration, development, and the construction of adequate refinery facilities. We can educate the consumer in ways of conservation of energy resources, and industry and Government together can begin making adequate sums of money available for research and development to enhance our own capabilities in new energy sources and in energy substitution and recycling efforts.

I offer a bill today which is aimed at enhancing our capabilities in the area of commercial development of new energy sources, a joint Government-industry corporation to seek the accelerated development of new, exotic energy sources.

It is high time we galvanize ourselves to act rather than simply react to a situation when it has reached crisis proportions. We simply must accelerate our efforts before it is too late. This bill represents an effort in that direction.

By Mr. MOSS:

S. 455. A bill to amend the Federal Aviation Act of 1958 to provide a definition for inclusive tour charters and for other purposes. Referred to the Committee on Commerce.

AIRLINE TOUR CHARTERS

Mr. MOSS. Mr. President, I introduce for appropriate reference a bill to amend the Federal Aviation Act of 1958 to provide a definition for inclusive tour charters. During last Congress, the Aviation Subcommittee of the Senate Commerce Committee held several days of hearings on restrictions on single-stop inclusive tour charters. The thrust of the legislation which I introduce today would eliminate most of those restrictions. Although the Civil Aeronautics Board has moved to reduce the burdens on air carriers, the regulations are still somewhat restrictive and require that additional legislative scrutiny be paid to the problem.

One-stop inclusive tour charters could increase traffic volume for the airline industry, increase use of resorts, and provide a method of low-cost vacation travel for the American people. One-stop inclusive tour charters provide for an economic boost for the entire tourism industry.

The air carriers, both scheduled and charter operators, have long felt that if the restrictions on their activities on inclusive tour charters were relaxed, better public service could be provided. The European experience is most noteworthy. Almost 9 million northern Europeans enjoy Mediterranean vacations each year. This is due solely to the availability of low-cost, packaged vacations. There is no reason to suppose that a similar boom would not occur here, were the opportunity to present itself.

Mr. President, I ask unanimous consent that the text of the legislation appear at the conclusion of my remarks.

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

S. 455

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Aviation Act of 1958, as amended, is further amended as follows:

(1) Paragraphs (20) through (36) of section 101 are renumbered as paragraphs (21) through (37), respectively, and a new paragraph (20) is added to read as follows:

"(20) 'Inclusive tour charter trip' means a charter trip which combines air transportation, pursuant to a contract between an air carrier or foreign air carrier and a person authorized by the Board to sell inclusive tours, and land arrangements at one or more points of destination, sold to members of the public at a price which is no less than the just and reasonable fare for charter air transportation plus a compensatory charge for land arrangements, and subject to such other requirements not inconsistent herewith as the Board shall by regulation prescribe: *Provided,* That nothing in this Act shall be construed to prohibit an air carrier from controlling, being controlled by, or being under common control with a person authorized by the Board to sell inclusive tours."

(2) Renumbered paragraph (35) of section 101 is revised to read as follows:

"(35) 'Supplemental air transportation' means charter trips, including inclusive tour charter trips, in air transportation rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act."

(3) Section 402(f) is amended to read as follows:

"(f) Any permit issued under the provisions of this section may, after notice and hearing, be altered, modified, amended, suspended, canceled, or revoked by the Board whenever it finds such action to be in the public interest. Any interested person may file with the Board a protest or memorandum *in support* of or in opposition to the alteration, modification, amendment, suspension, cancelation or revocation of a permit. Whenever the Board finds that the government or aeronautical authorities of any foreign country have refused to permit, or have imposed arbitrary or unreasonable restrictions or limitations upon, the performance of foreign air transportation by an air carrier pursuant to its certificate, or have discriminated between classes of air carriers, the Board may, with or without prior notice and without hearing, suspend or modify any permit issued under this section to any foreign air carrier authorizing foreign air transportation between such foreign country and the United States for the period that such prohibition or restrictions by the foreign country remain in effect."

(4) Section 1102 is amended by deleting the period at the end thereof and adding the following: ": *Provided further*, That no new or amended agreement between the United States and any foreign country relating to air transport rights shall be concluded by the Government of the United States which is inconsistent with, or would restrict the exercise of, the authority of the Board under section 402(f) of this Act."

By Mr. MOSS:

S. 456. A bill to amend the Internal Revenue Code of 1954 to tax cigarettes on the basis of their tar content, and for other purposes. Referred to the Committee on Finance.

CIGARETTE TAR TAX ACT

Mr. MOSS. Mr. President, I am today introducing the Cigarette Tar Tax Act, a bill to amend the Internal Revenue Code of 1954 to tax cigarettes on the basis of their tar content, and for other purposes.

Five years ago, the late Senator from New York, Mr. Kennedy, and the Senator from West Virginia (Mr. RANDOLPH), offered in the Senate legislation setting the tax rate of cigarettes on the basis of tar and nicotine.

The Public Health Service had just issued its authoritative report on tar and nicotine, and although the report did not specify the exact role which each of the many constituents of tar plays in the disease process, the report did conclude that the lower the tar and nicotine, the less the risk of disease caused by cigarette smoking. The Federal Trade Commission subsequently recommended that tar and nicotine content be displayed in cigarette advertising and the cigarette industry has agreed to this proposal.

Nevertheless, a high number of cigarette brands remain in the middle and upper end of the tar and nicotine spectrum. Surely at this time, when we talk of imposing differential taxes on leaded and unleaded gasolines, and harnessing the tax schedules to the national fight against pollution, we should be prepared to move in a similar manner on this problem of personal health.

Recently, the city of New York instituted an incentive tax on tar and nicotine. This tax charges more for cigarettes which bring increased needs of health care. The heavy cigarette smoker of high tar and nicotine cigarettes is the one who demands hospitalization. A higher premium is thus established for financing needed municipal services. A proposal of this sort in a limited area, however, cannot completely succeed unless a uniformity exists, as would be the case if the tax were applied nationally.

As we increase the taxes on those cigarettes which provide the greatest hazard to health, we must also decrease the financial incentives to those who grow tobacco and manufacture cigarettes. For this reason I have included in the Cigarette Tar Tax Act several sections which come to grips directly with the problem.

The Government must change the economic and social benefits accruing to the tobacco economy. We must support every conceivable method to deter the growing, processing, and consumption of the product by education, economic incentives, and appeals to commonsense.

The other sections of the Cigarette Tar Tax Act provides for the establishment of a Commission on Tobacco Adjustment Assistance to prepare, within 18 months, a comprehensive analysis and recommendations for appropriate action necessary to provide assistance to those who will be adversely affected by the elimination of tobacco subsidies and the decrease in tobacco consumption. I hope my colleagues from tobacco States will join with me in this constructive plan to assist the tobacco farmer, the exporter, and the State and local governments. I would also imagine Senators with significant agricultural constituencies would be particularly supportive of this effort to prepare the agricultural economy for the eventual elimination of support coincident with the reduction in use of the product.

Perhaps medical concern about cholesterol and fatty acids may lead to similar problems of decreasing use and reductions in subsidies in the dairy industry. I hope we can learn from our past experiences with the SST, with tobacco and with other pending issues, that long-range planning is far more satisfactory than are last minute contingency plans.

Members of the Commission on Tobacco Adjustment Assistance would be tobacco growers, manufacturers of tobacco products, other segments of the economy seriously affected by the reduction in the use of tobacco, and State and local governments. The Commission would report to the Congress and the President within 18 months of enactment, making recommendations for legislation and administrative action necessary to eliminate or substantially to reduce the hardships to persons affected by decreasing tobacco consumption and elimination of subsidies.

Finally, the Cigarette Tar Tax Act would remove that great inconsistency of American life—tax support for tobacco crops, inspection, and overseas sales. How can we as a Nation continue to put tax money in this lethal commodity? These are questions which I have posed before and I will continue to pose in hearings before the appropriate legislative committee. The letters of outrage will continue to pour in, as long as we continue our policy of pouring tax dollars into tobacco, while we warn our citizens of the dangers of disease from its use.

Mr. President, I ask unanimous consent that the text of the Cigarette Tar Tax Act be printed in the RECORD following my statement.

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

S. 456

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 "Cigarette Tar Tax Act".

SEC. 2. (a) Section 5701(b) of the Internal Revenue Code of 1954 (relating to tax on cigarettes) is amended to read as follows:

"(b) CIGARETTES.—On cigarettes, manufactured in or imported into the United States, there shall be imposed the following taxes:

"(1) SMALL CIGARETTES.—On cigarettes, weighing not more than 3 pounds per thousand, the tax shall be determined under the following table:

"If the tar content thereof is—	The tax per thousand cigarettes shall be—
10 mg. or less	$4
More than 10 mg. but not more than 15 mg	7
More than 15 mg. but not more than 20 mg	10
More than 20 mg	15

"(2) LARGE CIGARETTES.—

"(A) IN GENERAL.—On cigarettes weighing more than 3 pounds per thousand, the tax per thousand shall be 2.1 times the tax prescribed by paragraph (1).

"(B) SPECIAL RULE FOR LONG CIGARETTES.—On long cigarettes (as described in subparagraph (A)) which are more than 6½ inches long, the tax per thousand shall be determined under paragraph (1), counting each 2¾ inches, or fraction thereof, of the length of each as one cigarette.

"(3) DETERMINATION OF TAR CONTENT.—

"(A) TESTING BY FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall from time to time (but not less often than once each calendar year) test each brand of cigarettes manufactured in or imported into the United States for the tar content of cigarettes of such brand. The conditions, methods, and procedures for conducting such tests shall be prescribed by (and may be changed by) the Commission by regulations issued by it for purposes of this paragraph. Until such time as such regulations are first issued, the conditions, methods, and procedures for conducting such tests shall be those approved by the Commission for formal testing which are in effect on the date of the enactment of the Cigarette Tar Tax Act.

"(B) CERTIFICATION TO SECRETARY.—At least once each calendar year, the Chairman of the Federal Trade Commission shall certify to the Secretary or his delegate, on the basis of the tests conducted pursuant to subparagraph (A), the tar content of each brand of cigarettes manufactured in or imported into the United States. The tar content of a brand of cigarettes as contained in such certification shall, for purposes of applying paragraphs (1) and (2), be the tar content of cigarettes of such brand for the period beginning with the day after such certification is made with respect to such brand and ending with the day on which the next certification is made with respect to such brand."

(b) The amendment made by subsection (a) shall take effect on the first day of the first calendar quarter which begins more than 30 days after the date of the enactment of this Act, except that, with respect to the authority of the Federal Trade Commission to issue regulations for purposes of sections 5701(b)(3) of the Internal Revenue Code of 1954 (as added by subsection (a)), such amendment shall take effect on the date of the enactment of this Act.

SEC. 3. (a) There is established a commission to be known as the Commission on Tobacco Adjustment Assistance (hereafter in this section referred to as the "Commission").

(b) The Commission shall consist of 15 members to be appointed by the President. The members of the Commission shall include representatives—

(1) growers of tobacco,

(2) manufacturers of cigarettes, cigars, and other tobacco products,

(3) other segments of the economy seriously affected by the elimination or substantial reduction of the use of cigarettes, cigars, and other tobacco products and

(4) State and local governments.

Not more than three members of the Commission may be officers or employees of the Federal Government.

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

(d) Seven members of the Commission shall constitute a quorum and a vacancy in the Commission shall not affect its powers.

(e) It shall be the purpose and duty of the Commission to make a full and complete study of—

(1) the probable effect of the increases in the taxes imposed under section 5701 of the Internal Revenue Code of 1954 and of the termination of price supports for tobacco in achieving the elimination or substantial reduction of the use of cigarettes, cigars, and other tobacco products;

(2) the economic hardships which will result from the elimination or substantial reduction of the use of cigarettes, cigars, and other tobacco products to—

(A) growers of tobacco,

(B) manufacturers of cigarettes, cigars, and tobacco products,

(C) other segments of the economy directly affected; and

(3) the economic hardship to State and local governments caused by the reduction in revenues resulting from the elimination or substantial reduction of the use of cigarettes, cigars, and other tobacco products. The Commission may include in such study such other matters as it deems advisable which relate to the effect on the economy of the elimination or substantial reduction of the use of cigarettes, cigars, and other tobacco products.

(f) The Commission shall, within 18 months after the date of the enactment of this Act, report to the President and to the Congress—

(1) the results of the study conducted by it pursuant to subsection (e), and

(2) its recommendations for legislation and administrative action necessary to eliminate or substantially reduce the use of cigarettes, cigars, and other tobacco products, and to provide assistance to persons described in subsection (e)(2) and to State and local governments in adjusting to such elimination or substantial reduction.

(g) Members of the Commission shall serve without compensation but shall be allowed travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(h) The Commission is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates; and

(2) to obtain the services of experts and consultants, in accordance with the provisions of section 3109 of title 5, United States Code, at rates for individuals not to exceed $100 per day.

(i) The Commission is authorized to request from any department, agency, or independent instrumentality of the Government any information and assistance it deems necessary to carry out its purpose under this section; and each such department, agency, and instrumentality is authorized to cooperate with the Commission and, to the extent permitted by law, to furnish such information and assistance to the Commission upon request made by the Chairman or any other member when acting as Chairman.

(j) The Commission shall cease to exist 60 days after the date of the submission of its report under subsection (f).

(k) There are hereby authorized to be appropriated $1,000,000 in each fiscal year to carry out the provisions of this section.

SEC. 4. (a) Section 106 of the Agricultural Act of 1949, as amended, is amended by adding at the end thereof a new clause as follows: "(d)(1) The level at which price support may be made available for the 1974, 1975 and 1976 crops of tobacco shall be subject to the following limitations:

"(A) The 1974 crop of any kind of tobacco may not be supported at any level greater than 75 per centum of the level at which the 1970 crop of such tobacco was supported.

"(B) The 1975 crop of any kind of tobacco may not be supported at any level greater than 50 per centum of the level at which the 1970 crop of such tobacco was supported.

"(C) The 1976 crop of any kind of tobacco may not be supported at any level greater than 25 per centum of the level at which the 1970 crop of such tobacco was supported.

"(2) Price support shall not be made available for the 1977 and subsequent crops of tobacco."

(b) Notwithstanding any other provisions of law, marketing quotas, marketing penalties, acreage-poundage quotas, and acreage allotments for tobacco shall be ineffective with respect to the 1977 and subsequent crops of tobacco.

SEC. 5. (a) Section 4 of the Tobacco Inspection Act (7 U.S.C. 511c) is amended by striking out the following: ": *Provided*, That in no event shall charges be in excess of the cost of said samples, illustrations, and service so rendered".

(b) Section 5 of such Act (7 U.S.C. 511d) is amended by striking out the seventh sentence thereof.

(c) The last paragraph of section 6 of such Act (7 U.S.C. 511e) is amended by striking out the period at the end of such paragraph and inserting in lieu thereof a semicolon and the following: "but all of the cost of providing services under this section shall be borne by the persons requesting such services."

SEC. 6. Title I of the Agricultural Trade Development and Assistance Act of 1954 is amended by adding at the end thereof a new section as follows:

"SEC. 111. Notwithstanding any other provision of law (1) no subsidy or other incentive payment shall be made, directly or indirectly, under the provisions of this Act to any person for the export or sale of tobacco or any tobacco product, and (2) no funds may be expended for the purpose of advertising or otherwise promoting the sale of tobacco in any foreign country."

SEC. 7. Section 5(f) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c(f)) is amended by striking out the period at the end of such section and inserting in lieu thereof a comma and the following: "except that nothing herein shall be construed to authorize the payment of any subsidy for the export of tobacco from the United States."

By Mr. MOSS (for himself, Mr. MANSFIELD, and Mr. METCALF):

S. 457. A bill to amend the act of June 21, 1949 (81 Stat. 116, 30 U.S.C. 54) enlarging the liability for damages to stockraising and other homesteads by mining activities. Referred to the Committee on Interior and Insular Affairs.

LIABILITY FOR DAMAGES BY MINING ACTIVITIES

Mr. MOSS. Mr President, one of the most pressing problems facing us in the West with the intensified interest in coal development is the situation where the surface of the land is privately owned and the mineral has been retained by the Federal Government.

Over the years, and under these circumstances, efforts to enlarge the liability for damages to stockraising and other homesteads. In 1949, the Congress enlarged the liability to require the mineral leasee to pay the homesteader for the value of the surface for grazing.

In present-day mining operations, stripmining methods not only destroy the surface for grazing, but may permanently destroy the entire surface value of the land for any constructive purpose.

The bill is intended to meet that situation. I am joined by Senator MANSFIELD and Senator METCALF in introducing this bill.

By Mr. JAVITS (for himself, Mr. WILLIAMS, Mr. KENNEDY, Mr. BROOKE, Mr. BURDICK, Mr. CRANSTON, Mr. HARTKE, Mr. HUGHES, Mr. HUMPHREY, Mr. MCGEE, Mr. METCALF, Mr. PASTORE, Mr. PERCY, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. STEVENS, Mr. STEVENSON, Mr. TAFT, Mr. TOWER, Mr. TUNNEY, Mr. MOSS, Mr. PELL, Mr. RANDOLPH, and Mr. DOLE):

S. 458. A bill to provide for the humane care, treatment, habilitation and protection of the mentally retarded in residential facilities through the establishment of strict quality operation and control standards and the support of the implementation of such standards by Federal assistance, to establish State plans which require a survey of need for assistance to residential facilities to enable them to be in compliance with such standards, seek to minimize inappropriate admissions to residential facilities and develop strategies which stimulate the development of regional and community programs for the mentally retarded which include the integration of such residential facilities, and for other purposes. Referred to the Committee on Labor and Public Welfare.

BILL OF RIGHTS FOR MENTALLY RETARDED

Mr. JAVITS. Mr. President, I introduce on behalf of myself and Senators WILLIAMS, KENNEDY, PELL, BROOKE, BURDICK, CRANSTON, DOLE, HARTKE, HUM-

PHREY, MCGEE, PASTORE, PERCY, RIBICOFF, SCHWEIKER, STEVENS, STEVENSON, TOWER, TAFT, HUGHES, MOSS, and TUNNEY, the "Bill of Rights for the Mentally Retarded," which is essentially the same as the bill I introduced in the 92d Congress. A companion bill will again be introduced in the House by Representatives HASTINGS and MURPHY, and I am confident it will have broad bipartisan support, as it did in the 92d Congress when it had more than 50 cosponsors.

I ask unanimous consent that the comments of need and praise for the legislation by various interested professional organizations be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. JAVITS. Mr. President, I believe the suggestions which have been brought to my attention regarding the standards, the relationship of the bill with the existing Developmental Disabilities Act and voluntary standards continuation should be determined by the Labor and Public Welfare Committee, of which I am ranking minority member, during its hearings and executive consideration of the measure. I am very hopeful of prompt committee consideration of my "Bill of Rights for the Mentally Retarded" and the extension of the expiring "Developmental Disabilities Services and Facilities Construction Act," introduced today by Senator KENNEDY—and of which I am a cosponsor. Thus, by hearings on both measures, we will assure a complimentary approach, targeting in on the problems of the mentally retarded and other developmentally disabled.

At the request of Governor Rockefeller of New York, I urged special Federal crisis intervention to assist New York State in improving the distressing situation at Willowbrook in New York and other mental retardation programs within the State. I personally viewed the tragedy of Willowbrook and resolved to overcome the dehumanizing conditions. I pledged myself to the introduction of a Bill of Rights for the Mentally Retarded, utilizing standards developed by committees representing all the disciplines and interests that must be involved in providing fully adequate programs for the mentally retarded, under the leadership of the Accreditation Council for Facilities for the Mentally Retarded.

Since that time, the parents of mentally retarded children and a concerned public anxiously awaited the report on the New York State mental retardation program. I regret to say that it failed to provide urgently needed Federal leadership in response to the crisis at Willowbrook State School and the plight of all the mentally retarded.

No one could have personally experienced Willowbrook—where many were left to vegetate without sufficiently well trained staff to care for them and receiving substandard care, totally inadequate to respond to their basic health and hygiene needs—and not expect an immediate and effective Federal response. Unfortunately, there was no clear cut HEW recommendation or support for effectuating this goal. I believe the Federal Government has an obligation to implement and honor the commitment to provide humane care and treatment to the institutionalized mentally retarded and to deemphasize long-term institutionalization.

Mr. President, I ask unanimous consent that in order for all interested parties to have the benefit of the previously mentioned recommendations that the full text of the letters from which these comments have been prepared and other letters of comment, the full text of the bill, and the section-by-section analysis prepared by the Library of Congress Congressional Research Service be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2.)

Mr. JAVITS. Mr. President, also to continue to focus public attention on all matters involving the mentally retarded and other developmentally disabled, the decision of which is of special importance, I ask unanimous consent that the portion of my introductory remarks on June 28, 1972, entitled "Discussion of Issues" be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 3.)

Mr. JAVITS. Mr. President, we must finally, at this point in time, accept the responsibility that is ours. Ours, not only as legislators, but as citizens in this country that has at its roots the political doctrine of equal rights for all people. We must now act to insure these basic rights to the mentally retarded, and that is why I have again introduced the "Bill of Rights for the Mentally Retarded."

EXHIBIT 1

COMMENTS ON "BILL OF RIGHTS FOR THE MENTALLY RETARDED"

National Association for Retarded Children: "The proposed bill addresses itself to one of the really critical issues facing states in serving the needs of the mentally retarded today. I am in complete agreement with the philosophy expressed in this proposed legislation."

Accreditation Council of Facilities for the Mentally Retarded: "The Accreditation Council wholeheartedly supports the Senator's objective of improving the services provided mentally retarded persons."

New York State Association for Retarded Children: "I think the concept of the bill is superb."

Association for Children with Retarded Mental Development: "We have examined the Bill in its entirety and find it to be an outstanding document covering every aspect of the need for continuity of care and concern of the rights of the mentally retarded."

Federation of Parent's Organizations for the New York State Mental Institutions: "This bill is the best one I've ever seen. I hope I can be of some help in seeing that it becomes the law of the land."

Citizens Action Committee for the Handicapped: "If this Bill could become a reality, it would usher in a 'new world' for the retarded. It includes everything those of us who have been fighting for change and for a restructuring of existing systems of service, would have included were we to write our own 'Bill of Rights'."

AFL–CIO: " . . . the bill represents a major step forward toward the goal of fully protecting the rights of millions of handicapped citizens of whom the mentally retarded are the most vulnerable."

New York State Department of Mental Hygiene: "I am very much in accord with the intent of Senator Javits' Bill of Rights for the Mentally Retarded, and with its excellent provisions for providing better services for our retarded citizens."

United Cerebral Palsy Associations, Inc.: "The 'Bill of Rights for the Mentally Retarded', which you sent me, would be a lasting landmark in the restoration of full citizenship for the mentally retarded of our country."

Illinois Department of Mental Health: "As a superintendent of a 2,700 bed facility serving the mentally retarded of all ages and all handicapping conditions, may I state that this is the most exciting, promising, encouraging and all-encompassing proposal that has ever been made."

The Joseph P. Kennedy, Jr. Foundation: "I have read your bill on the Bill of Rights for the Mentally Retarded and am very impressed. Congratulations for working so quickly and with such expertise in such a sad and difficult area."

Joint Commission on Accreditation of Hospitals: "Your strong and sincere interest in the welfare of the mentally retarded is well demonstrated by your conception of this legislative proposal. All of us on the staff, as well as the members of the Accreditation Council for Facilities for the Mentally Retarded and the Board of Commissioners of the Joint Commission, support your objective wholeheartedly."

Association for the Help of Retarded Children: "I would like to assure you of my complete support of this fine legislation."

EXHIBIT 2

LETTERS COMMENTING ON "BILL OF RIGHTS FOR MENTALLY RETARDED"

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION,

May 12, 1972.

To: Mr. Jay Cutler, Minority Staff Counsel, New Senate Office.

From: Edwin W. Martin, Associate Commissioner, Bureau of Education for the Handicapped.

Subject: Bill of Rights for the Mentally Retarded.

Thank you for the opportunity to review the proposed legislation to establish and implement a bill of rights for retarded children. The attached comments were developed by my staff. I thought you might be interested.

As you know, we have been quite concerned about the problems of children in institutions for the mentally retarded. Jim Moss, on my staff, was with the Federal team which visited Willowbrook. After that, he made a visit to the Rosewood State Hospital in Maryland. We are going to spend more time visiting these places in order to get a better understanding of the problem. This is going to become a special concern and priority item for this office.

We have in mind developing technical assistance and training programs to help improve the skills of professionals and other personnel in such institutions. We find that people managing educational and rehabilitation programs are not always up to date on what can and should be done. We will also be continuing our efforts to create more community programs so that these children will not have to be sent to such facilities.

The process of reconstructing the lives of institutionalized children will be difficult, and costly. It will take time. Your bill of rights is a good beginning.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION,

April 28, 1972.

To: Dr. Edwin W. Martin, Jr., Associate Commissioner, BEH.

From: R. Paul Thompson, Policy and Procedures Officer, ASB.

Subject: Bill of Rights for the Mentally Retarded.

The "Bill of Rights for the Mentally Retarded" (Mr. Javits, April 10, 1972) is a very comprehensive piece of legislation which provides humane care, treatment, and protection of the mentally retarded in residential facilities, and for the development of regional, and community programs for the mentally retarded which include the integration of such residential facilities. There is evidence of considerable expertise in the writing of the bill. In general, it is a carefully worded document, establishing strict standards for residential services, leaving little to chance or imagination with the exception of the educational component. Observations are as follows:

TITLE XI

Part A—State Strategy Planning: Provides for a review of all existing State plans concerned with providing services and programs for the mentally retarded. Emphasizes coordination of existing facilities. Provides not to exceed $300,000 per institution to cover costs of administering and operating demonstration facilities and training programs for MR.

Part B—Delivery of Mental Retardation Programs and Services: Requires development of a State plan, which includes the designation of a State planning and advisory council. I would recommend that membership on this council must include the State Director of Special Education and State Administrator of the PL 89-313 program. (See Sec. 1103(21))

Part C—Standards for Residential Facilities for the Mentally Retarded: Detailed and adequate. No suggestions.

Sec. 1124. Significant—"No individual whose needs cannot be met by the facility shall be admitted to it."

Sec. 1126.—Excellent—"The residential facility shall admit only residents who have had a comprehensive evaluation . . . by an appropriately constituted interdisciplinary team."

Sec. 1127(c). Significant—"There shall be a regular, at least annual, joint review of the status of each resident by all relevant personnel . . ."

Sec. 1132. Provides regulations concerning staff training, and inservice training for employees who have not achieved the desired level of competence. Specifies use of modern educational media equipment and development of working relations with nearby colleges and universities.

Sec. 1155(a). Specifies living components or groups or residents.

Sec. 1155(b). Indicates that residents who are mobile nonambulatory, deaf, blind, epileptic, and so forth, shall be integrated with peers of comparable social and intellectual development *and shall not be segregated on the basis of their handicaps.* This seems idealistic but not necessarily practical in all cases, i.e., persons who are deaf probably should not be placed with residents who are blind, since communication barriers could easily arise.

Chapter 3—Professional and Special Programs and Services

Sec. 1159. Specifies that individuals providing professional and special programs and services to residents include those in education; library services; music, art, dance and other activity therapies; occupational therapy; and vocational rehabilitation. I would suggest the addition of "Vocational Education and Vocational Habilitation (as contrasted to vocational rehabilitation).

Sec. 1163. Concentrates on educational services, indicating that such services, "defined as deliberate attempts to facilitate the intellectual, sensorimotor, and affective development of the individual shall be available to all residents regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps." Could more clearly state that not only will such services be made available, but that all residents, to the maximum extent possible, *be enrolled or included,* in such programs.

Sec. 1166 Deals with Library Services. Very adequate.

Subchapter IX—Physical and Occupational Therapy Services. Specifies that physical and occupational therapy be provided, or made available to residents on a continuing basis, as needed. Very adequate.

Subchapter X—Psychological Services. Provides for both direct and indirect psychological services. Appropriate and seem to be comprehensive.

Subchapter XI—Recreation Services. Specifies quite complete recreational services for each resident, which includes a variety of activities such as outings, performances in dramatic or musical productions, camping, team and lead-up activities, individual and dual sports, hobbies, etc. Specifies provision of "opportunities to use leisure time in activities of the resident's own choosing in an informal setting under minimal supervision." This subchapter appears to be excellent.

Subchapter XIII—Social Services. Specifies that social services shall be available to residents and their families, and shall so be provided, directly and indirectly. Comprehensive.

Subchapter XIV—Speech Pathology and Audiology Services. Well designed; there seem to be no problems with this subchapter.

Subchapter XV—Vocational Rehabilitation Services. This subchapter could be reviewed critically to determine if all necessary aspects of a comprehensive vocational education and/or career education program are included. Seems oriented principally to *rehabilitation* rather than *habilitation* or initiatory training. (". . . services which includes the establishment, maintenance, and implementation of those programs that will ensure the optimal *development or restoration* of each resident, physically, psychologically, socially, and vocationally.")

Chapter 5—Research

This chapter charges the administration and the staff to encourage research activity. This chapter might be strengthened to assure that research activities are in fact conducted, and that funds are made available for such studies. The apparent permissiveness of this chapter could result in no research being conducted.

Chapter 8—Definitions

Significant definition—"Resident" means the general term used in the standards to refer to an individual who receives service from a residential facility, *whether or not such individual is actually in residence in the facility.*" However, a residential facility may use the term "resident" to refer only to those individuals actually in residence, and may thus distinguish between resident and nonresident recipients of its services.

Summary Statement

This is a most significant piece of legislation, designed to ensure quality services to the mentally retarded. It is particularly strong in the medical health, social services, therapy, and residential living services. Areas possibly needing strengthening include the educational, vocational educational and research components.

Mr. Robert Gettings, of the National Association of Coordinators of State Programs for Mental Retardation, has indicated to me that he feels the bill exceeds the necessary detail for a law. His preference, which apparently reflects the thinking of many in his association, would be to have a less restrictive and comprehensive law, with the minute details being spelled out in policy statements, regulations, etc. Such statements would lend themselves more readily to changes as might be dictated by time and place.

ASSOCIATION FOR CHILDREN WITH RETARDED MENTAL DEVELOPMENT, INC.,

New York, N.Y., May 8, 1972.

Senator JACOB K. JAVITS,
New York, N.Y.

DEAR SENATOR JAVITS: Please accept our thanks for sending us a copy of your "Bill of Rights for the Mentally Retarded."

At your request we are going to review this proposed legislation and if we have any recommendations we will communicate them to Mr. J. Cutler.

Of course, we will also alert our membership and all interested friends and professionals in the field about your bill. May we suggest that at the time you feel we can be of additional help in ensuring adoption of your bill, would you alert us and I am sure we can get many people to use their good offices for this purpose? All of us recognize the unquestionable need for the Federal Government to adopt a stance which will guarantee the elimination of conditions which treat our children in an inhuman way. We are with you in this, all the way.

IDA RAPPAPORT,
Executive Director.

ASSOCIATION FOR CHILDREN WITH RETARDED MENTAL DEVELOPMENT, INC.,

New York, N.Y., May 31, 1972.

Mr. JAY CUTLER,
Minority Counsel to the Senate Health Subcommittee, New Senate Office Building, Washington, D.C.

DEAR MR. CUTLER: Early last month we received a copy of a proposed "Bill of Rights for the Mentally Retarded," to be introduced by Senator Javits. We have examined the Bill in its entirety and find it to be an outstanding document covering every aspect of the need for continuity of care and concern of the rights of the mentally retarded.

In the covering letter you encouraged comments and suggestions on this proposed legislation. We wish to offer some recommendations which do not alter in any way the intent of the "Bill of Rights," but we hope you will accept them in the friendly spirit in which they are being offered. Inasmuch as there are a number of comments, we thought it would be appropriate to list them on a separate sheet relating specifically to the sections of the Bill directly involved.

Please understand that we do not intend to be the ultimate experts on all phases of this kind of legislation and so, perhaps some of our suggestions may not be completely appropriate from everybody's viewpoint. But, you invited us and we are taking the liberty of advising you to the best of our experience and ability.

Sincerely yours,

HARRY KAMISH,
Director, Public and Human Relations.

ASSOCIATION FOR CHILDREN WITH RETARDED MENTAL DEVELOPMENT, INC.
New York, N.Y., May 31, 1972.

COMMENTS AND SUGGESTIONS ON SENATOR JACOB K. JAVITS' "BILL OF RIGHTS FOR THE MENTALLY RETARDED"

INTRODUCTION UNDER SUBHEAD "A BILL"

Include in the first sentence, "to provide for the humane care . . ." *education and training.*

In same Introduction following "seek to minimize inappropriate admissions . . ." and to *maximize necessary admissions.*

At the end of same Section, following "integration and such facilities . . ." *which provide for a full spectrum of necessary services to the mentally retarded in facilities conducted and administered by public and voluntary agencies.*

PART B, PAGE 8, LINE 6

Specific provision should be made for the inclusion of parents of the mentally retarded in the membership of a planning and advisory council.

PAGE 11, LINE 19–20

Again, provision should be made for the specific inclusion of parents on the National Advisory Council.

PAGE 12, LINE 2

Parents should be definitely specified as the consumers of such services.

PAGE 12, LINE 5–14

The Council should be required to make on-the-spot surveys on examinations and facilities.

CHAPTER 1, PAGE 13

Line 6.—Sec. 1110 (a) to read "the ultimate aim of the *residential facility for the mentally retarded "hereinafter to be called the 'facility'* shall be to foster those behaviors that maximize the human qualities of the resident increase the *adaptability and development . . .*"

"(b)"—this section relating to the principle of normalization should be clarified beyond the professional terms used with specifics.

"SEC. 1111." We have been grappling for years with the development of names for such facilities which would eliminate "mentally retarded" in its title. Up to the present, the best we could come up with are euphemisms. We believe, any effort to avoid retardation as a descriptive term is an illusion.

CHAPTER 1, PAGE 13, LINE 20

Residents—additionally be referred to as clients and trainees.

CHAPTER 1, PAGE 14, LINE 13

"(c)"—The words normal activities should be changed to *activities suitable to their capabilities.*

LINE 16

"(e)"—There should be a more specific definition of the responsible agencies and population of the community.

PAGE 15, LINE 19

"(6)"—Sheltered employment in regular industry, among non-retarded workers, from our experience, is not realizable goal. Sheltered employment, as we know it, refers to work opportunities provided for the trainable mentally retarded person who, while not having the development necessary for competitive industry, can still function in a work training and work activities environment. Of course, in exceptional cases some persons in this category may be able to hold down jobs in gainful employment, but this is not generally the case. We find, for example, a growing accretion in our own workshops of those who can function and perform to the best of their ability in a sheltered setting but would find it difficult to perform in outside industry.

PAGE 18, LINE 12

"(3)"—Provision to be made specifically for trusteeships for residents described in this Section. New York State has developed good guidelines in this respect.

PAGE 25, LINE 14

"Sec. 1122."—Parents should be included specifically as participants.

PAGE 25, LINE 17

"(1)"—Parents and surrogates of residents should be specifically included on the policy making or governing Board.

PAGE 25, LINE 22

"(2)"—We recommend that all facilities have governing Boards.

PAGE 27, LINE 16

"(13)"—A mechanism for advocacy for all residents should be specifically spelled out.

PAGE 29, LINE 22

"(d)"—Why the emphasis on admission as temporary . . . especially, in view of the fact that severely and profoundly retarded clients require permanent placement.

PAGE 33, LINE 19

"(1)"—Recommend that autopsies be performed only with the permission of the next of kin or legal guardian.

PAGE 36, LINE 7

"(d)"—Recommend psychological assessment be a necessary part of all personnel applications, not only "where indicated" . . . full knowledge of all personnel is desirable.

PAGE 37, LINE 7

"Sec. 1132" (a)—Add after first word on Line 7 "employment . . . add the following words and *paid prevailing rates when providing such services.*

PAGE 37, LINE 15

"(4)"—Recommend this line read, "are adequately reimbursed."

PAGE 42, LINE 11

"(e)—The word non-retarded in the context of this Section is unrealistic. Anyone familiar with the rhythm of life of the mentally retarded must recognize the special needs of this population and the ways in which they can enjoy their lives to the utmost of their capabilities. To attempt to cast this in a form where it "shall resemble the cultural norm" for chronological-age peers who are non-retarded is reaching very far.

PAGE 45, LINE 8

"(n)"—It is recommended that requirement be included that reports be made regularly to facility heads on incidences of use of restraint.

PAGE 46, LINE 15

"(p)"—Recommend that this sub-section have an addition as follows, "all use of chemical restraint shall be approved by appropriate facility supervisors under the direct orders of a physician.

PAGE 51, LINE 21

"(d)"—Recommend after the first two, words, "effective procedures . . ." *consistent with State, municipal, and/or other local regulations.*

PAGE 53, LINE 1

"(2)"—Recommend facility staff discuss clothing needs and problems with parents or guardians wherever feasible.

PAGE 58, LINE 6

Recommend addition of a sub-section (f)—facility staff shall periodically discuss with parents or guardian of residents all living unit problems."

PAGE 100, LINE 23

"Sec. 1167."—Recommend that all members of the medical staff be qualified as medically competent to perform duties in the following sub-sections 1, 2, and 3.

While provision is made for the regularizing of staff-resident relationships, it is recommended that explicit provision be made for parent-guardian relationships with the facility's staff. There should be defined the avenues of approach to staff on various levels and also provision for periodic discussions of resident problems with those in the family who relate immediately to such residents.

ASSOCIATION FOR THE HELP OF RETARDED CHILDREN,
New York, N.Y., June 12, 1972.

Mr. JAY CUTLER,
Minority Counsel to the Senate Health Subcommittee, Washington, D.C.

DEAR MR. CUTLER: I have reviewed Senator Javits' "Bill of Rights for the Mentally Retarded," and I would like to assure you of my complete support of this fine legislation. Please advise me when it is introduced so that I can inform our members.

Sincerely,

I. JOSEPH HARRIS,
Executive Director.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 2, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I am replying to your letter inviting comments on your proposed "bill of rights for the mentally retarded." The mentally retarded are a neglected minority which rarely receive the treatment which other citizens take for granted. It is essential that the rights of these too often forgotten Americans be protected.

Although the AFL–CIO may not be in full agreement with every provision of your bill, in general, the bill represents a major step forward toward the goal of fully protecting the rights of millions of handicapped citizens of whom the mentally retarded are the most vulnerable. Your bill will do much to stimulate informed public debate and action to guarantee the rights of these innocent victims of heredity, disease and accidents.

Sincerely,

KENNETH YOUNG,
Assistant Director,
Department of Legislation.

DIXON-STATE SCHOOL,
Dixon, Ill., May 18, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Mr. T. K. Taylor of the Accreditation Council for Facilities for the Mentally Retarded, has generously shared with us a copy of your proposed Bill of Rights for the Mentally Retarded.

As a superintendent of a 2,700 bed facility serving the mentally retarded of all ages and all handicapping conditions, may I state that this is the most exciting, promising, encouraging and all-encompassing proposal that has ever been made. You are obviously well acquainted with the tremendous needs and problems that exist in the field of residential care for the mentally retarded. Your proposal will do much to "provide for the humane care, treatment, habilitation and protection of the mentally retarded in residential facilities."

I, my colleagues, and the parents of our residents can only hope and, indeed, pray that your proposed Bill be enacted and implemented in the very near future.

We are, indeed, most grateful.

Sincerely,

DAVID EDELSON,
Superintendent.

DEPARTMENT OF MENTAL HYGIENE,
Albany, N.Y., May 9, 1972.

Mr. JAY CUTLER,
Minority Counsel, Senate Health Subcommittee, Washington, D.C.

DEAR MR. CUTLER: Senator Javits asked me in his May 1 letter to comment on his re-

vised "Bill of Rights for the Mentally Retarded" which he plans to introduce this month.

I understand that you have already had an opportunity to exchange ideas on this bill last Friday with Fred Grunberg, our Deputy Commissioner for Mental Retardation and Children's Services.

I certainly appreciate Senator Javits' efforts to provide Federal legislation to increase the quality of residential care for the retarded and to stimulate the development of community services which will integrate residential care. However, I am apprehensive about the impact of the Bill on the Developmental Disabilities Act.

Although the level of funding does not reflect the importance of the Developmental Disabilities Act, this legislation also stimulates the Statewide plans for comprehensive community services for the developmentally disabled, including the mentally retarded.

Both have similar purposes and both include the mentally retarded in their target group. I would anticipate not only duplication, but also conflict in having two Councils in each state, as well as the National level, both developing plans and policies for services for the retarded.

I am very much in accord with the intent of Senator Javits' "Bill of Rights for the Mentally Retarded", and with its excellent provisions for providing better services for our retarded citizens. However, I do feel that the effectiveness of both the Bill and the Developmental Disabilities Act would be increased if some mechanism were developed for integrating and coordinating the two.

Thank you for giving me the opportunity to comment on Senator Javits' much-needed Bill. Please call either me or Dr. Grunberg if we can be of further help.

Sincerely yours,

ALAN D. MILLER, M.D.,
Commissioner.

FEDERATION OF PARENTS ORGANIZATIONS FOR THE NEW YORK STATE MENTAL INSTITUTIONS,
New York, N.Y., June 6, 1972.

Mr. JAY CUTLER,
Minority Counsel to the Senate Health Subcommittee, Washington, D.C.

DEAR JAY: Here are some comments on Senator Javits' bill.

On the whole, except for the minimal amount of money envisioned to help do the job, this bill is the best one I've ever seen. I hope I can be of some help in seeing that it becomes the law of the land.

Sincerely,

MAX SCHNEIER,
Chairman.

FEDERATION OF PARENTS ORGANIZATIONS OF THE NEW YORK STATE MENTAL INSTITUTIONS,
New York, N.Y., June 5, 1972.

Senator JACOB JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I have reviewed your bill in the U.S. Senate regarding the mentally retarded. I find your bill excellent and very far reaching. There are some points of confusion and perhaps a slight degree of disagreement. The areas follow:

Page 6, lines 19 and 22 . . . These sums are very low and would not cure the ills of the New York State Institutions.

Page 7, line 12 . . . Talks about "such sums as are necessary' but it is my opinion that "such sums" will not materialize unless explicitly appropriated.

Page 8, line 4 . . . One-third consumer representation would not be enough for effective counter control.

Page 8, lines 20 and 21 . . . Who will support the community services? State or the Federal Government?

Page 9, Line 5 . . . If the Federal Government pays 75%, that would be excellent! But previous sections of the bill indicate a much lower percentage ($30,000,000.)

Page 10, lines 15 and 19 . . . Sounds great! A real prod to action.

Page 12, line 3 . . . Why will the Federal Advisory body be mostly consumers, and the state body be mostly providers?

The standards which are described in the remainder of the bill are excellent. In order for New York State to meet these standards, it will have to "shuffle" the deck of their program and redeal it—It would mean a total change! My only concern is that this may not be enforced, especially if only $30,000,000 is appropriated.

I heartily endorse this bill and would like to testify on its behalf, if that is possible.

Thanks again for all of your efforts on behalf of the retarded. I hope that the same will be done for the mentally ill.

Sincerely yours,

MAX SCHNEIDER,
Chairman.

THE JOHN F. KENNEDY INSTITUTE FOR HABILITATION OF THE MENTALLY AND PHYSICALLY HANDICAPPED CHILD
Baltimore, Md., May 9, 1972.

Mr. JAY CUTLER,
Minority Counsel to the Senate Health Subcommittee, Washington, D.C.

DEAR MR. CUTLER: I recently received a letter from Senator Javits and a copy of the Bill which outlines the provision of humane care, treatment, habilitation, and the protection of the mentally retarded in residential facilities.

I was extremely impressed by the scope of this Bill. Such a comprehensive, obviously well-searched Bill for updating of our residential facilities is, of course, long overdue. I certainly should like to compliment you and the staff who were responsible for compending such an encompassing Bill.

I should like to make several comments about this Bill, after reading it several times and with some experience in the field. I should hope that my comments and criticisms are taken in a truly constructive sense.

In the preamble of the Bill, it is very clearly suggested that efforts should be made to "seek to minimize inappropriate admissions to residential facilities". It is my feeling that much of what is alluded to in this Bill would be geared to the educably retarded individual. As you are aware, most institutions in this country that deal with the retarded have many inappropriate admissions in which I would include the educably retarded. It is my feeling that small units for these individuals would be most functional for them if they were organized within the respective communities.

On Page 15 of the Bill, it is mentioned that residents should be integrated to the greatest possible extent with the general population. Attendance in classes or programs within regular schools, attending places of worship, using community resources for swimming and bowling, and so on, as well as shopping in stores and gainful employment are all things that I would think would be most apropos to the educably retarded. In addition, on Page 28, in the subchapter entitled number III, there are regulations as to admission and release. Once again, I was unable to find any wording that might dissuade the admission of the mildly retarded to an institution.

I have said all this because I feel that most institutions, many of which are good, spend most of their efforts, both from the service standpoint and professionally, to the habilitation of the mildly retarded. These are the people that need it the least. I think with a minimum of professional guidance and good residential facilities within the community these people can be habilitated with ease.

I, therefore, would concern myself more with the moderately and severely retarded. I think that all of the services and professional input that has been described in this Bill should be guided towards the diagnosis, management, and habilitation of these individuals.

The description of the goals of the professionals working with the retarded in this Bill is truly outstanding. My one concern is as follows: when so many different professionals are working with the retarded, oftentimes sight is lost of the goal, and various services that should have been applied are not. I should like to suggest to you an alternative. After a resident has been known to the staff for some time, perhaps one month, a total habilitation conference could be held. This might set forth the goals for that individual. At this time, perhaps one or two major managers could be named for that individual. For example, a cerebral palsied patient who is retarded might benefit from (1) education, (2) physical therapy, and (3) vocational training. If these services then have the responsibility or are the main manager for that resident, they may assume the responsibility of having under services for that resident whenever it seems appropriate, such as hearing and speech, religion, social services, and so on. It has been my experience that with many different disciplines concerned with a resident, oftentimes very little is accomplished unless there is a major manager or two.

I should also like to suggest that residential facilities for the retarded make every effort to share facilities. I feel best qualified to comment on the professional services aspects. I am convinced that a resident of a residential facility would get much better diagnostic service if he had a complicated problem, if this were to be done in a hospital setting, for example, which had great expertise in the metaboilc and/or anatomic diagnosis of a particular problem. This would prevent the installation of costly equipment and so on in many institutions. The investigation period may last for only a few days at which time the individual would reassume his residency in the institution from whence he came. All information that was gained at the consultation unit could be made available to the institution. In this fashion, I truly believe that the costs for diagnosis could be kept down and probably the reliability of the tests would be greater.

On page 24, line 19, (H) number with convulsive disorders, grouped by level of seizure control. I think it would be more meaningful, particularly for research purposes, to have that sentence read "number with convulsive disorders, grouped by level of seizure control, and type of seizure".

On page 77, line 10, General anesthesia facilities for dental care shall be available I would disagree with this concept. I am concerned about major dental and medical surgical activities occurring in any institution that does not have a good operating room, cardiac massage unit, cardiac arrest unit, including anesthetist available. I think we are asking for trouble if general anesthesia is to be encouraged in facilities that do not have excellent medical backup. What would one do if there was a cardiac arrest? Would the appropriate drugs and personnel, including any surgeons, be on hand? Once again, I think that you should consider making arrangements for any major dental or medical and/or surgical services for your

residents at well-equipped, established hospital and/or dental units.

In the nursing section, particularly page 110, line 17, which states "formulating the policies governing the research in the facility", I would suggest that nursing might take part in governing research policies, but certainly in consultation with others in the unit. It seems to me that the best research in any facility is done by those who have the most expertise, whether they are nurses, physicians, or psychologists.

On page 115, line 9, (C), I wonder whether the sentence should not begin with noting rather than nothing.

The section on Subchapter VIII—Pharmacy Services, beginning on page 112, is indeed very comprehensive. I should like to make a plea, however, in your regulations for including a sentence or two on the safety packaging of medications that are given to the families of the residents or residents themselves. (Poison Prevention Packaging Act of 1970) I think that younger residents of institutions may be readily exposed to various medications if left in drawers or on top of desks of older residents. Unless these are safety-packaged, I would be concerned about the possibility of accidental poisonings amongst residents who did not know the consequences of their actions.

Finally, let me say how happy I am to see such explicit and comprehensive regulations on the horizon. I should be happy to help in any way. Please feel free to call upon me at any time if I can offer you any further assistance.

Sincerely,

ROBERT H. A. HASLAM, M.D.,
Director.

JOINT COMMISSION ON ACCREDITATION OF HOSPITALS,
Chicago, Ill., May 31, 1972.

MR. JAY CUTLER,
New Senate Office Building,
Washington, D.C.

DEAR MR. CUTLER: I want to share with you my report to the Councilors concerning our discussion on Senator Javits' bill, which is item (3) in the enclosed memo.

It was very nice to have a chance to talk with you, and I hope that we will be able to keep in touch as this matter progresses.

Sincerely,

Ken Crosby,
KENNETH G. CROSBY, Ed. D.
Program Director.

MEMORANDUM No. 63

To: Councilors.
From: Kenneth G. Crosby, Ed. D., Program Director.
Subjects: (1) Memorandum of Agreement, (2) June 19–20 Council Meeting, (3) Javits' Bill.
Date: May 31, 1972.

(1) The Memorandum of Agreement approved by the Joint Conference Committee and by the Board of Commissioners has been sent to the chief executive officers of Council Member Organizations with the enclosed letter. A copy of the Memorandum and other materials was sent you earlier with the Minutes of the Joint Conference Committee Meeting.

(2) The preliminary agenda for the June 19–20 meeting is enclosed. The meeting will begin at 9:00 A.M. on Monday, June 19, and from the length of the agenda I would expect it to last all day on Tuesday. Councilors should plan accordingly. Reservations for arrival Sunday, June 18, have been made at the Sheraton-Chicago for all Councilors. If there is any change in your arrival plans, please let us know at once, so that we will not have to pay for unused rooms.

(3) A copy of Dr. Porterfield's letter to Mr. Jay Cutler of Senator Javits' staff was sent you earlier. During our interview with Mr. Cutler on May 26, Dr. Shotick and I attempted to make the following points:

1. The Accreditation Council wholeheartedly supports the Senator's objective of improving the services provided mentally retarded persons, which is also the Council's goal.

2. AC/FMR believes that there is great value in the voluntary accreditation approach to setting standards and assessing compliance with them, especially when this approach is supported by government.

3. In order to be an effective means of improving services, standards have to be continually reviewed and revised in the light of increased knowledge, changing practice, and experience with their application and implementation. The Council's standards are expected to need revision soon, and they should not, therefore, be written into law. Whatever body sets standards must have the flexibility to change them.

4. As a voluntary agency that includes both provider and consumer representation, the Accreditations Council has the requisite flexibility to change both standards and organizational participation in standard-setting, in response to changing needs. The Council will consider next month the membership application of five additional organizations. The Accreditation Council's purview, moreover, is not limited to public residential facilities, but includes private facilities and non-residential community programs, and this broader perspective enhances the Council's capability to develop effective standards for public residential facilities.

5. The Accreditation Council recognizes the need for governmental overseeing of programs expending governmental funds. Rather than creating, in a National Advisory Council on Standards for Residential Facilities for the Mentally Retarded, yet another government agency, especially one that replaces an already-functioning voluntary body, however, consideration should be given to assigning this overseeing role to an existing group, such as the National Advisory Council on Services and Facilities for the Developmentally Disabled.

6. As important as standard-setting in improving services is the assessment of compliance with Standards. For effective results, this should not be left to the diverse means that might be employed by the fifty states. Since assessment of compliance necessarily involves interpretation and judgment in respect to the standards that have been set, and since feedback from assessment of compliance is essential for the continued improvement of standards, the dual, complementary functions of standard-setting and compliance-assessment should not be separated. Such separation would weaken the capacity to perform each function effectively.

7. The laudable intent of Senator Javits' bill can be achieved more effectively by encouraging facilities to comply with standards set and assessed by an independent, voluntary, national organization composed of both providers and consumers, which is what AC/FMR is. Certifiability of a facility for participation in the financial provisions of the bill should be presumed to exist if the facility is accredited by AC/FMR.

JOINT COMMISSION ON ACCREDITATION OF HOSPITALS,
Chicago, Ill., May 18, 1972.

Senator JACOB K. JAVITS,
U.S. Senate, New Senate Office Building,
Washington, D.C.
Attention: Mr. Jay Cutler

DEAR SENATOR JAVITS: Since receipt on May 3 of a copy of your proposed Bill of Rights for the Mentally Retarded, the draft has been examined with meticulous care, particularly by the staff of the Accreditation Council for Facilities for the Mentally Retarded. I report now on the conclusions drawn from this review for your consideration.

Your strong and sincere interest in the welfare of the mentally retarded is well demonstrated by your conception of this legislative proposal. All of us on the staff, as well as the members of the Accreditation Council for Facilities for the Mentally Retarded and the Board of Commissioners of the Joint Commission, support your objective wholeheartedly. The following comments are directed only at a consideration of the means by which this objective may be met.

There is, of course, a basic difference in approach. It is the position of the Joint Commission and of this Accreditation Council that there is great inherent value in the voluntary approach. When this is recognized and supported by government, the highest potential is created. For government to replace voluntary effort is no particular gain. We are attempting to instill the capability and the will for self-reliance in the mentally retarded. We should do no less for all of our citizens.

(1) The proposed National Advisory Council to the Secretary (Sec. 1108) essentially replaces the Accreditation Council for Facilities for the Mentally Retarded. This voluntary body was created in 1969 after three years of organizing negotiation, feasibility trials, and developmental effort. That it has been worth the effort is evidenced by the cooperative total commitment of five national organizations representing both professional and consumer interests to produce residential standards and, in the very near future, standards for community programs. Each of the signatory organizations contributes support, as does the Joint Commission and as will the institutions and programs to receive services. Government has provided substantial support in the form of grants. The gains and losses resulting in conversion to a federal operation must be carefully assessed. Without attempting to offer this assessment at this moment, it is our view that the losses would be greater. To mention only one point, the organizations participating in standard-setting would be relatively fixed by statute. The organizations which should participate may change from time to time—several others have presently applied for membership on the Accreditation Council—and the flexibility of an indedepent, national, voluntary body is requisite to making appropriate changes.

(2) Sections 1110 through 1197 identify, with a few minor variations, the present standards of the Accreditation Council. If standards are to be effective in improving services to the retarded, they must not be static, as they tend to be in statute, but must change in response to increased knowledge, improved practice, and experience with their application and implementation. These present standards of the Council are now being field-tested. Some standards have already been found to be unclear and in need of revision. Further experience can be expected to identify more needed changes. Again the flexibility of a voluntary body is requisite to effective results.

(3) The draft bill is silent on any program to evaluate institutional conformance to the standards. A chore, as critical as the derivation of the standards themselves, is the creation of a perceptive evaluation tool which can measure conformance, test the validity of the standards themselves, and offer a consultative mechanism for improvements in institutional performance. A proper accreditation program does more than categorize from time to time. It also offers a motivational force for change. Presumably the Secretary would find it necessary to utilize the services of state agencies for this phase. We submit that the Accreditation Council is closer by years

to the effective implementation of this activity on an equitable national basis.

(4) Sections 1101 through 1107 do provide the kind of incentive and support which can facilitate early improvement in the condition of the mentally retarded. Were it geared to the program of the Accreditation Council for Facilities for the Mentally Retarded (or any comparable organization determined by the Secretary), it would be directed more effectively toward its objective. However, rather than a total delegation as was provided in the Medicare Act, certifiability of a facility for federal support should be *presumed* (rather than *deemed*, as in the Medicare Act) to exist if the facility is accredited by the Joint Commission on Accreditation of Hospitals through its Accreditation Council for Facilities for the Mentally Retarded. This would permit a reexamination or a resurvey or both at the instigation of the Secretary where substantial challenge has been made and, when indicated, a withdrawal of certification. This leaves the work in voluntary hands, the final decision for federal aid in federal hands. By this device, the constitutionality of the legislation is better assured.

(5) There does not appear to be a Section 1109.

The staff, the Accreditation Council, the Board of Commissioners, and all of the participating national organizations stand ready to be of help to you in any further consideration of this legislation. Again may we compliment you on your empathy with this too often forgotten segment of our population. We are very grateful for this opportunity to comment on your plans.

Sincerely,

JOHN D. PORTERFIELD, M.D., *Director.*

THE JOSEPH P. KENNEDY, JR. FOUNDATION,
Washington, D.C., May 25, 1972.

Senator JACOB JAVITS,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR JAVITS: I have read your bill on the Bill of Rights for the Mentally Retarded and am very impressed. Congratulations for working so quickly and with such expertise in such a sad and difficult area.

I have attached a memo prepared by me and Dr. Cooke, our Scientific Advisor to the Kennedy Foundation. Let me know if we can help further.

Sincerely,

EUNICE KENNEDY SHRIVER.

MEMORANDUM TO SENATOR JAVITS

The purpose is excellent and the proposals are certainly very worthwhile. Title XI, which is supported residential facilities, includes the development of some state strategies, including review of existing plans and the like. In addition, a relatively small amount of money, $300,000 per institution, is authorized to study the administration and financing of such programs.

There seems to be a priority for the institutions which are the worst, and this would seem on the surface to be very reasonable, but unfortunately, it could lead to some horrendous places simply being patched up rather than completely abandoned. The National Advisory Council on Standards for the Mentally Retarded is obviously a good idea if it has some authority; otherwise, it will simply be another group that writes out the standards which no one is able to follow because they don't have any money.

We have very serious concerns about this bill of rights since it provides some money for residential services, but absolutely none for the enormous job of providing services for individuals who do not get into institutions. The best way to improve state institutions is to reduce the case load. The best way to do that is to provide much more money for noninstitutional activities so that patients in the institutions may be discharged and new patients will not be admitted because there will be community activities for them.

The section on integration of the patients with the community is very worthwhile and there are six points which are emphasized that the community should be used rather than the institution. The only trouble is that a good deal of money is required for these community activities and I do not see that at all in the authorization.

In Section 1160 on page 69 is listed the need for programs and services which provide for comprehensive diagnosis and evaluation, design and implementation of an individualized rehabilitation program, regular review, freedom of movement and an array of services that allows each resident to develop to his maximum potential. All of these are very worthwhile but it is fair to say that many institutions cannot mount and will never be able to mount adequate comprehensive diagnosis and evaluation because there is a shortage of physicians and particularly a shortage of people who want to be pinned down to a remote institution. Every effort should be made to have such services provided by excellent groups in the community, particularly university-affiliated facilities. A mention should be made in this legislation that these resources exist and should be used on a regional basis as much as possible for the kind of consultation and diagnostic evaluation that is spoken to in other parts of the legislation.

Again, much of the material in regard to nursing services, library services and the like speak to the large institution and after reading this legislation, one would get the feeling that the biggest place can provide the best program. We believe that this has not been shown to be the case and in the legislative history of this bill, it must be stressed that the great bulk of the services should be directly provided within the institution and worked out with the community and not that every effort be made to bring the residents into the institution on a full time basis.

Section XI on Recreation Services is excellent. The distinction between Recreation and Physical Education Services and Rehabilitation Services is important as illustrated in your bill. Both the personnel and the goals are quite different and should be so recognized.

ROBERT F. COOKE, M.D.,
EUNICE KENNEDY SHRIVER.

NATIONAL ASSOCIATION FOR RETARDED CHILDREN,
Arlington, Tex., May 15, 1972.

Mr. JAY CUTLER,
Minority Counsel to the Senate Health Subcommittee, New Senate Office Building,
Washington, D.C.

DEAR MR. CUTLER: I am responding to Senator Javits letter to me of May 1 requesting a review of the proposed "Bill of Rights for the Mentally Retarded." I have had an opportunity to study this Bill with much interest, and I hope that the following comments may be of interest to you.

My first reaction is one of admiration for Senator Javits obvious concern for the welfare of retarded persons living in state institutions. The proposed Bill addresses itself to one of the really critical issues facing states in serving the needs of the mentally retarded today. I am in complete agreement with the philosophy expressed in this proposed legislation.

Although I am in general agreement with the standards included in Part C, I have some serious question that these standards should be incorporated in law. Those of us who developed the accreditation standards for residential facilities for the mentally retarded strongly felt the standards should remain flexible and should continually reflect changing knowledge and philosophy regarding services for the mentally retarded. The following quotation from the Standards Manual makes this position explicit: "The *Standards for Residential Facilities for the Mentally Retarded* are to be subject to continuous review and revision, in order to maintain currency with the best thinking and with changing knowledge and practice in the field, and in order to keep them clear, comprehensive, and challenging." The spirit of the Bill could be better served, I feel, by insisting compliance with the Accreditation Council for Facilities for the Mentally Retarded, rather than by stipulating specific standards. A second alternative might be to include the Standards, as outlined in Part C, in regulations rather than in the Bill itself.

Turning now to specific aspects of the Bill, I feel there is some danger that the emphasis on "optimum safety" of living quarters mentioned in lines 13 and 14 on page 3, may permit the establishment of, or justification for, a highly controlled, sterile, and developmentally inappropriate environment. Historically, we have seen concern for safety used as a rationalization for neglecting the developmental needs of individual residents. Perhaps the statement could include the intent that safety considerations should not be overly restrictive and should take into account the need for freedom to explore and the freedom to sustain the normal minor injuries associated with child development.

I fear that the statement made at the bottom of page 3 that "residential facilities should be small, home-like units. . . ." may be overly limiting, in that the statement might be interpreted to prevent innovative environmental modifications designed to facilitate the training of retarded persons. It might be possible to incorporate the language on page 61 of the Bill which states "the interior design of living units shall simulate the functional arrangements of a home to encourage a personalized atmosphere for small groups of residents, *unless it has been demonstrated that another arrangement is more effective in maximizing the human qualities of the specific residents being served.*" (Underlining mine.)

In reviewing the proposed composition of the "National Advisory Council on Standards for Residential Facilities for the Mentally Retarded," I note that the members of the Council are selected from those agencies currently represented in the Accreditation Council for Facilities for the Mentally Retarded. Since this Council has been considering the possible inclusion of additional organizations, I wonder whether it might not be more appropriate to indicate that members shall be selected from the agencies represented on the Accreditation Council for Facilities for the Mentally Retarded, rather than limit membership to the specific agencies currently comprising the Accreditation Council.

I hope these comments are helpful. If I can be of any additional assistance, I hope you will not hesitate to contact me again.

With all best wishes.

Sincerely,

PHILIP ROOS, Ph. D.
Executive Director.

NATIONAL ASSOCIATION OF SUPERINTENDENT OF PUBLIC RESIDENTIAL FACILITIES,
Lansing, Mich., May 9, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate Committee on Labor and Public Welfare, Washington, D.C.

DEAR SENATOR JAVITS: I reviewed the "Bill of Rights for the Mentally Retarded" and have contacted Jay Cutler of your staff.

As Chairman of the National Association of Superintendents of Public Residential Facilities, I would like to take this opportunity to say our entire organization wishes you success in your endeavor to alleviate the highly

unsatisfactory conditions that exist in so many of America's institutions for the retarded. We look to you as a champion, not only of the rights of the retarded but others who have made the field of Mental Retardation a career.

Sincerely yours,

DAVID ROSEN,
Chairman.

NEW YORK STATE ASSOCIATION FOR RETARDED CHILDREN, INC.,
New York, N.Y., May 31, 1972.

Mr. JAY CUTLER,
Committee on Labor and Public Welfare, New Senate Office Building, Washington, D.C.

DEAR JAY: I have examined very carefully the proposed bill by Senator Javits to provide for human rights of mentally retarded especially in the institutions.

I think the concept of the bill is superb as, indeed, are most of its terms. May I make some special comments on the bill itself.

Page 21 of the first version. Under subchapter III, section 1124 the statement is made "No individual whose needs cannot be met by facilities shall be admitted to it." I do not, however, see any alternatives to this in the bill itself. I think there must be some provision for this, other than the confusing and almost inoperable developmental disabilities services act (91–517).

Page 22. Section 1126(a) The statement is made "The residential facilities shall admit only residents who have had comprehensive evaluation . . ." There is no provision for who will give this evaluation.

Page 26. Section 1129(d) The statement is made *"except in an emergency* (italics mine) transfer shall be made with prior consent and order of resident or his guardian." I think the term *except in emergency* should be eliminated.

No transfers should be made without prior knowledge and not "ordinarily the consent", but absolute consent and this should be an informed consent.

Page 27. Section 1130, subsection (a): "In event of any unusual occurrences including serious illness and accidents, impending death, etc., resident's next of kin, etc., shall be notified, etc." I think this should state "Should be notified within 24 hours".

Page 31. Section 1132: "(a) Residents shall not be involved in the care, training or supervision unless they (4) are reimbursed". This should state "are reimbursed in accordance with minimal federal wage laws".

Page 37. Section 1140, Subsection "(h) Residents shall be permitted personal possessions".—should read—Shall be permitted and encouraged to have personal possessions.

These may seem minor changes, but my experience with "Developmental Disabilities" makes me very wary to imprecise language.

Now, one other matter, Jay. We in the field of mental retardation think the Developmental Disabilities Services Act an abortion. It is imprecise in language and, while opening the door to unrelated handicaps, shuts it on the mentally retarded.

The whole concept of throwing all handicaps together is, perhaps, well intentioned, but misguided. Our whole experience for over 100 years is that where the mentally retarded are in a mix with other handicaps for services, the mentally retarded end up with the short end of the stick.

The N.Y. State Association for Retarded Children calls on our senior senator to undertake a revision of this law in 1973 and go back to serving the retarded. The physically handicapped, without mental retardation have numerous laws for their protection and service. The retarded have this only.

I am ready to meet with you to help draft new legislation. We feel it is a must.

Sincerely,

JOSEPH T. WEINGOLD,
Executive Director.

UNITED CEREBRAL PALSY ASSOCIATION, INC.,
New York, N.Y., May 16, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: The "Bill of Rights for the Mentally Retarded," which you sent me, would be a lasting landmark in the restoration of full citizenship for the mentally retarded of our country. The emphasis placed on efforts to locate facilities that prepare a person to achieve normalization within the content of their family and community is excellent. A special dislike of mine is covered by the improved terminology for facilities and residents (Section 1111) and location of facilities, etc. (Sections 1112, 1113 and 1114). I resist regularly the tendency to call Palsy a "disease" or an "affliction," and those attending centers as "patients," etc.

No effort shall be made to comment on those subchapters about medical or related professional standards and requirements. I lack the qualifications to do so. It is noted that the major part of the standards follow those adopted by the Accreditation Council for the Facilities for the Mentally Retarded, which was chaired by Dr. Elsie Helsel who heads our Washington office. The method for transforming their exceptionally fine report into an Act of Congress does raise a few questions.

Although the data requirements of Section 1121(7) are not limitations, I suggest the desirability of including a category for those with multiple handicaps, or to require appropriate cross-references for the identity of this group. The specialized needs of the multiple handicapped is recognized in Sections 1140(e), 1150(i) and 1157(e). In this connection, would not "or multiple handicapped" in place of "and so forth" more clearly set forth the intent of Section 1155(b) at line 12?

While in accord with the concept and objective of Section 1132, I have concern about the practical results. The desirable requirement of 1132(b)(2) could become a deterrent to moving a resident out of "training situations." The attitude, I fear, would be why not hire a non-resident if the wage of a resident must be "at the legally required wage level." The need would appear to be for a pay incentive system that would enable a resident to progress from "training situations" to a position or performance level that would result in a full wage level. Whether Section 1132(b) (1) and (2) will accomplish the desired goal seems doubtful to me.

A major thrust of the Bill for residential-type and community related facilities appears to be defeated by application of this Act to existing facilities. As much as the need exists for changes and improvements in existing "institutional prisons," they would have to be moved and rebuilt entirely to begin to meet the full concept expressed in the Bill. In this regard the Bill appears to undertake two inconsistent objectives. In so doing the basic philosophy and essential goals will have to be excepted away with each grant in one way or another because nearly all existing facilities were constructed to provide diametrically different objectives. How any amount of grants can make it possible to provide "a personally satisfying life within the residential environment" (Section 1101(b)(4) in most existing structures consistent with the Bill's standards and objectives escapes me.

My own State (Mississippi) is a glaring example of what is still occurring. The legislature funded last month the construction of a $5,000,000, 500-bed multi-story "mastaba to madness." This "monster-structure" will be located at Oxford, Mississippi, and (according to the State official under whose jurisdiction it would have operated) will be obsolete and overflowing before the foundation is laid.

My thoughts concerning this aspect of the Bill are to involved to detail here. For this reason that I have talked with Mr. Jay Cutler and have arranged to come to Washington on May 23, 1971, to explore other means of accomplishing the desired results while avoiding the obvious weakness of the present duality.

Sincerely,

GEORGE J. SCHWEIZER, JR.,
President.

UNITED CEREBRAL PALSY, ASSOCIATIONS, INC.
New York, N.Y., May 24, 1972.

Mr. JAY CUTLER,
Counsel, Minority Staff, Committee on Labor and Public Welfare, New Senate Office Building, Washington, D.C.

DEAR JAY: It was sheer joy meeting you at long last. I guess the world is filled with beautiful people whose paths never cross. Fortunately ours did.

As Mr. George Schweizer, President of UCPA and I indicated in our meeting with you on May 23rd, we applauded what Senator Javits is attempting to do for the retarded and other developmentally disabled who must reside in our public institutions.

Although we are sympathetic to the problems of the states in operating such systems—old buildings, inadequate budgets, and insufficient staff, we agree with the Senator that we can no longer tolerate the conditions such systems impose. We can no longer accept rational reasons for why we cannot provide decent places to live and appropriate programs for our severely handicapped citizens.

Appropriate services for this group must be available not as a charitable gift—but as a constitutional right. Miracles must happen. Conditions must change!

Fortunately several forces are impacting on the problem of improvement of care in institutions. Each in its own way will be helpful:

Accreditation of residential facilities by the Accreditation Council for Facilities for the Mentally Retarded, a consortium of voluntary agencies with priority concerns for quality care. The actual accreditation of facilities for the mentally retarded is just starting. Development of standards and survey procedures is a complicated process. We are now open for business and we have high hopes;

Litigation in the courts in Alabama, New York, Georgia, South Carolina, Missouri and Massachusetts;

Developmental Disabilities Act Planning and Advisory Councils which with consumer involvement are drafting and implementing total state plans for the developmentally disabled including alternatives to institutional care;

The mood of the professional and lay community which will no longer tolerate warehousing conditions for human beings.

Our concerns with the Senator's proposed bill, which we were pleased to be asked to comment on, are primarily:

(1) Standards Problems—by creating a new National Advisory Committee, the bill would in essence create two groups of standard setters—the members of the Accreditation Council and the National Advisory Council. We also have a concern with getting locked into standards which are minimal and which we are trying to strengthen as quickly as it is pragmatically possible.

(2) Survey Problem—as the bill is presently written with states having the responsibility for surveying institutions in order to determine compliance, there is an unacceptable conflict of interest. States operate the institutional systems. States should not be

judging whether or not they are doing a good job in operating the institutional system.

(3) Accreditation Process—those of us who have been working for six years to develop standards and procedures for accreditating institutions for the mentally retarded feel that as the bill is presently written it would weaken or liquidate the accreditation process.

It is my understanding that we have come to an accommodation on these concerns in the following manner.

(1) By changing the language on Page 11, Section 1108 to establish a National Advisory Council which will consist of representatives of agencies as represented on the Accreditation Council. (These are presently AAMD, APA, CEC, NARC, and UCPA). However, the Accreditation Council is considering enlarging this group. The Secretary would have responsibility for naming the agencies whose representatives are to serve on the National Advisory Council. The individual agencies would have responsibility for naming the specific councilors. In this way the same group of individuals would be serving as the National Advisory Council that are presently serving as Councilors on the Accreditation Council. Unless these two groups of individuals are identical, we could see mass confusion in the proliferation of standards which might not be compatible.

As I explained to you the Accreditation Council has made provision for the continuous revising and strengthening of standards. This process needs to have flexibility and not be locked into law. The bill language should therefore indicate that the standards in the bill are minimal and states will be expected to comply with additional standards approved by the Accreditation Council for Facilities for the Mentally Retarded.

(2) On Page 5, Section 1101 by adding language that says states in conjunction with the Accreditation Council will survey institutions for compliance. You might want to consider assigning this survey process entirely to the survey teams from the Accreditation Council. Surveyors would be performing two functions. They would be looking for the states for situations which should be improved in order to bring the services into compliance. Wearing another hat they would be deciding whether an institution was presently complying with enough of the standards in order to get the Seal of Accreditation.

One problem which we did not have an opportunity to discuss at our meeting was the problem posed by Page 8, line 1, State Advisory Councils. These Councils would seem to duplicate the efforts of the present Developmentally Disabilities Planning and Advisory Councils which are already functioning and which have one-third consumers.

Granted that such Councils are having "growing pains", from my own experience in the State of Ohio where I serve as Chairman of such a Council, I can assure you that we are moving very rapidly into the development of community alternatives for institutional care. We are putting in place a Protective Service-Case Management System which will be an entry point for all candidates for residential care, institutional or community. We also have built into that system a resource which we feel is absolutely essential if we are going to move in the direction of community based residential facilities, namely a protective services system.

I have enclosed a copy of the Ohio Law and a copy of a speech given in Minnesota describing the System. I have also enclosed a copy of my letter to Congressman Ryan commenting on a bill which he plans to introduce. The Mentally Disabled Protection Act.

On behalf of United Cerebral Palsy I should like to thank you again for being so generous with your time in meeting with Mr. Schweizer and myself. If we can be of help in any further way, please call.

Sincerely,

ELSIE D. HELSEL, Ph. D.,
Washington Representative.

UNITED CEREBRAL PALSY ASSOCIATIONS, INC.,
New York, N.Y., January 12, 1973.

Mr. JAY CUTLER,
Counsel, Minority Staff, Committee on Labor and Public Welfare, Washington, D.C.

DEAR JAY: Attached are some suggested changes for S. 3759 "Bill of Rights for the Mentally Retarded."

First off of course I would be a lot happier if you would say this was a "Bill of Rights for the Mentally Retarded and Other Developmentally Disabled."

The enclosed changes do the following things:

(1) Make some minor additions and changes in the language.

(2) Utilize the State DDA Planning and Advisory Council as the "State Planning and Advisory Council" so that efforts are coordinated and not duplicated.

(3) Utilize the Accreditation Council for Facilities for the Mentally Retarded in much the same way that JCAH is used in the Medicare program so that there is not duplication of effort in the promulgation of standards and the determination of compliance.

Following our meeting on January 11th I called Dr. Kenneth Crosby who drafted the language concerned with standards and determination of compliance. He will be forwarding to you a letter including the same language so that you have an official communication from the Accreditation Council.

If you have any questions or if we can help in any further way please call. My home phone in Athens, Ohio is (614) 593-8775. My Washington office number is 638-6169.

Warmest personal wishes,

ELSIE D. HELSEL, Ph. D.,
Washington Representative.

CHANGES FOR S. 3759

Section 1101. (a), Line 15–16—Delete (Page 5): "which shall be done in cooperation with the National Advisory Council on Standards for Residential Facilities for the Mentally Retarded established under section 1109 of this Act,"

Section 1101. (a), Insert after line 26. (Page 5): "Surveys to determine the compliance of facilities with the standards established under part C of this title shall be conducted by the national accrediting body for such facilities, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals."

Section 1103, "State Plans", Suggested Change (Page 7): "(a) Any State desiring to receive a grant under this title submit a plan to the Secretary:

"(1) setting forth as one of its priority goals the improvement of residential services;

"(2) setting forth a strategy and a schedule for compliance with standards under part C;

"(3) having in operation a properly constituted developmental disabilities planning and advisory council with duties and responsibility as set forth in section 134 of the Developmental Disabilities Act;

"(4) assuring reasonable state financial participation . . . ;

"(5) setting forth a schedule of costs . . . ;

"(6) designating how placement . . . ;

Section 1103 (2), Suggested Change To Read (Page 8): "designating the State developmental disabilities planning and advisory council as the planning and advisory body.

Section 1106. Add after point (c) (Page 11): "(d) A facility shall be deemed to meet the standards promulgated under part C of this title if it is accredited by the national accrediting body for such facilities, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, provided that the Secretary may cause an independent survey of compliance with the standards to be made in any facilities surveyed by the Accreditation Council whenever he finds such an independent survey to be necessary to validate the findings of the Accreditation Council survey.

Re: Section 1108.—"Alternative Programs of Care (Page 11):

As you know the Accreditation Council is also developing standards for community programs. If these community programs are residential programs they should meet the same standards as are established in your bill under part C. Otherwise as we create alternatives to institutional care in the community they may be no better, or even worse, then our present institutions. The recent experience in Pennsylvania confirms this fear. You should know that the present standards were drafted in such a way that they would be appropriate for any residential facility of any size. A group of operators of small group homes in California reviewed the standards in order to give the Council assurance that the standards would be applicable to small facilities.

Suggested Change for Section 1108.—"Alternative Programs of Care:

"Community resources and community living situations for the mentally retarded receiving grants under this section shall comply with the applicable standards established by the national accrediting body for such programs, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals. A program shall be deemed to be in compliance with such standards if it is accredited by the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, provided that the Secretary may cause an independent survey of compliance to be made of any programs surveyed by the Accreditation Council whenever he finds such an independent survey to be necessary to validate the findings of the Accreditation Council survey.

Section 1109. (Page 12), Delete "National Advisory Council on Standards for Residential Facilities for the Mentally Retarded"

Replace with "Revision of Standards and the following material:

"(a) The Secretary shall seek and receive the advice of the national accrediting body for facilities and programs for the mentally retarded, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, in respect to (1) recommendation for any changes, revisions, modifications, or impovements in the standards established under part C of this title, (2) any regulations promulgated or proposed to be promulgated by him in the implementation of the standards established under part C of this title, provided that nothing herein shall limit the authority of the Secretary to seek and receive advice and respect to the above matters from any source he deems appropriate.

SUGGESTED CHANGES FOR S. 3759

Version submitted June 28, 1972.

Re: Page 3, Line 5: We have learned in Ohio that having legal guardians is just not enough protection for incompetent individuals whether they reside in State institutions or in the community. We have therefore set up a statewide Protective Advocacy System under law.

Suggested Change for Line 5: (5) a protective advocacy service including but not limited to guardianship should be available

for both adults who are incompetent because of the severity of their mental retardation and minors who are deprived of parental guardianship, prior to their admission to a residential facility and, also, for each of who are in residential facilities at the date of the enactment of this Act;

Section 1101. (a), Line 4, Suggested Change (Page 5): "In order to assist the States in bringing existing residential facilities into compliance with standards under part C of this Act, the Secretary shall make grants to the several states who have an approved developmental disabilities plan meeting the following criteria:

(1) setting forth as one of its priority goals the improvement of residential services;

(2) setting forth a strategy and a schedule for working toward compliance with the standards in part C;

(3) setting forth strategies which minimize inappropriate placement particularly through the provision of alternative programs of care;

(4) setting forth strategies for the coordination and integration of existing residential facilities with existing and future regional and community mental retardation programs and services;

(5) providing for the study of administive relationships, including the identification of legal, economic, social, and other barriers to compliance with standards established under part C of this Act;

(6) providing for the financing of programs and services from both public and private sources among Federal, State and local governments in the field of mental retardation with recommendation for improvement, the Secretary may make grants to such applicants and upon such terms and conditions as he shall by regulations prescribe.

NATIONAL REHABILITATION
TRAINING INSTITUTE, INC.,
August 29, 1972.

Hon. JACOB K. JAVITS,
U.S. Senate, Committee on Labor and Public Welfare, Washington, D.C.

DEAR SENATOR JAVITS: Thank you for your letter of July 26, 1972, accompanying your "Bill of Rights for the Mentally Retarded" (S. 3759).

Upon review of the Bill, I was most impressed by its comprehensiveness, and by its unmistakable manifestation of concern for the plight of the mentally retarded. The Bill clearly represents a carefully developed legislative document, and I am pleased to know that it has the bi-partisan support of twenty-five senators.

I shall be most happy to encourage its support by the membership of the National Rehabilitation Training Institute, and have already communicated my support for the legislation to Senator Bayh and Congressman Jacobs.

With best wishes,
Sincerely,

——— ———.

NEW YORK STATE ASSOCIATION
FOR RETARDED CHILDREN, INC.,
Gloversville, N.Y., December 28, 1972.

Senator JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Thank you for sending us a copy of your Bill, "Bill of Rights for the Mentally Retarded." This is certainly an important step in correcting the intolerable conditions that exist in institutions for the mentally retarded.

Unfortunately, large institutions for the retarded are, at this time, a necessary evil. However, I am firmly convinced that many current residents of institutions could be better served in community settings.

Borderline institutionalized retardates who are capable of assuming sophisticated responsibilities (cooking, marketing, banking, etc.) which are necessary to function in society can be trained in halfway houses and rehabilitation centers. Moderately retarded can be served in Hostels and selected profoundly retardates in community based nursing homes (capacity 15–16).

The positive results that can be achieved when retarded persons of all levels reside in enlightened communities are outstanding. I have witnessed a high school student teach an autistic retarded young woman how to speak, a college student spend hours socializing with and teaching certain basic skills to a profoundly retarded woman and the drastic positive change that occurs in persons who have been institutionalized for many years and are now living in a community. I have found that when the community is exposed to persons who are retarded in a positive way obtaining community support such as described above is surprisingly easy.

Because of the above I was most interested in those parts of the Bill which discussed community alternatives to institutions. I am hopeful that the three sections where community programs are mentioned (Page 8, "The Library of Congress, Congressional Research Service. Bill of Rights for the Mentally Retarded—Section-by-Section Analysis") could be developed further.

Your Bill provides a major solution to the immediate needs of institutions. However, since institutions are not the final answer, your Bill can be looked on as a temporary Bill of Rights for the Mentally Retarded until such time as it is feasible to institute a national program whose goal is to return to the community all unnecessary institutionalized persons who are retarded. At that time, we can institute the real solution by providing legislation for community based programs for the retarded.

Please keep me informed as to the progress of your Bill of Rights as I think it is excellent in concept and if passed will benefit the mentally retarded a great deal.

Very truly yours,
PAUL NIGRA, *Executive Director.*

JOINT COMMISSION, ACCREDITATION
COUNCIL FOR FACILITIES FOR THE
MENTALLY RETARDED,
Chicago, Ill., January 12, 1973.

Mr. JAY CUTLER,
Minority Counsel, Senate Health Subcommittee, Washington, D.C.

Re: Senator JAVITS' "Bill of Rights for Mentally Retarded"

DEAR MR. CUTLER: As you know, this Accreditation Council wholeheartedly supports Senator Javits' objective of improving the services provided mentally retarded persons; the improvement of services to the retarded is, indeed, this Council's whole reason for being. The Council is pleased, therefore, that the "Bill of Rights for the Mentally Retarded" is to be reintroduced in the current session of the Congress. Anticipating this possibility, the Council discussed, at its last meeting, how its own activities could further most effectively achievement of the bill's intent.

The Council continues to believe that, while the right of mentally retarded citizens to adequate treatment and habilitation should be expressly stated in statute, detailed standards (such as the Council's) for the operation of habilitation programs and facilities should not be incorporated into law. You are aware of the reasons for the Council's conclusion, and it, in turn, understands the reasons for your position that it is desirable to put the Council's current standards into law. You should know, however, that last November the Council adopted several additions to and changes in its standards for residential facilities. The need for these additions and changes had been revealed during surveys of facilities to determine their compliance with the standards, and this points up again the fact that standard setting and compliance assessment are inseparable aspects of a single process.

If standards are to remain effective instruments for the improvement of services, they must be continuously subject to review and revision on the basis of survey experience. Similarly, assessment of compliance with standards necessarily involves interpretation and judgment based upon an intimate knowledge of how the standards have been developed and of their fundamental intent, plus ready access to the means of effecting modifications when these are necessary for the achievement of that intent. To be specific, surveys of several facilities indicated that a number of the Council's standards were not understood by the facilities in the way that was necessary to achieve their intent. This information was immediately fed back to the Council, and the standards were modified forthwith so as to express their intent more clearly. Again, surveys revealed lacunae in the standards, in that the surveyors observed practices that they knew to be inconsistent with the Council's conception of an adequate program, but that were not explicitly mentioned in the standards. This intelligence, too, was presented to the Council, and the gaps in the standards were immediately filled. The conclusion is clear: the dual, complimentary functions of standard setting and compliance assessment cannot be separated without weakening the capacity to perform each function effectively.

Just as the Bill (and the Council) holds the promulgation of nation-wide standards to be necessary for the effective improvement of services, so is a uniform method of compliance assessment essential for optimal results. Even if state-conducted surveys of state-operated facilities did not represent a fundamental conflict of interest, an accurate assessment of compliance with uniform national standards could not be achieved with the diverse methods, judgments, and interpretations that might be employed by the fifty states. Such surveys can best be done by an independent national body representing both the providers and the consumers of services for the retarded, which is exactly what this Accreditation Council is.

In the light of these considerations, the Council suggests that Senator Javits' bill might be strengthened by making the following changes in Section 3:

(1) Delete the words "which shall be done in cooperation with the National Advisory Council on Standards for Residential Facilities for the Mentally Retarded established under section 1109 of this Act" from Sec. 1101(a) of Part A of Title XI of the Public Health Service Act, and insert at the end of Sec. 1101(a) the following: "Surveys to determine the compliance of facilities with the standards established under part C of this title shall be conducted by the national accrediting body for such facilities, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals."

(2) Add the following paragraph to Sec. 1106 of Title XI of the Public Health Service Act: "(d) A facility shall be deemed to meet the standards promulgated under part C of this title if it is accredited by the national accrediting body for such facilities, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, provided that the Secretary may cause an independent survey of compliance with the standards to be made in any facility surveyed by the Accreditation Council whenever he finds such an independent survey to be necessary to validate the findings of the Accreditation Council survey."

(3) Delete the title "National Advisory Council on Standards for Residential Facilities for the Mentally Retarded" and Sec. 1109 of Title XI of the Public Health Service Act,

and replace this material with the following: "Revision of Standards. Sec. 1109. The secretary shall seek and receive the advice of the national accrediting body for facilities and programs for the mentally retarded, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, in respect to (1) recommendations for any changes, revisions, modifications, or improvements in the standards established under part C of this title, (2) any regulations promulgated or proposed to be promulgated by him in the implementation of the standards established under part C of this title, provided that nothing herein shall limit the authority of the Secretary to seek and receive advice in respect to the above matters from any source he deems appropriate."

The Council shares, as you know, the Senator's objectives of discouraging inappropriate admission to institutions and encouraging the exploration of alternatives to institutional care. As you also know, however, there is a great deal of concern among both providers and consumers regarding the establishment of alternatives to institutional care that may be no better—or even worse—than the institutions, unless relevant standards are met. The Council, indeed, has seen clear justification for this concern during the surveys it has conducted: residents have been placed in living situations that are even less desirable than the institution from which they came.

For the past two years the Council has been engaged in the development of standards for community agencies serving the retarded. As was the case with the standards for residential facilities, the development of these standards has involved the participation of administrators, practitioners, researchers, and consumers, representing a wide cross-section of the population concerned with programs for the mentally retarded and developmentally disabled. These national standards are currently being field tested by representative agencies, and they are expected to be adopted by the Council and published later this year. With this accomplishment the Council will have made available standards for all facilities and programs serving the retarded and developmentally disabled, and this wider purview and perspective, of course, will enhance the Council's ability to maintain effective standards for each segment of the field.

In the light of the foregoing, the Council suggests that Senator Javits' bill might be strengthened further by adding the following to Section 3:

(4) Add the following paragraph to Sec. 1108, "Alternative Programs of Care," of Title XI of the Public Health Service Act: "Community resources and community living situations for the mentally retarded receiving grants under this section shall comply with the applicable standards established by the national accrediting body for such programs, the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals. A program shall be deemed to be in compliance with such standards if it is accredited by the Accreditation Council for Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals, provided that the Secretary may cause an independent survey of compliance to be made of any program surveyed by the Accreditation Council whenever he finds such an independent survey to be necessary to validate the findings of the Accreditation Council survey."

This Accreditation Council represents, as you know, a partnership of providers and consumers, brought together for the sole and express purpose of improving services to the mentally retarded. The Council is, of course, highly gratified that its first efforts in this endeavor—its standards for residential facilities for the mentally retarded—have received the acceptance indicated by their incorporation in Senator Javits' bill. The Council trusts that its subsequent and future efforts will be equally successful. Further indication of the Council's success is the fact that for additional national organizations concerned with programs for the retarded and developmentally disabled have applied and been approved for membership in the Council: the American Academy of Pediatrics, American Nurses' Association, American Psychological Association, and National Association of Private Residential Facilities for the Mentally Retarded. The participation of these organizations will, of course, further enhance the Council's ability to serve our mentally retarded citizens.

Sincerely,

KENNETH G. CROSBY, Ed.D.,
Program Director.

S. 458

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 "Bill of Rights for the Mentally Retarded".

SEC. 2. (a) The Congress finds that—

(1) there are more than two hundred thousand mentally retarded persons in the United States currently living in publicly and privately operated residential facilities for the mentally retarded;

(2) the prime purpose of residential services for the mentally retarded is to protect and nurture the mental, physical, emotional, and social development of each individual requiring responsible full-time services and to provide those experiences which will enable the individual (A) to develop his physical, intellectual, and social capabilities to the fullest extent possible; (B) to develop emotional maturity commensurate with social and intellectual growth; (C) whenever possible, to develop skills, habits, and attitudes essential for return to contemporary society; and (D) to live a personally satisfying life within the residential environment for whatever period he may need to remain there;

(3) the basic obligation of residential services is to assure to the mentally retarded the same constitutional rights and guarantees as every other American citizen;

(4) voluntary and involuntary admissions to a residential facility should be based on sound professional considerations that include a comprehensive assessment of mental ability, physical health, and adaptive behavior which demonstrate a handicap sufficiently severe to justify placement;

(5) legal guardians should be appointed for both adults who are incompetent because of the severity of their mental retardation and minors who are deprived of parental guardianship, prior to their admission to a residential facility and, also, for each such individual who is in residential facilities at the date of enactment of this Act;

(6) residential facilities for the mentally retarded should provide a warm, stimulating setting devoid of dehumanizing conditions, the living quarters should be designed for optimum safety and to insure the provision of basic needs, including the right of privacy, and the location of the residential facility should where appropriate be within the community served and provide for normal contacts within the community life;

(7) the protection of the human dignity, the integrity and the life, of the mentally retarded must be realized as the first consideration in research and planning for the mentally retarded; and

(8) residential facilities should consist of small, homelike units located within, coordinated with, and integrated into existing community living situations and although the demand for resources to build these new facilities may seem to conflict with the demand for resources to upgrade the old ones to humane care, treatment and protection standards, the two objectives are equally necessary.

(b) The purpose of this Act is to establish standards which assure the humane care, treatment, habilitation, and protection of the mentally retarded in residential *facilities* and improve the system for the provision of services to the mentally retarded through the encouragement of and support for the planning and development of strategies to implement such standards, minimize inappropriate admissions to residential facilities and stimulate the development of regional and community programs integrating such residential facilities which conform to such standards. It is the further purpose of this Act to encourage and support planning and development of strategies which survey and analyze residential facilities and their compliance with the standards established under title XII of the Public Health Service Act and stimulate regional and community programs and services for the mentally retarded which integrate such residential facilities.

AMENDMENT TO PUBLIC HEALTH SERVICE ACT

SEC. 3. The Public Health Service Act is amended by inserting after title XI the following new title:

"TITLE XI—SUPPORT OF RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED

"PART A—STATE STRATEGY PLANNING

"SEC. 1201. (a) In order to assist the States in comprehensive surveys and analyses of the cost of bringing existing residential facilities into compliance with the standards established under part C of this title, review existing State plans concerned with providing services and programs for the mentally retarded and develop strategies which include implementation and monitoring mechanisms which minimize inappropriate placement in residential facilities particularly through the provision of alternative programs of care and coordinate and integrate existing residential facilities with existing and future regional and community mental retardation programs and services, which shall be done in cooperation with the National Advisory Council on Standards for Residential Facilities for the Mentally Retarded established under section 1209 of this Act, and to study administrative relationships, including the identification of legal, economic, social and other barriers to compliance with the standards established under part C of this Act and financing of programs and services from both public and private sources among Federal, State, and local governments in the field of mental retardation with recommendations for improvement, the Secretary may make grants, to such applicants and upon such terms and conditions as he shall by regulations prescribe.

"(b) In order to assist the States in improving existing residential facilities for the mentally retarded so as to contribute more effectively in providing the resident with experiences which will enable such individual (1) to develop his physical, intellectual, and social capabilities to the fullest extent possible; (2) to develop emotional maturity commensurate with social and intellectual growth; (3) whenever possible, to develop skills, habits, and attitudes essential for return to contemporary society; and (4) to live a personally satisfying life within the residential environment and to otherwise conform to the standards established under part C of this title, the Secretary may, in accordance with the provisions of this part, make grants, not to exceed $300,000 per institution, to cover costs of administering and operating demonstration facilities and training programs to render services in the care

of mentally retarded persons in residential facilities and reduce excess residential facility population, which shall be evaluated for effectiveness in improving residential care for the mentally retarded.

"(c) For the purpose of making grants under section (a) of this part there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1974 and for each of the next two succeeding fiscal years and for the purpose of making grants under section (b) of this part there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1974, and for each of the next two succeeding fiscal years.

"PART B—DELIVERY OF MENTAL RETARDATION PROGRAMS AND SERVICES

"GRANTS TO ASSIST INSTITUTIONS FOR THE MENTALLY RETARDED

"SEC. 1202. (a) For the purpose of assisting States in meeting the expenses, directly or indirectly, for bringing publicly operated facilities and publicly assisted facilities into conformity with the standards established under part C of this title, which seek to assure the humane care, protection, habilitation, and treatment of the mentally retarded in residential facilities, there are authorized to be appropriated such sums as are necessary to enable the Secretary to make grants under this title.

"(b) In considering applications for such grants, the Secretary shall give priority to those applicants whose publicly operated residential facility or publicly assisted facilities are in the greatest need of assistance to comply with such standards.

"STATE PLANS

"SEC. 1203. (a) Any State desiring to receive a grant under this title shall submit a plan to the Secretary:

"(1) setting forth a schedule for compliance with the standards established under part C of this title for each facility for which assistance is requested;

"(2) designating a State planning and advisory council, which shall include representatives of local agencies and nongovernmental organizations concerned with services for mentally retarded persons and at least one-third of the membership of such council shall consist of representatives of consumers of such services from publicly operated and publicly assisted residential facilities for the mentally retarded;

"(3) assuring reasonable State financial participation in the cost of carrying out the plan to comply with the standards set forth in this title and how the residential facility for the mentally retarded will complement and augment rather than duplicate or replace other community services for the mentally retarded or meet the requirements of part C of this title;

"(4) setting forth a schedule of costs to achieve compliance with the standards established under part C of this title; and

"(5) designating how placement in residential facilities shall be minimized through alternative regional and community programs and services for the mentally retarded.

"(b) The Secretary shall approve a plan which sets forth a reasonable time for compliance with the standards established under this title, and he shall not finally disapprove a plan except after reasonable notice and opportunity for a hearing to such State.

"AMOUNT OF GRANTS; PAYMENTS

"SEC. 1204. (a) The total of the grants with respect to any project under this part may not exceed 75 per centum of the necessary cost thereof as determined by the Secretary.

"(b) Payments of grants under this part shall be made in advance or by way of reimbursement, and on such conditions as the Secretary may determine.

"MAINTENANCE OF EFFORT

"SEC. 1205. Applications for grants under this part may be approved by the Secretary only if the application contains or is supported by reasonable assurances that the grants will not result in any decrease in the level of State, local, and other non-Federal funds for services for mentally retarded which would (except for such grant) be available to the applicant, but that such grants will be used to supplement, and, to the extent practicable, to increase the level of such funds.

"WITHHOLDING OF GRANTS

"SEC. 1206. (a) Whenever the Secretary, after an opportunity for a hearing on the record finds—

"(1) that there has been a failure to comply substantially with any requirement set forth in the plan of that State approved under section 1103; or

"(2) that in the operation of any program assisted under this title there is a failure to comply substantially with any applicable provision of this title;

the Secretary shall notify such State of his findings and that no further payments may be made to such State under this Act for any project connected with the program until he is satisfied that there is no longer any such failure to comply, or that the noncompliance will be promptly corrected.

"(b) In any case where a State has received a grant under section 1202 and has not complied with the standards of this title within a reasonable period of time prescribed by the Secretary, such State shall not be eligible for any further Federal funds on behalf of any individual who is a resident of any public or private residential facility for the retarded which does not meet the standards set forth in part C of this title. The funds to which any individual would otherwise be entitled to have paid on his behalf to any vendor of residential services, public or private, shall be reserved for him and administered by the Social Security Administration in the same manner as benefits under title II of the Social Security Act would be administered on his behalf were he entitled to same.

"(c) Five years after the date of enactment of this Act, no residential facility for the mentally retarded shall be eligible to receive payments either directly or indirectly under any Federal law, unless such facility meets the standards promulgated under part C of this title.

"EXTENSION OF TIME TO MEET STANDARDS

"SEC. 1207. Where in any fiscal year the appropriation for grants under section 1202 does not meet the amount authorized, the Secretary may extend the time for recipients of such grants and other residential facilties for the mentally retarded to meet the standards established by this Act.

"ALTERNATIVE PROGRAMS OF CARE

"SEC. 1208. (a) The Secretary is authorized to make grants to any public or private nonprofit agency, organization or institution to meet the costs of development, improvement, extension, or expansion of community resources and community living situations for the mentally retarded other than living-in residential facilities for the mentally retarded.

"(b) Applications for grants under this section shall contain such information and be in such form as the Secretary may prescribe.

"(c) In considering applications for grants under this section the Secretary shall give priority to those applicants whose proposal he determines are of special significance because they demonstrate new or relatively effective or efficient methods of delivery of services to the mentally retarded.

"(d) There are authorized to be appropriated to carry out the purpose of this section such sums as may be necessary for the fiscal year ending June 30, 1974 for each of the next two succeeding fiscal years.

"(e) Each recipient of a grant under this title shall keep such records as the Secretary may prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is made or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such records as will facilitate an effective audit.

"(f) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination of any books, documents, papers, and records of the recipient of any grant under this title which are pertinent to such grant."

"NATIONAL ADVISORY COUNCIL ON STANDARDS FOR RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED

"SEC. 1209. (a) Effective ninety days after the date of enactment of this Act, there is hereby established a National Advisory Council on Standards for Residential Facilities for the Mentally Retarded (hereinafter referred to as the 'Council'), which shall consist of fifteen members, not otherwise in the regular full-time employ of the United States, to be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service. The Secretary shall from time to time designate one of the members of the Council to serve as Chairman thereof. The members of the Council shall be selected from representatives of the American Association on Mental Deficiency, the American Psychiatric Association, the Council for Exceptional Children, the National Association for Retarded Children, the United Cerebral Palsy Association, consumers (for example, parents of the mentally retarded) of services from publicly operated and publicly assisted residential facilities for the mentally retarded, and leaders in the fields of service to the mentally retarded, including a representative of the National Association of Coordinators of State Programs for the Mentally Retarded, of the National Association of Superintendents of Public Residential Facilities for the mentally retarded, and other persons (for example, parents of the mentally retarded) in organizations representing consumers of such services. A majority of the Council shall be representative of the interests of consumers of such services.

"(b) It shall be the duty and function of the Council to (1) advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of the standards established under part C of this Act, (2) study and evaluate such standards authorized by this Act through site visits and other appropriate methods with a view of determining their effectiveness in carrying out the purposes for which they were established, and (3) based upon site visits or other studies, evaluations or reviews recommend to the Secretary any changes, revisions, modifications, or improvements in the standards established under part C of this Act.

"(c) Members of the Council, while attending meetings or conferences thereof or otherwise serving on the business of the Council, including site visits shall be entitled to receive compensation at rates fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate provided for GS–18 of the General Schedule for each day of such service (including traveltime), and,

while so serving away from their homes or regular places of business, they may be allowed travel expenses, including diem in lieu of subsistence, as authorized by section 5702 of title 5, United States Code, for persons in the Government service employed intermittently."

"PART C—STANDARDS FOR RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED

"Chapter 1.—ADMINISTRATIVE POLICIES AND PRACTICES

"Subchapter I—Philosophy, Location and Organization

"SEC. 1210. (a) The ultimate aim of the facility shall be to foster those behaviors that maximize the human qualities of the resident, increase the complexity of his behavior, and enhance his ability to cope with his environment.

"(b) The facility shall accept and implement the principle or normalization, defined as the use of means that are as culturally normative as possible to elicit and maintain behavior that is as culturally normative as possible, taking into account local and subcultural differences.

"SEC. 1211. (a) The names of facilities, the labels applied to their users, and the way these users are interpreted to the public should be appropriate to their purposes and programs and services should not emphasize 'mental retardation' or 'deviancy'.

"(b) Residents should not be referred to as 'patient' except in a hospital-medical context; as 'kids' or 'children' if they are adults; or as 'inmates'.

"SEC. 1212. (a) The facility should be located within, and conveniently accessible to, the population served, so as to have access to necessary generic community services.

"(b) The facility should not be isolated from society or community by factors such as:

"(1) difficulty of access, due to distance or lack of public transportation;

"(2) architectural features;

"(3) socio-cultural or psychological features; and

"(4) rules, regulations, customs, and habits.

"(c) Protection devices (such as fences and security windows), where necessary, should be inconspicuous, and should preserve as normal an environmental appearance as possible, so as to permit the pursuit of normal activities.

"(d) The facility should be in scale with the community in which it is located.

"(e) The facility and the surrounding community should be encouraged to share their services and resources on a reciprocal basis.

"(f) The community in which the facility is located should be capable of meeting the needs of the facility's residents for generic and specialized services.

"(g) The community in which the facility is located should be capable of absorbing, and encouraged to absorb, into its cultural life those residents capable of participation in that life.

"(h) The facility shall have available a current description directory of community resources.

"SEC. 1213. (a) Residents should be integrated to the greatest possible extent with the general population. To this end, generic and specialized community services, rather than facility services, should be used extensively or, if possible, completely. For example, the residents should—

"(1) attend (special) classes or programs in regular schools;

"(2) attend religious instruction and worship in the community;

"(3) utilize medical, dental, and all other professional services located in the community;

"(4) use community rather than facility recreation resources, such as bowling alleys, swimming pools, movies, and gymnasia;

"(5) shop in community stores, rather than in facility stores and canteens; and

"(6) work in as integrated a fashion as possible: sheltered employment should be in regular industry, and among nonretarded workers; sheltered workshops should be in the community; and work that must be on the campus of the facility should afford maximal contact with nonretarded persons. There shall be evidence of professional and public education to facilitate the integration of residents, as outlined above.

"(b) The facility should be divided into groupings of program and residence units, based upon a rational plan to meet the needs of the residents and fulfill the purposes of the facility.

"SEC. 1214. The facility shall make every attempt to move residents from—

"(1) more to less structured living;

"(2) larger to smaller facilities;

"(3) larger living units to smaller living units;

"(4) group to individual residence;

"(5) dependent to independent living; and

"(6) segregated to integrated living.

"Subchapter II—General Policies and Practices

"SEC. 1215. (a) The facility shall have a written outline of the philosophy, objectives, and goals it is striving to achieve, that is available for distribution to staff, consumer representatives, and the interested public, and that shall include but need not be limited to:

"(1) its role in the State comprehensive program for the mentally retarded;

"(2) its concept of the rights of its residents;

"(3) its goals for its residents;

"(4) its concept of its relationship to the parents of its residents, or to their surrogates;

"(5) its concept of its relationship to the community, zone, or region from which its residents come;

"(6) its concept of its responsibility (through research, training, and education) for improving methods, understanding, and support for the mental retardation field;

"(7) the facility shall have a plan for evaluation and modification to maintain;

"(A) the consistency of its philosophy, objectives, and goals with advancements in knowledge and professional practices; and

"(B) the consistency of its practices with its philosophy, objectives, and goals.

"(b) The facility shall have a manual on policies and procedures, describing the current methods, forms, processes, and sequence of events being followed to achieve its objectives and goals.

"(c) The facility shall have a written statement of policies and procedures concerning the rights of residents that—

"(1) assure the civil rights of all residents;

"(2) are in accordance with general and special rights of the mentally retarded as defined by the Secretary in accordance with section 2 of this Act; and

"(3) define the means of making legal counsel available to residents for the protection of their rights.

"SEC. 1216. (a) The facility shall have a written statement of policies and procedures that protect the financial interests of residents and that provide for—

"(1) determining the financial benefits for which the resident is eligible;

"(2) assuring that the resident receive the funds for incidentals and for special needs (such as specialized equipment) that are due him under public and private financial support programs; and

"(3) when large sums accrue to the resident, providing for counseling of the resident concerning their use, and for appropriate protection of such funds.

"(b) Procedures in the major operating units of the facility shall be described in manuals that are current, relevant, available, and followed.

"(c) The facility shall have a summary of the laws and regulations relevant to mental retardation and to the function of the facility.

"(d) The facility shall have a plan for a continuing management audit to insure compliance with State laws and regulations and the effective implementation of its stated policies and procedures.

"SEC. 1217. (a) A public facility shall have documents that describe the statutory basis of its existence, and describe the administrative framework of the governmental department in which it operates.

"(b) A private facility shall have documents that include its charter, its constitution and bylaws, and its State license.

"SEC. 1218. (a) The governing body of the facility shall exercise general direction and shall establish policies concerning the operation of the facility and the welfare of the individuals served.

"(b) The governing body shall establish appropriate qualifications of education, experience, personal factors, and skills for the chief executive officer. The chief executive officer shall have had training and experience in the administration of human services. The chief executive officer shall have administrative ability, leadership ability, and an understanding of mental retardation. Where the chief executive officer is required also to have had training in a professional service discipline, such training shall be in a discipline appropriate to the facility's program.

"(c) The governing body shall employ a chief executive officer so qualified, and shall delegate to him authority and responsibility for the management of the affairs of the facility in accordance with established policies.

"(d) The chief executive officer shall—

"(1) designate an individual to act for him in his absence;

"(2) make arrangements so that some one individual is responsible for the administrative direction of the facility at all times;

"(3) when an assistant chief executive officer is employed, the qualifications required for this position shall be in compliance with those stated above for the chief executive officer; and

"(4) there shall be on the premises of the facility at all times a person designated by the chief executive officer, or the person acting for him, to be responsible for the supervision of the facility.

"SEC. 1219. (a) The facility shall be administered and operated in accordance with sound management principles.

"(b) The type of administrative organization of the facility shall be appropriate to the program needs of its residents.

"(c) The facility shall have a table of organization that shows the governance and administrative pattern of the facility.

"(d) The table of organization shall show the major operating programs of the facility, with staff divisions, the administrative personnel in charge of the programs and divisions, and their lines of authority, responsibility, and communication.

"(e) The organization shall provide for the judicious delegation of administrative authority and responsibility among qualified members of the staff, in order to distribute the administrative load of the facility and to accelerate its operating efficiency.

"(f) The organization shall be such that problems requiring ongoing decisionmaking regarding the welfare of the resident are handled primarily by personnel on the lowest level competent to resolve the problem.

"(g) The organization shall provide for the utilization of staff with different levels of training by using those with more adequate

training to supervise and train those with lesser training.

"(h) The organization shall provide effective channels of communication in all directions.

"(i) The facility shall have a plan for improving the quality of staff and services that shows how the staff functions by programmatic responsibilities in establishing and maintaining standards of quality for services to residents. The plan shall show how the facility's organizational structure enables the following functions:

"(1) determination of standards for quality of services to the residents;

"(2) establishment of qualifications for personnel;

"(3) recruitment of qualified personnel;

"(4) initiation of preservice and inservice training and staff development programs;

"(5) work with administrators, supervisors, and staff of the administrative units of the facility to secure and assign qualified personnel to such units;

"(6) annual evaluation of staff performance;

"(7) continuous evaluation of program effectiveness; and

"(8) development and conduct of appropriate research activities.

"SEC. 1220. (a) The administration of the facility shall provide for effective staff and resident participation and communication. Staff meetings shall be regularly held. Standing committees appropriate to the facility, such as records, safety, human rights, utilization review, research review, and infection and sanitation, shall meet regularly. Committees shall include resident participation, whenever appropriate. Committees shall include the participation of direct-care staff, whenever appropriate.

"(b) Minutes and reports of staff meetings, and of standing and ad hoc committee meetings shall include records of recommendations and their implementation, and shall be kept and filed. Summaries of the minutes and reports of staff and committee meetings shall be distributed to participants and to appropriate staff members. Various forms of communication (such as meetings, minutes of meetings, directives, and bulletins) shall be utilized to foster understanding among the staff, among the residents, between staff and residents, and between facility, community, and family.

"SEC. 1221. The facility shall designate a percentage of its operating budget for self-renewal purposes, such as:

"(1) development of operational data records;

"(2) research on its own programs;

"(3) evaluation by qualified persons who are not part of the facility;

"(4) elicitation of feedback from consumers of the facility's services, or from their representatives;

"(5) staff education;

"(6) the findings generated by the foregoing activities shall be actively and broadly disseminated to:

"(A) all members of the facility's staff;

"(B) consumer representatives, when appropriate;

"(7) the facility shall have a continuing system for collecting and recording accurate data that describe its population, in such form as to permit data retrieval and usage for description, programing of services, and research. Such data shall include, but need not be limited to:

"(A) number by age-groups, sex, and race;

"(B) number grouped by levels of retardation (profound, severe, moderate, mild, and borderline), according to the American Association and Mental Deficiency Manual on Terminology and Classification in Mental Retardation;

"(C) number grouped by levels of adaptive behavior, according to the American Association on Mental Deficiency classification;

"(D) number with physical disabilities;

"(E) number ambulatory and nonambulatory (mobile and nonmobile);

"(F) number with sensory defects;

"(G) number with oral and other communication handicaps; and

"(H) number with convulsive disorders, grouped by level of seizure control.

"SEC. 1221. The facility shall have a description of services for residents that is available to the public and that includes information such as:

"(1) groups served;

"(2) limitations concerning age, length of residence, or type or degree of handicap;

"(3) the plan for grouping residents into program and living units;

"(4) preadmission and admission services;

"(5) diagnosis and evaluation services;

"(6) means for individual programing of residents in accordance with need;

"(7) means for implementation of programs for residents, through clearly designated responsibility;

"(8) the therapeutic and developmental environment provided the residents; and

"(9) release and follow-up services and procedures.

"SEC. 1222. The facility shall provide for meaningful and extensive consumer-representative and public participation, by the following means:

"(1) the policymaking or governing board (if any) shall include consumers or their representatives (for example, parents), interested citizens, and relevantly qualified professionals presumed to be free of conflicts of interest;

"(2) when a facility does not have a governing board its policymaking authority shall actively seek advice from an advisory body composed as described above;

"(3) the facility shall actively elicit feedback from those consumers of its services (and their representatives) who are not members of the aforementioned governing or advisory bodies;

"(4) there shall be an active program of ready, open, and honest communication with the public. In structuring visits to the facility by persons not directly concerned with a resident, however, steps shall be taken both to encourage visiting and to consider the sensibilities and privacy of the residents. Undignified displays or exhibitions of residents shall be avoided, and normal sensibility shall be exercised in speaking about a resident;

"(5) personnel shall be permitted to communicate their views about a resident and his needs and program to his relatives. Personnel shall be trained to properly and competently assume this responsibility;

"(6) the facility shall maintain active means of keeping residents' families or surrogates informed of activities related to the residents that may be of interest to them;

"(7) communications to the facility from residents' relatives shall be promptly and appropriately handled and answered;

"(8) close relatives shall be permitted to visit at any reasonable hour, and without prior notice. Steps shall be taken, however, so that the privacy and rights of the other residents are not infringed by this practice;

"(9) parents and other visitors shall be encouraged to visit the living units, with due regard for privacy. There shall be facilities for visiting that provide privacy in the living unit (but not special rooms used solely for visiting);

"(10) parents shall be permitted to visit all parts of the facility that provide services to residents;

"(11) frequent and informal visits home shall be encouraged, and the regulations of the facility shall encourage rather than inhibit such visitations;

"(12) there shall be an active citizens' volunteer program; and

"(13) the facility shall acknowledge the need for, and encourage the implementation of, advocacy for all residents.

"SEC. 1223. A public education and information program should be established that utilizes all communication media, and all service, religious, and civic groups, and so forth, to develop attitudes of understanding and acceptance of mentally retarded persons, in all aspects of community living.

"Subchapter III—Admission and Release

"SEC. 1224. No individual whose needs cannot be met by the facility shall be admitted to it. The number admitted as residents to the facility shall not exceed—

"(1) its rated capacity; and

"(2) its provisions for adequate programing.

"SEC. 1225. (a) The laws, regulations, and procedures concerning admission, readmission, and release shall be summarized and available for distribution. Admission and release procedures shall—

"(1) encourage voluntary admission, upon application of parent or guardian or self;

"(2) give equal priority to persons of comparable need, whether application is voluntary or by a court;

"(3) facilitate emergency, partial, and short-term residential care, where feasible; and

"(4) utilize the maximum feasible amount of voluntariness in each individual case.

"(b) The determination of legal incompetence shall be separate from the determination of the need for residential services, and admission to the facility shall not automatically imply legal incompetence.

"SEC. 1226. (a) The residential facility shall admit only residents who have had a comprehensive evaluation, covering physical, emotional, social, and cognitive factors, conducted by an appropriately constituted interdisciplinary team.

"(b) Initially, service need shall be defined without regard to the actual availability of the desirable options. All available and applicable programs of care, treatment, and training shall be investigated and weighed, and the deliberations and findings recorded. Admission to the residential facility shall occur only when it is determined to be the optimal available plan. Where admission is not the optimal measure, but must nevertheless be recommended or implemented, its inappropriateness shall be clearly acknowledged and plans shall be initiated for the continued and active exploration of alternatives.

"(c) The intended primary beneficiary of the admission shall be clearly specified as—

"(1) the resident

"(2) his family

"(3) his community;

"(4) society; and

"(5) several of the above.

"(d) All admissions to the residential facility shall be considered temporary, and when appropriate admissions shall be time-limited. Parents or guardians shall be counseled, prior to admission, on the relative advantages and disadvantages and the temporary nature of residential services in the facility. Prior to admission, parents or guardians shall, and the prospective resident should, have visited the facility and the living unit in which the prospective resident is likely to be placed.

"SEC. 1227. (a) A medical evaluation by a licensed physician shall be made within one week of the resident's admission. Upon admission, residents should be placed in their program groups, and they should be isolated only upon medical orders issued for specific reasons.

"(b) Within the period of one month after admission there shall be:

"(1) a review and updating of the preadmission evaluation

"(2) a prognosis that can be used for programing and placement;

"(3) a comprehensive evaluation and individual program plan, made by an interdisciplinary team;

"(4) direct-care personnel shall participate in the aforementioned activities;

"(5) the results of the evaluation shall be recorded in the resident's unit record;

"(6) an interpretation of the evaluation, in action terms, shall be made to:

"(A) the direct-care personnel responsible for carrying out the resident's program;

"(B) the special services staff responsible for carrying out the resident's program; and

"(C) the resident's parents or their surrogates.

"(c) There shall be a regular, at least annual, joint review of the status of each resident by all relevant personnel, including personnel in the living unit, with program recommendations for implementation. This review shall include—

"(1) consideration of the advisability of continued residence and alternative programs;

"(2) at the time of the resident's attaining majority, or if he becomes emancipated prior thereto:

"(A) the resident's need for remaining in the facility;

"(B) the need for guardianship of the resident;

"(C) the exercise of the resident's civil and legal rights;

"(3) The results of these reviews shall be:

"(A) recorded in the resident's unit record;

"(B) made available to relevant personnel;

"(C) interpeted to the resident's parents or surrogates;

"(D) intepreted to the resident, when appropriate; and

"(4) parents or their surrogates shall be involved in planning and decisionmaking.

"SEC. 1228. A physical inspection for signs of injury or disease should be made in accordance with procedures established by the facility:

"(A) within twenty-four hours prior to a resident's leaving the facility for vacation, placement, or other temporary or permanent release; and

"(B) within twenty-four hours following a resident's return to the facility from such absence.

"SEC. 1229. (a) At the time of permanent release or transfer, there shall be recorded a summary of findings, progress, and plans.

"(b) Planning for release shall include provision for appropriate services, including protective supervision and other followup services, in the resident's new environment. Procedures shall be established so that—

"(1) parents or guardians who request the release of a resident are counseled concerning the advantages and disadvantages of such release; and

"(2) the court or other appropriate authorities are notified when a resident's release might endanger either the individual or society.

"(c) When a resident is transferred to another facility there shall be—

"(1) written evidence that the reason for the transfer is the welfare of the resident; and

"(2) a transfer process that shall insure that the receiving facility will meet the needs of the resident.

"(d) Except in an emergency, transfer shall be made only with the prior knowledge, and ordinarily the consent, of the resident and his guardian.

"SEC. 1230. (a) In the event of any unusual occurrence, including serious illness or accident, impending death, or death, the resident's next of kin, or the person who functions in that capacity (a guardian or citizen advocate) shall be notified promptly and in a compassionate manner. When appropriate, the wishes and needs of the resident, and of the next of kin, concerning religious matters shall be determined and, insofar as possible, fulfilled.

"(b) When death occurs:

"(1) with the permission of the next of kin or legal guardian, an autopsy shall be performed;

"(2) such autopsy shall be performed by a qualified physician, so selected as to be free of any conflict of interest or loyalty;

"(3) the family shall be told of the autopsy findings, if they so desire; and

"(4) the facility shall render as much assistance as possible in making arrangements for dignified religious services and burial, unless contraindicated by the wishes of the family.

"(c) The coroner or medical examiner shall be notified of deaths, in accordance with state law.

"Subchapter IV—Personnel Policies

"SEC. 1231. (a) Adequate personnel services shall be provided by means appropriate to the size of the facility. If the size of the facility warrants a personnel director, he shall have had several years of progressively more responsible experience or training in personnel administration, and demonstrated competence in this area.

"(b) The facility's current personnel policies and practices shall be described in writing;

"(1) The hiring, assignment, and promotion of employees shall be based on their qualifications and abilities, without regard to sex, race, color, creed, age, irrelevant disability, marital status, ethnic or national origin, or membership in an organization.

"(2) Written job descriptions shall be available for all positions.

"(3) Licensures, certification, or standards such as are required in community practice shall be required for all comparable positions in the facility:

"(4) Ethical standards of professional conduct, as developed by professional societies, shall be recognized as applying in the facility.

"(5) There shall be a planned program for career development and advancement for all categories of personnel.

"(6) There shall be an authorized procedure, consistent with due process, for suspension and/or dismissal of an employee for cause.

"(7) Methods of improving the welfare and security of employees shall include:

"(A) a merit system or its equivalent;

"(B) a salary schedule covering all positions;

"(C) effective grievance procedures;

"(D) provisions for vacations, holidays, and sick leave;

"(E) provisions for health insurance and retirement;

"(F) provisions for employee organizations;

"(G) opportunities for continuing educational experiences, including educational leave; and

"(H) provisions for recognizing outstanding contributions to the facility.

"(c) A statement of the facility's personnel policies and practices shall be available to all its employees.

"(d) All personnel shall be initially screened to determine if they are capable of fulfilling the specific job requirements. All personnel shall be medically determined to be free of communicable and infectious diseases at the time of employment and annually thereafter. All personnel should have a medical examination at the time of employment and annually thereafter. Where indicated, psychological assessment should be included at the time of employment and annually thereafter.

"(e) The performance of each employee shall be evaluated regularly and periodically, and at least annually. Each such evaluation shall be—

"(1) reviewed with the employee; and

"(2) recorded in the employee's personnel record.

"(f) Written policy shall prohibit mistreatment, neglect, or abuse of residents. Alleged violations shall be reported immediately, and there shall be evidence that—

"(1) all alleged violations are thoroughly investigated;

"(2) the results of such investigation are reported to the chief executive officer, or his designated representative, within twenty-four hours of the report of the incident; and

"(3) appropriate sanctions are invoked when the allegation is substantiated.

"SEC. 1232. (a) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for productive services. There shall be a written policy to protect residents from exploitation when they are engaged in productive work. A current, written policy shall encourage that residents be trained for productive, paid employment. Residents shall not be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless they—

"(1) have been specifically trained in the necessary skills;

"(2) have the humane judgment required by those activities;

"(3) are adequately supervised; and

"(4) are reimbursed.

"(b) Residents who function at the level of staff in occupational or training activities shall—

"(1) have the right to enjoy the same privileges as staff; and

"(2) be paid at the legally required wage level when employed in other than training situations.

"(c) Appropriate to the size and nature of the facility, there shall be a staff training program that includes:

"(1) orientation for all new employees, to acquaint them with the philosophy, organization, program, practices, and goals of the facility;

"(2) induction training for each new employee, so that his skills in working with the residents are increased;

"(3) inservice training for employees who have not achieved the desired level of competence, and opportunities for continuous inservice training to update and improve the skills and competencies of all employees;

"(4) supervisory and management training for all employees in, or candidates for, supervisory positions;

"(5) provisions shall be made for all staff members to improve their competencies, through means such as—

"(A) attending staff meetings;

"(B) undertaking seminars, conferences, workshops, and institutes;

"(C) attending college and university courses;

"(D) visiting other facilities;

"(E) participation in professional organizations;

"(F) conducting research;

"(G) publishing studies;

"(H) access to consultants;

"(I) access to current literature, including books, monographs, and journals relevant to mental retardation;

"(6) interdisciplinary training programs shall be stressed;

"(7) the ongoing staff development program should include provision for educating staff members as research consumers.

"(8) where appropriate to the size and nature of the facility, there shall be an individual designated to be responsible for staff development and training, and such individual should have—

"(A) at least a master's degree in one of the major disciplines relevant to mental retardation;

"(B) a thorough knowledge of the nature of mental retardation and associated disabilities, and the current goals, programs, and practices in this field;

"(C) a knowledge of the educational process;

"(D) an appropriate combination of academic training and relevant experience;

"(E) demonstrated competence in organizing and directing staff training programs; and

"(9) appropriate to the size and nature of the facility, there should be adequate, modern educational media equipment for the conduct of an inservice training program, such as: overhead, filmstrip, motion picture, and slide projectors; screens; models and charts; and video tape systems.

"(d) Working relations should be established between the facility and nearby colleges and universities for the following purposes:

"(1) making credit courses, seminars, and workshops available to the facility's staff;

"(2) using facility resources for training and research by colleges and universities; and

"(3) exchanging of staff between the facility and the colleges and universities for teaching, research, and consultation.

"Chapter 2.—RESIDENT LIVING

"Subchapter I—Staff-Resident Relationships and Activities

"SEC. 1240. (a) The primary responsibility of the living unit staff shall be to devote their attention to the care and development of the residents as follows:

"(1) each resident shall receive appreciable and appropriate attention each day from the staff in the living unit;

"(2) living unit personnel shall train residents in activities of daily living and in the development of self-help and social skills;

"(3) living unit personnel shall be responsible for the development and maintenance of a warm, family- or home-like environment that is conducive to the achievement of optimal development by the resident;

"(4) appropriate provisions shall be made to ensure that the efforts of the staff are not diverted from these responsibilities by excessive housekeeping and clerical duties, or other non-resident-care activities; and

"(5) the objective in staffing each living unit should be to maintain reasonable stability in the assignment of staff, thereby permitting the development of a consistent inter-personal relationship between each resident and one or two staff members.

"(b) Members of the living unit staff from all shifts shall participate with an interdisciplinary team in appropriate referral, planning, initiation, coordination, implementation, followthrough, monitoring, and evaluation activities relative to the care and development of the resident.

"(c) There shall be specific evaluation and program plans for each resident that are—

"(1) available to direct care staff in each living unit; and

"(2) reviewed by a member or members of the interdisciplinary program team at least monthly, with documentation of such review entered in the resident's record.

"(d) Activity schedules for each resident shall be available to direct care staff and shall be implemented daily as follows:

"(1) such schedules shall not permit 'dead time' of unscheduled activity of more than one hour continuous duration; and

"(2) such schedules shall allow for individual or group free activities, with appropriate materials, as specified by the program team.

"(e) The rhythm of life in the living unit shall resemble the cultural norm for the residents' nonretarded age peers, unless a departure from this rhythm is justified on the basis of maximizing the residents' human qualities. Residents shall be assigned responsibilities in the living unit commensurate with their interests, abilities, and developmental plans, in order to enhance feelings of self-respect and to develop skills of independent living. Multiple-handicapped and nonambulatory residents shall—

"(1) spend a major portion of their waking day out of bed;

"(2) spend a portion of their waking day out of their bedroom areas;

"(3) have planned daily activity and exercise periods; and

"(4) be rendered mobile by various methods and devices.

"(f) All residents shall have planned periods out of doors on a year-round basis. Residents should be instructed in how to use, and, except as contraindicated for individual residents by their program plan, should be given opportunity for, freedom of movement—

"(1) within the facility's ground; and

"(2) without the facility's grounds.

Birthdays and special events should be individually observed.

Provisions shall be made for heterosexual interaction appropriate to the residents' developmental levels.

"(g) Residents' views and opinions on matters concerning them should be elicited and given consideration in defining the processes and structures that affect them.

"(h) Residents should be instructed in the free and unsupervised use of communication processes. Except as denied individual residents by team action, for cause, this should typically include—

"(1) having access to telephones for incoming and local outgoing calls;

"(2) having free access to pay telephones, or the equivalent, for outgoing long distance calls;

"(3) opening their own mail and packages, and generally doing so without direct surveillance; and

"(4) not having their outgoing mail read by staff, unless requested by the resident.

"(i) Residents shall be permitted personal possessions, such as toys, books, pictures, games, radios, arts and crafts materials, religious articles, toiletries, jewelry, and letters.

"(j) Regulations shall permit normalized and normalizing possession and use of money by residents for work payment and property administration, as for example, in performing cash and check transactions, and in buying clothing and other items, as readily as other citizens. In accordance with their developmental level—

"(1) allowances or opportunities to earn money shall be available to residents; and

"(2) residents shall be trained in the value and use of money.

"(k) There shall be provision for prompt recognition and appropriate management of behavioral problems in the living unit. There shall be a written statement of policies and procedures for the control and discipline of residents that is—

"(1) directed to the goal of maximizing the growth and development of the residents;

"(2) available in each living unit; and

"(3) available to parents or guardians.

"(l) Residents shall participate, as appropriate, in the formulation of such policies and procedures. Corporal punishment shall not be permitted. Residents shall not discipline other residents, except as part of an organized self-government program that is conducted in accordance with written policy.

"(m) Seclusion, defined as the placement of a resident alone in a locked room, shall not be employed.

"(n) Except as provided in subsection (p), physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to others, and restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for program. The facility shall have a written policy that defines the uses of restraint, the staff members who may authorize its use, and a mechanism for monitoring and controlling its use. Orders for restraints shall not be in force for longer than twelve hours. A resident placed in restraint shall be checked at least every thirty minutes by staff trained in the use of restraints, and a record of such checks shall be kept. Mechanical restraints shall be designed and used so as not to cause physical injury to the resident, and so as to cause the least possible discomfort. Opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which restraint is employed. Totally enclosed cribs and barred enclosures shall be considered restraints.

"(o) Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be restraints, but shall be designed and applied—

"(1) under the supervision of a qualified professional person; and

"(2) so as to reflect concern for principles of good body alinement, concern for circulation, and allowance for change of position.

"(p) Chemical restraint shall not be used excessively, as punishment, for the convenience of staff, as a substitute for program, or in quantities that interfere with a resident's habilitation program.

"(q) Behavior modification programs involving the use of time-out devices or the use of noxious or aversive stimuli shall be:

"(1) reviewed and approved by the facility's research review and human rights committees;

"(2) conducted only with the consent of the affected resident's parents or surrogates;

"(3) described in written plans that are kept on file in the facility;

"(4) restraints employed as time-out devices shall be applied for only very brief periods, only during conditioning sessions, and only in the presence of the trainer; and

"(5) removal from a situation for time-out purposes shall not be for more than one hour, and this procedure shall be used only during the conditioning program, and only under the supervision of the trainer.

"Subchapter II—Food Services

"SEC. 1241. (a) Food services shall recognize and provide for the physiological, emotional, religious, and cultural needs of each resident, through provision of a planned, nutritionally adequate diet. There shall be a written statement of goals, policies, and procedures that—

"(1) governs all food service and nutrition activities;

"(2) is prepared by, or with the assistance of, a nutritionist or dietitian;

"(3) is reviewed periodically, as necessary, by the nutritionist or dietitian;

"(4) is in compliance with State and local regulations;

"(5) is consistent with the facility's goals and policies; and

"(6) is distributed to facility personnel.

"(b) When food services are not directed by a nutritionist or dietitian, regular, planned, and frequent consultation with a nutritionist or dietitian should be available. Records of consultations and recommendations shall be maintained by the facility and by the consultant. An evaluation procedure shall be established to determine the extent of implementation of the consultant's recommendations.

"(c) A nourishing, well-balanced diet, consistent with local customs, shall be provided all residents. Modified diets shall be—

"(1) prescribed by the resident's program team, with a record of the prescription kept on file;

"(2) planned, prepared, and served by persons who have received adequate instruction; and

"(3) periodically reviewed and adjusted as needed.

"(d) Dietary practices in keeping with the religious requirements of residents' faith groups should be observed at the request of parents or guardians. Denial of a nutritionally adequate diet shall not be used as a punishment. At least three meals shall be served daily, at regular times, with—

"(1) not more than a fourteen-hour span between a substantial evening meal and breakfast of the following day, and

"(2) not less than ten hours between breakfast and the evening meal of the same day.

"(e) Resident's mealtimes shall be comparable to those normally obtaining in the community. Provision should be made for between meal and before bedtime snacks, in keeping with the total daily needs of each resident. Food shall be served—

"(1) as soon as possible after preparation, in order to conserve nutritive value;

"(2) in an attractive manner;

"(3) in appropriate quantity;

"(4) at appropriate temperature;

"(5) in a form consistent with the developmental level of the resident; and

"(6) with appropriate utensils.

When food is transported, it shall be done in a manner that maintains proper temperature, protects the food from contamination and spoilage, and insures the preservation of nutritive value.

"(f) All residents, including the mobile nonambulatory, shall eat or be fed in dinning rooms, except where contraindicated for health reasons, or by decision of the team responsible for the resident's program. Table service shall be provided for all who can and will eat at a table, including residents in wheelchairs. Dining areas shall—

"(1) be equipped with tables having smooth, impervious tops or clean table coverings may be used;

"(2) be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each resident;

"(3) promote a pleasant and home-like environment that is attractively furnished and decorated, and is of good acoustical quality; and

"(4) be designed to stimulate maximum self-development, social interaction, comfort, and pleasure.

"(g) Dining arrangements shall be based upon a rational plan to meet the needs of the residents and the requirements of their programs. Dining and serving arrangements should provide for a variety of eating experiences (for example, cafeteria and family style), and, when appropriate, for the opportunity to make food selections with guidance. Unless justified on the basis of meeting the program needs of the particular residents being served, dining tables should seat small groups of residents (typically four to six at a table), preferably including both sexes.

"(h) Dining rooms shall be adequately supervised and staffed for the direction of self-help eating procedures, and to assure that each resident receives an adequate amount and variety of food. Staff members should be encouraged to eat with those residents who have semi-independent or independent eating skills. For residents not able to get to dining areas, food service practices shall permit and encourage maximum self-help, and shall promote social interaction and enjoyable experiences.

"SEC. 1242. (a) Residents shall be provided with systematic training to develop appropriate eating skills, utilizing adaptive equipment where it serves the developmental process.

"(b) Residents with special eating disabilities shall be provided with an interdisciplinary approach to the diagnosis and remediation of their problems, consistent with their developmental needs.

"(c) Direct-care staff shall be trained in and shall utilize proper feeding techniques. Residents shall eat in an upright position. Residents shall eat in a manner consistent with their developmental needs (for example, infants should be fed in arms, as appropriate). Residents shall be fed at a leisurely rate, and the time allowed for eating shall be such as to permit adequate nutrition, to promote the development of self-feeding abilities, to encourage socialization, and to provide a pleasant mealtime experience.

"(d) Effective procedures for cleaning all equipment and all areas shall be followed consistently. Handwashing facilities, including hot and cold water, soap, and paper towels, shall be provided adjacent to work areas.

"Subchapter III—Clothing

"SEC. 1245. (a) Each resident shall have an adequate allowance of neat, clean, fashionable, and seasonable clothing.

"(b) Each resident shall have his own clothing, which is, when necessary, properly (inconspicuously) marked with his name, and he shall use this clothing. Such clothing shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community.

"(c) Nonambulatory residents shall be dressed daily in their own clothing, including shoes, unless contraindicated in written medical orders.

"(d) Washable clothing shall be designated for multi-handicapped residents being trained in self-help skills, in accordance with individual needs.

"(e) Clothing for incontinent residents, shall be designed to foster comfortable sitting, crawling and/or walking, and toilet training.

"(f) A current inventory should be kept of each resident's personal and clothing items.

"(g) Residents shall be trained and encouraged to:

"(1) select and purchase their own clothing as independently as possible, preferably utilizing community stores;

"(2) select their daily clothing;

"(3) dress themselves;

"(4) change their clothes to suit the activities in which they engage; and

"(5) maintain (launder, clean, mend) their clothing as independently as possible.

"SEC. 1246. Storage space for clothing to which the resident has access shall be provided. Ample closet and drawer space shall be provided for each resident. Such space shall be accessible to all, including those in wheelchairs.

"SEC. 1247. The person responsible for the facility's resident-clothing program shall be trained or experienced in the selection, purchase, and maintenance of clothing, including the design of clothing for the handicapped.

"Subchapter IV—Health, Hygiene, and Grooming

"SEC. 1250. (a) Residents shall be trained to exercise maximum independence in health, hygiene, and grooming practices, including bathing, brushing teeth, shampooing, combing and brushing hair, shaving, and caring for toenails and fingernails.

"(b) Each resident shall be assisted in learning normal grooming practices with individual toilet articles that are appropriately available to that resident.

"(c) Teeth shall be brushed daily, with an effective dentifrice. Individual brushes shall be properly marked, used, and stored. Dental care practices should encourage the use of newer dental equipment, such as electric toothbrushes and water picks, as prescribed.

"(d) Residents shall be regularly scheduled for hair cutting and styling, in an individualized, normalized manner, by trained personnel.

"(e) For residents who require such assistance, cutting of toenails and fingernails by trained personnel shall be scheduled at regular intervals.

"(f) Each resident shall have a shower or tub bath at least daily, unless medically contraindicated. Residents' bathing shall be conducted at the most independent level possible. Residents' bathing shall be conducted with due regard for privacy. Individual washcloths and towels shall be used. A bacteriostatic soap shall be used, unless otherwise prescribed.

"(g) Female residents shall be helped to attain maximum independence in caring for menstrual needs. Menstrual supplies shall be of the same quality and diversity available to to all women.

"(h) Every resident who does not eliminate appropriately and independently shall be engaged in a toilet training program. The facility's training program shall be applied systematically and regularly. Appropriate dietary adaptations shall be made to promote normal evacuation and urination. The program shall comprise a hierarchy of procedures leading from incontinence to independent toileting. Records shall be kept of the progress of each resident receiving toilet training. Appropriate equipment shall be provided for toilet training, including equipment appropriate for the multiply handicapped. Residents who are incontinent shall be immediately bathed or cleansed, upon voiding or soiling, unless specifically contraindicated by the training program in which they are enrolled, and all soiled items shall be changed. Persons shall wash their hands after handling an incontinent resident.

"(i) Each living unit shall have a properly adapted drinking unit. Residents shall be taught to use such units. Those residents who cannot be so taught shall be given the proper daily amount of fluid at appropriate intervals adequate to prevent dehydration. There shall be a drinking unit accessible to, and usable by, residents in wheelchairs. Special cups and noncollapsible straws shall be available when needed by the multiple handicapped. If the drinking unit employs cups, only single-use, disposable types shall be used.

"(j) Procedures shall be established for:

"(1) monthly weighing of residents, with greater frequency for those with special needs;

"(2) quarterly measurement of height, until the age of maximum growth;

"(3) maintenance of weight and height records; and

"(4) every effort shall be made to assure that residents maintain normal weights.

"(k) Policies and procedures for the care of residents with infections and contagious diseases shall conform to State and local health department regulations.

"(l) Orders prescribing bed rest or prohibiting residents from being taken out-of-doors shall be reviewed by a physician at least every three days.

"(m) Provisions shall be made to furnish and maintain in good repair, and to encourage the use of, dentures, eyeglasses, hearing aids, braces, and so forth, prescribed by appropriate specialists.

"Subchapter V—Grouping and Organization of Living Units

"SEC. 1255. (a) Living unit components or groupings shall be small enough to insure the development of meaningful interpersonal relationships among residents and between residents and staff. The resident-living unit (self-contained unit including sleeping, dining, and activity areas) should provide for not more than sixteen residents. Any deviation from this size should be justified on the basis of meeting the program needs of the

specific residents being served. To maximize development, residents should be grouped within the living unit into program groups of not more than eight. Any deviation from this size should be justified on the basis of meeting the program needs of the specific residents being served.

"(b) Residential units or complexes should house both male and female residents to the extent that this conforms to the prevailing cultural norms. Residents of grossly different ages, developmental levels, and social needs shall not be housed in close physical or social proximity, unless such housing is planned to promote the growth and development of all those housed together. Residents who are mobile-non-ambulatory, deaf, blind, epileptic, and so forth, shall be integrated with peers of comparable social and intellectual development, and shall not be segregated on the basis of their handicaps.

"(c) The living unit shall not be a self-contained program unit, and living unit activities shall be coordinated with recreation, educational, and habilitative activities in which residents engage outside the living unit, unless contraindicated by the specific program needs of the particular residents being served. Each program group should be assigned a specific person, who has responsibility for providing an organized, developmental program of physical care, training, and recreation.

"(d) Residents shall be allowed free use of all living areas within the living unit, with due regard for privacy and personal possessions. Each resident shall have access to a quiet, private area where he can withdraw from the group when not specifically engaged in structured activities.

"(e) Outdoor active play or recreation areas shall be readily accessible to all living units.

"Subchapter VI—Resident-Living Staff

"SEC. 1256. (a) There shall be sufficient, appropriately qualified, and adequately trained personnel to conduct the resident-living program, in accordance with the standards specified in this document. Resident-living personnel shall be administratively responsible to a person whose training and experience is appropriate to the program. The title applied to the individuals who directly interact with residents in the living units should be appropriate to the kind of residents with whom they work and the kind of interaction in which they engage. The personnel who staff the living units may be referred to by a variety of terms, such as attendants, child care workers, or cottage parents. The term 'psychiatric aid' may be appropriate for a unit serving the emotionally disturbed, but not for a cottage of well-adjusted children. The title of "child care worker" may be appropriate for a nursery school group, but not for an adult unit. Nurses' aides are appropriate for units serving sick residents but not well ones.

"(b) The attire of resident-living personnel should be appropriate to the program of the unit in which they work, and consistent with attire worn in the community.

"(c) When resident-living units are organized as recommended in subchapter V, and designed as stipulated in subchapter VII, the staff-resident ratios for twenty-four-hour, seven-day coverage of such units by resident-living personnel, or for equivalent coverage, should be as follows:

"(1) for medical and surgical units, and for units including infants, children (to puberty), adolescents requiring considerable adult guidance and supervision, severely and profoundly retarded, moderately and severely physically handicapped, and residents who are aggressive, assaultive, or security risks, or who manifest severely hyperactive or psychotic-like behavior—

"(A) first shift, 1 to 4;

"(B) second shift, 1 to 4;

"(C) third shift, 1 to 8; and

"(D) overall ratio (allowing for a five-day workweek plus holiday, vacation, and sick time), 1 to 1;

"(2) for units serving moderately retarded adolescents and adults requiring habit training—

"(A) first shift, 1 to 8;

"(B) second shift, 1 to 4;

"(C) third shift, 1 to 8; and

"(D) overall ratio, 1 to 1.25;

"(3) for units serving residents in vocational training programs and adults who work in sheltered employment situations—

"(A) first shift, 1 to 16;

"(B) second shift, 1 to 8;

"(C) third shift, 1 to 16; and

"(D) overall ratio, 1 to 2.5.

"(d) Regardless of the organization or design of resident-living units, the overall staff-resident ratios should be as stipualted above. Regardless of the organization or design of resident-living units, the overall staff-resident ratios for the categories defined above shall not be less than 1 to 2, 1 to 2.5, and 1 to 5, respectively.

"Subchapter VII—Design and Equipage of Living Units

"SEC. 1257. (a) The design, construction, and furnishing of resident-living units shall be—

"(1) appropriate for the fostering of personal and social development;

"(2) appropriate to the program;

"(3) flexible enough to accommodate variations in program to meet changing needs of residents; and

"(4) such as to minimize noise and permit communication at normal conversation levels.

"(b) The interior design of living units shall simulate the functional arrangements of a home to encourage a personalized atmosphere for small groups of residents, unless it has been demonstrated that another arrangement is more effective in maximizing the human qualities of the specific residents being served. There shall be a minimum of eighty square feet of living, dining, or activity space for each resident. This space shall be arranged to permit residents to participate in different kinds of activities, both in groups and singly. Furniture and furnishings shall be safe, appropriate, comfortable, and home-like.

"(c) Bedrooms shall:

"(1) be on or above street grade level;

"(2) be outside rooms;

"(3) accommodate from one to four residents;

"(4) provide at least sixty square feet per resident in multiple sleeping rooms, and not less than eighty square feet in single rooms.

"(5) partitions defining each bedroom shall extend from floor to ceiling;

"(6) doors to bedrooms—

"(A) should not have vision panels;

"(B) should not be lockable, except where residents may lock their own bedroom doors, as consistent with their program;

"(7) there shall be provision for residents to mount pictures on bedroom walls (for example by means of pegboard or cork strips), and to have flowers, artwork, and other decorations;

"(8) each resident shall be provided with—

"(A) a separate bed of proper size and height for the convenience of the resident;

"(B) a clean, comfortable mattress;

"(C) bedding appropriate for weather and climate;

"(9) each resident shall be provided with—

"(A) appropriate individual furniture, such as a chest of drawers, a table or desk, and an individual closet with clothes racks and shelves accessible to the resident;

"(B) a place of his own for personal play equipment and individually prescribed prosthetic equipment; and

"(10) space shall be provided for equipment for daily out-of-bed activity for all residents not yet mobile, except those who have a short-term illness, or those very few for whom out-of-bed activity is a threat to life.

"(d) Suitable storage shall be provided for personal possessions, such as toys, books, pictures, games, radios, arts and crafts materials, toiletries, jewelry, letters, and other articles and equipment, so that they are accessible to the residents for their use. Storage areas shall be available for off-season personal belongings, clothing, and luggage.

"(e) Toilet areas, clothes closets, and other facilities shall be located and equipped so as to facilitate training toward maximum self-help by residents, including the severely and profoundly retarded and the multiple handicapped as follows:

"(1) water closets, showers, bathtubs, and lavatories shall approximate normal patterns found in homes, unless specifically contraindicated by program needs;

"(2) toilets, bathtubs, and showers shall provide for individual privacy (with partitions and doors), unless specifically contraindicated by program needs;

"(3) water closets and bathing and toileting appliances shall be equipped for use by the physically handicapped;

"(4) there shall be at least one water closet of appropriate size for each six residents;

"(A) at least one water closet in each living unit shall be accessible to residents in wheelchairs;

"(B) each water closet shall be equipped with a toilet seat;

"(C) toilet tissue shall be readily accessible at each water closet;

"(5) there shall be at least one lavatory for each six residents and one lavatory shall be accessible to and usable by residents in wheelchairs;

"(6) there shall be at least one tub or shower for each eight resident;

"(7) there shall be individual racks or other drying space for washcloths and towels; and

"(8) larger, tilted mirrors shall be available to residents in wheelchairs.

"(f) Provisions for the safety, sanitation, and comfort of the residents shall comply with the following requirements:

"(1) each habitable room shall have direct outside ventilation by means of windows, louvers, air conditioning, or mechanical ventilation horizontally and vertically;

"(2) each habitable room shall have at least one window, and the window space in each habitable room should be at least one-eighth (12½ per centum) of the floor space;

"(A) each resident unit of eight shall have at least one glazed area low enough so that a child in normal day activities has horizontal visual access to the out-of-doors;

"(B) the type of glass or other glazing material used shall be appropriate to the safety needs of the residents of the unit;

"(3) floors shall provide a resilient, comfortable, attractive, nonabrasive, and slip-resistant surface. Carpeting used in units serving residents who crawl or creep shall be nonabrasive;

"(4) temperature and humidity shall be maintained within a normal comfort range by heating, air conditioning, or other means. The heating apparatus employed shall not constitute a burn hazard to the residents;

"(5) the temperature of the hot water at all taps to which residents have access shall be controlled, by the use of thermostatically controlled mixing valves or by other means, so that it does not exceed 110 degrees Fahrenheit. Mixing valves shall be equipped with safety alarms that provide both auditory and visual signals of valve failure;

"(6) emergency lighting of stairs and exits, with automatic switches, shall be provided in units housing more than fifteen residents;

"(7) there shall be adequate clean linen

and dirty linen storage areas for each living unit. Dirty linen and laundry shall be removed from the living unit daily; and

"(8) laundry and trash chutes are discouraged, but if installed, such chutes shall comply with regulations prescribed by the Secretary.

"Chapter 3.—PROFESSIONAL AND SPECIAL PROGRAMS AND SERVICES

"SUBCHAPTER I—INTRODUCTION

"SEC. 1258. (a) In addition to the resident-living services detailed in section 2, residents shall be provided with the professional and special programs and services detailed in this section, in accordance with their needs for such programs and services.

"(b) The professional and special programs and services detailed herein may be provided by programs maintained or personnel employed by the residential facility, or by formal arrangements between the facility and other agencies or persons, whereby the latter will provide such programs and services to the facility's residents as needed.

"(c) In accordance with the normalization principle, all professional services to the retarded should be rendered in the community, whenever possible, rather than in a residential facility, and where rendered in a residential facility, such services must be at least comparable to those provided the nonretarded in the community.

"(d) Programs and services provided by the facility, or to the facility by agencies outside it, or by persons not employed by it, shall meet the standards for quality of service as stated in this section. The facility shall require that services provided its residents meet the standards for quality of services as stated in this section, and all contracts for the provision of such services shall stipulate that these standards will be met.

"SEC. 1159. (a) Individuals providing professional and special programs and services to residents may be identified with the following professions, disciplines, or areas of service:

"(1) audiology;

"(2) dentistry (including services rendered by licensed dentists, licensed dental hygienists, and dental assistants);

"(3) education;

"(4) food and nutrition (including services rendered by dietitians and nutritionists);

"(5) library services;

"(6) medicine (including services rendered by licensed physicians, whether doctors of medicine or doctors of osteopathy, licensed podiatrists, and licensed optometrists);

"(7) music, art, dance, and other activity therapies;

"(8) nursing;

"(9) occupational therapy;

"(10) pharmacy;

"(11) physical therapy;

"(12) psychology;

"(13) recreation;

"(14) religion (including services rendered by clergy and religious educators);

"(15) social work;

"(16) speech pathology;

"(17) vocational rehabilitation counseling; and

"(18) volunteer services.

"(b) Interdisciplinary teams for evaluating the resident's needs, planning and individualized habilitation program to meet identified needs, and periodically reviewing the resident's response to his program and revising the program accordingly, shall be constituted of persons drawn from, or representing, such of the aforementioned professions, disciplines, or service areas as are relevant in each particular case.

"(c) Since many identical or similar services or functions may competently be rendered by individuals of different professions, the Standards in the following subsections shall be interpreted to mean that necessary services are to be provided in efficient and competent fashion, without regard to the professional identifications of the persons providing them, unless only members of a single profession are qualified or legally authorized to perform the stated service. Services listed under the duties of one profession may, therefore, be rendered by members of other professions who are equipped by training and experience to do so.

"(d) Regardless of the means by which the facility makes professional services available to its residents, there shall be evidence that members of professional disciplines work together in cooperative, coordinated, interdisciplinary fashion to achieve the objectives of the facility.

"SEC. 1160. Programs and services and the pattern of staff organization and function within the facility shall be focused upon serving the individual needs of residents and should provide for—

"(1) comprehensive diagnosis and evaluation of each resident as a basis for planning programing and management;

"(2) design and implementation of an individualized habilitation program to effectively meet the needs of each resident;

"(3) regular review, evaluation, and revision, as necessary, of each individual's habilitation program;

"(4) freedom of movement of individual residents from one level of achievement to another, within the facility and also out of the facility, through training, habilitation, and placement; and

"(5) an array of those services that will enable each resident to develop to his maximum potential.

"SUBCHAPTER II—DENTAL SERVICES

"SEC. 1261. (a) Dental services shall be provided all residents in order to maximize their general health by—

"(1) maintaining an optimal level of daily oral health, through preventive measures; and

"(2) correcting existing oral diseases.

"(b) Dental services shall be rendered—

"(1) directly, through personal contact with all residents by dentists, dental hygienists, dental assistants, dental health educators, and oral hygiene aides, as appropriate to the size of the facility; and

"(2) indirectly, through contact between dental staff and other personnel caring for the residents, in order to maintain their optimal oral health.

"(c) Dental services available to the facility should include—

"(1) dental exaluation and diagnosis;

"(2) dental treatment;

"(3) comprehensive preventive dentistry programs;

"(4) education and training in the maintenance of oral health;

"(5) participation, as appropriate, by dentists and dental hygienists in the continuing evaluation of individual residents by interdisciplinary teams, to initiate, monitor and follow up individualized habilitation programs;

"(6) consultation with, or relating to—

"(A) residents;

"(B) families of residents;

"(C) other facility service and personnel;

"(7) participation on appropriate facility committees; and

"(8) planning and conducting dental research; cooperating in interdisciplinary research; and interpreting, disseminating, and implementing applicable research findings.

"(d) Comprehensive diagnostic services for all residents shall include—

"(1) a complete extra and intraoral examination, utilizing all diagnostic aids necessary to properly evaluate the resident's oral condition, within a period of one month following admission;

"(2) provision for adequate consultation in dentistry and other fields, so as to properly evaluate the ability of the patient to accept the treatment plan that results from the diagnosis; and

"(3) a recall system that will assure that each resident is reexamined at specified intervals in accordance with his needs, but at least annually.

"(e) Comprehensive treatment services for all residents shall include—

"(1) provision for dental treatment, including the dental specialities of pedodontics, orthodontics, periodontics, prosthodontics, endodontics, oral surgery, and oral medicine as indicated; and

"(2) provision for emergency treatment on a twenty-four-hour, seven-days-a-week basis, by a qualified dentist.

"(f) Comprehensive preventive dentistry programs should include—

"(1) fluoridation of the facility's water supply;

"(2) topical and systemic fluoride therapy as prescribed by the dentist;

"(3) periodic oral prophylaxis, by a dentist or dental hygienist, for each resident;

"(4) provisions for daily oral care, as prescribed by a dentist or dental hygienist, including:

"(A) Toothbrushing and toothbrushing aids, such as disclosing wafers;

"(B) tooth flossing;

"(C) irrigation;

"(D) proper maintenance of oral hygiene equipment;

"(E) monitoring the program to assure its effectiveness; and

"(5) provision, wherever possible, of diets in a form that stimulates chewing and improvement of oral health.

"(g) Education and training in the maintenance of oral health shall include:

"(1) continuing inservice training of living-unit personnel in providing proper daily oral health care for residents;

"(2) providing dental health education to direct-care personnel;

"(3) a dental hygiene program that includes:

"(A) discovery, development, and utilization of specialized teaching techniques that are effective for individual residents;

"(B) imparting information regarding nutrition and diet control measures to residents and staff;

"(C) instruction of classroom teachers and/or students in proper oral hygiene methods;

"(D) motivation of teachers and students to promote and maintain good oral hygiene;

"(E) instruction of residents in living units in proper oral hygiene methods; and

"(4) instruction of parents or surrogates in the maintenance of proper oral hygiene, where appropriate (as in the case of facilities having day programs, or in the case of residents leaving the facility).

"(h) A permanent dental record shall be maintained for each resident. A summary dental progress report shall be entered in the resident's unit record at stated intervals. A copy of the permanent dental record shall be provided a facility to which a resident is transferred.

"(i) When the facility has its own dental staff, there should be a manual that states the philosophy of the dental service and describes all dental procedures and policies. There shall be a formal arrangement for providing qualified and adequate dental services to the facility, including care for dental emergencies on a twenty-four hour, seven-days-a-week basis. A dentist, fully licensed to practice in the State in which the facility is located, shall be designated to be responsible for maintaining standards of professional and ethical practice in the rendering of dental services to the facility. Where appropriate, the facility should, in addition, have available to it, and should utilize, the program-development consultation services

of a qualified dentist who has experience in the field of dentistry for the retarded.

"(j) There shall be available sufficient, appropriately qualified dental personnel, and necessary supporting staff, to carry out the dental services program. All dentists providing services to the facility shall be fully licensed to practice in the State in which the facility is located. All dental hygienists providing services to the facility shall be licensed to practice in the State in which the facility is located. Dental assistants should be certified by the American Dental Assistants Association, or should be enrolled in a program leading to certification. Dental health educators shall have a thorough knowledge of—

"(1) dental health; and

"(2) teaching methods.

"(k) Oral hygiene aides, who may supplement and promote the proper daily oral care of residents, through actual participation and development of new methods in the tooth-brushing program, or in the dissemination of oral hygiene information, should be—

"(1) thoroughly trained in current concepts and procedures of oral care; and

"(2) trained to recognize abnormal oral conditions.

"(l) Supporting staff should include, as appropriate to the program—

"(1) receptionists;

"(2) clerical personnel to maintain current dental records;

"(3) dental laboratory technicians certified by the Dental Laboratory Association;

"(4) escort aides; and

"(5) janitorial or housekeeping personnel.

"(m) All dentists providing service to the facility shall adhere to the code of ethics published by the American Dental Association.

"SEC. 1162. (a) Appropriate to the size of the facility, a continuing education program shall be provided that is designed to maintain and improve the skills and knowledge of its professional dental personnel, through means such as—

"(1) preceptor or other orientation programs;

"(2) participation in seminars, workshops, conferences, institutes, or college or university courses, to the extent of at least sixty clock hours annually for each dental professional, in accordance with the standards of the American Dental Association and its component societies;

"(3) study leave;

"(4) participation in the activities of professional organizations that have as their goals the furtherance of expertise in the treatment of the handicapped;

"(5) access to adequate library resources, including current and relevant books and journals in dentistry, dental hygiene, dental assisting, and mental retardation;

"(6) encouragement of dentists to qualify themselves for staff privileges in hospitals; and

"(7) sharing of information concerning dentistry in its relationship with mental retardation, as by publication.

"(b) To enrich and stimulate the facility's dental program, and to facilitate its integration with community services, the facility should affiliate with, and provide educational experiences for the dental-career students of, dental schools, universities, colleges, technical schools, and hospitals, whenever the best interests of the facility's residents are thereby served.

"(c) There shall be adequate space, facilities, and equipment to meet the professional, educational, and administrative needs of the dental service. General anesthesia facilities for dental care shall be available. The services of a dental laboratory certified by the Dental Laboratory Association shall be available. Appropriate dental consultation shall be employed in the planning, design, and equipage of new dental facilities, and in the modification of existing facilities. All dental facilities shall be free of architectural barriers for physically handicapped residents.

"SUBCHAPTER III—EDUCATIONAL SERVICES

"SEC. 1163. (a) Educational services, defined as deliberate attempts to facilitate the intellectual, sensorimotor, and affective development of the individual, shall be available to all residents, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps. There shall be a written statement of educational objectives that are consistent with the facility's philosophy and goals. The principle that learning begins at birth shall be recognized, and the expertise of early childhood educators shall be integrated into the interdisciplinary evaluation and programing for residents.

"(b) Educational services available to the facility should include—

"(1) establishment and implementation of individual educational programs providing:

"(A) continuous evaluation and assessment of the individual;

"(B) programing for the individual;

"(C) instruction of individuals and groups;

"(D) evaluation and improvement of instructional programs and procedures;

"(2) participation in program development services, including those relating to:

"(A) resident habilitation;

"(B) staff training;

"(C) community activities;

"(3) consultation with, or relating to:

"(A) other programs for residents and staff;

"(B) parents of residents;

"(C) administration and operation of the facility;

"(D) the community served by the facility; and

"(4) research relating to educational programs, procedures, and techniques; and the interpretation, dissemination, and application of applicable research findings.

"(c) Where appropriate, an educator shall be a member of the interdisciplinary teams or groups concerned with—

"(1) the total programing of each resident; and

"(2) the planning and development of the facility's programs for residents.

"(d) Individual educational evaluations of residents shall:

"(1) commence with the admission of the resident;

"(2) be conducted at least annually;

"(3) be based upon the use of empirically reliable and valid instruments, whenever such tools are available;

"(4) provide the basis for prescribing an appropriate program of learning experiences for the resident;

"(5) provide the basis for revising the individual prescription as needed;

"(6) the reporting and dissemination of evaluation results shall be done in such a manner as to—

"(A) render the content of the report meaningful and useful to its intended recipient and user; and

"(B) promptly provide information useful to staff working directly with the resident.

"(e) There shall be written educational objectives for each resident that are—

"(1) based upon complete and relevant diagnostic and prognostic data;

"(2) stated in specific behavioral terms that permit the progress of the individual to be assessed; and

"(3) adequate for the implementation, continuing assessment, and revision, as necessary, of an individually prescribed program.

"(f) There shall be evidence of educational activities designed to meet the educational objectives set for every resident. There shall be a functional educational record for each resident, maintained by, and available to, the educator.

"(g) There shall be appropriate programs to implement the facility's educational objectives. Wherever local resources permit and the needs of the resident are served, residents should attend educational programs in the community. Educable and trainable residents shall be provided an educational program of a quality not less than that provided by public school programs for comparable pupils, as regards:

"(1) physical facilities;

"(2) qualifications of personnel;

"(3) length of the school day;

"(4) length of school year;

"(5) class size;

"(6) provision of instructional materials and supplies; and

"(7) availability of evaluative and other ancillary services.

"(h) Educational programs shall be provided severely and profoundly retarded residents, and all other residents for whom educational provisions may not be required by State laws, irrespective of age or ability.

"(i) Appropriate educational programs shall be provided residents with hearing, vision, perceptual, or motor impairments, in cooperation with appropriate staff.

"(j) Educational programs should include opportunities for physical education, health education, music education, and art education, in accordance with the needs of the residents being served.

"(k) A full range of instructional materials and media shall be readily accessible to the educational staff of the facility.

"(l) Educational programs shall provide coeducational experiences. Learning activities in the classroom shall be coordinated with activities of daily living in the living units and with other programs of the facility and the community. The facility shall seek reciprocal services to and from the community, within the bounds of legality and propriety. An educational program operated by a facility shall seek consultation from educational agencies not directly associated with the facility.

"SEC. 1164. (a) There shall be available sufficient, appropriately qualified eduational personnel, and necessary supporting staff, to carry out the educational programs. Delivery of educational services shall be the responsibility of a person who is eligible for—

"(1) certification as a special educator of the mentally retarded; and

"(2) the credential required for a comparable supervisory or administrative position in the community.

"(b) Teachers shall be provided aides or assistants, as needed. The facility's educators shall adhere to a code of ethics prescribed by the Secretary. Appropriate to the nature and size of the facility, there shall be an ongoing program for staff development specifically designed for educators. Staff members shall be encouraged to participate actively in professional organizations related to their responsibilities.

"(c) To enrich and stimulate the facility's educational program, and to facilitate its integration with community services, opportunities for internships, student teaching, and practicum experiences should be made available, in cooperation with university teacher-training programs, whenever the best interests of the residents are thereby served.

"SUBCHAPTER IV—FOOD AND NUTRITION SERVICES

"SEC. 1265. (a) Food and nutrition services shall be provided in order to—

"(1) insure optimal nutritional status of each resident, thereby enhancing his physical, emotional, and social well-being; and

"(2) provide a nutritionally adequate diet, in a form consistent with developmental

level, to meet the dietary needs of each resident.

"(b) There shall be a written statement of policies and procedures that—

"(1) describes the implementation of the stated objectives of the food and nutrition services;

(2) governs the functions and programs of the food and nutrition services;

"(3) is formulated and periodically reviewed by professional nutrition personnel;

"(4) is prepared in consultation with other professional staff;

"(5) is consistent with the facility's goals and policies;

"(6) is distributed and interpreted to all facility personnel; and

"(7) complies with State and local regulations.

"(c) Whenever appropriate, the following services should be provided—

"(1) initial and periodic evaluation of the nutritional status of each resident, including—

"(A) determination of dietary requirements and assessments of intake and adequacy through—

"(i) dietary interview;

"(ii) clinical evaluation;

"(iii) biochemical assessment;

"(B) assessment of food service practices;

"(C) assessment of feeding practices, capabilities, and potential;

"(2) maintenance of a continuing and periodically reviewed nutrition record for each resident;

"(3) incorporation of recommendations drawn from the nutrition evaluation into the total management plans for the resident;

"(4) periodic review of implementation of recommendations and of need for modification;

"(5) participation in the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and followup of individualized habilitation programs;

"(6) provision of—

"(A) counseling services to the individual resident;

"(B) reciprocal consultation services with facility staff and students;

"(C) counseling service to residents' families or their surrogates;

"(D) nutrition education, on a continuing basis, for residents, families or surrogates, staff, and students, and development of such programs in coordination with various education programs within the facility and the community;

"(7) coordination of nutrition programs between the facility and the community, including—

"(A) development of awareness of available programs in nutrition;

"(B) development of needed nutrition programs;

"(C) encouragement of participation of professionals and students in nutrition programs for the mentally retarded; and

"(8) development, coordination, and direction of nutrition research, as well as cooperation in interdisciplinary research.

"(d) Food services shall include—

"(1) menu planning;

"(2) initiating food orders or requisitions;

"(3) establishing specifications for food purchases, and insuring that such specifications are met;

"(4) storing and handling of food;

"(5) food preparation;

"(6) food serving;

"(7) maintaining sanitary standards in compliance with State and local regulations; and

"(8) orientation, training, and supervision of food service personnel.

"(e) The food and nutrition needs of residents shall be met in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, adjusted for age, sex, activity, and disability, through a nourishing, well-balanced diet. The total food intake of the residents should be evaluated, including food consumed outside of as well as within the facility.

"(f) Menus shall be planned to meet the needs of the residents in accordance with subsection (e). Menus shall be written in advance. The daily menu shall be posted in food preparation areas. When changes in the menu are necessary, substitutions should be noted and should provide equal nutritive values. Menus shall provide a sufficient variety of foods served in adequate amounts at each meal, and shall be: (1) Different for the same days of each week; (2) Adjusted for seasonal changes. Records of menus as served shall be filed and maintained for at least thirty days. At least a one-week supply of staple foods and a two-day supply of perishable foods shall be maintained on the premises. Records of food purchased for preparation shall be filed and maintained for at least thirty days. A file of tested recipes adjusted to appropriate yield should be maintained.

"(g) Foods shall be prepared by methods that—

"(1) conserve nutritive value;

"(2) enhance flavor; and

"(3) enhance appearance.

"(h) Food shall be prepared, stored, and distributed in a manner that assures a high quality of sanitation. Effective procedures for cleaning all equipment and work areas shall be followed consistently. Dishwashing and panwashing shall be carried out in compliance with State and local health codes. Handwashing facilities, including hot and cold water, soap, and paper towels, shall be provided adjacent to work area.

"(i) When food is transported, it shall be done in a manner that maintains proper temperature, protects the food from contamination and spoilage, and insures the preservation of nutritive value. Food storage procedures shall meet State and local regulations. Dry or staple food items shall be stored at least twelve inches above the floor, in a ventilated room not subject to sewage or waste water backflow, or contamination by condensation, leakage, rodents, or vermin. Perishable foods shall be stored at the proper temperatures to preserve nutritive values. Food served to residents and not consumed shall be discarded.

"(j) There shall be a sufficient number of competent personnel to fulfill the objectives of the food and nutrition services, including—

"(1) nutritionists or dietitians;

"(2) other food service personnel;

"(3) clerical personnel;

"(4) depending upon the size and scope of the facility, food and nutrition services shall be directed by one of the following—

"(A) a dietitian who is eligible for membership in the American Dietetic Association, and preferably eligible for registration by the association, or a nutritionist who has a master's degree in foods, nutrition, or public health nutrition, who is eligible for membership in the American Dietetic Association, and preferably eligible for registration by the association, and who, unless employed by a facility that also employs a dietitian, has had experience in institutional food management;

"(B) a food service manager who has a bachelor's degree in foods, nutrition, or a related field, and who receives consultation from a dietary consultant;

"(C) a responsible person who has had training and experience in meal management and service, and who receives consultation from a dietary consultant; and

"(D) the person responsible for food and nutrition services should have had training or experience in providing services to the mentally retarded, and should be sensitive to their needs;

"(5) the dietary consultant shall—

"(A) be eligible for membership in the American Dietetic Association, and preferably eligible for registration by the association;

"(B) serve on a regularly scheduled and frequent basis when no full-time dietitian is available; and

"(6) every person engaged in the preparation and serving of food in the facility shall have a valid food handler's permit, as required by State or local regulations. No person who is afflicted with a disease in a communicable stage, or who is a carrier of a communicable disease, or who has an open wound, shall work in any food service operation. Every person engaged in the preparation and serving of food in the facility shall annually be medically determined to be free of any disease in a communicable stage. All dietitians and nutritionists shall adhere to the code of ethics of the American Dietetic Association.

"(k) Appropriate to the size of the facility, an ongoing service training program shall be conducted that is designed to improve and maintain the skills of its food and nutrition services staff, through means such as—

"(1) seminars, workshops, conferences, and institutes;

"(2) college and university courses;

"(3) participation in professional organizations;

"(4) participation in interdisciplinary groups;

"(5) visitations to other facilities; and

"(6) access to adequate library resources, including current and relevant books and journals in nutrition and mental retardation.

"(l) Opportunities should be provided, in cooperation with university and other training programs, for students to obtain practical experience, under appropriate supervision, whenever the best interests of the residents are thereby served.

"(m) There shall be adequate space, facilities, and equipment to fulfill the professional, educational, administrative, operational, and research needs of the food and nutrition services. Dining areas and facilities for food storage, preparation, and distribution shall be—

"(1) designed in cooperation with a dietitian and, when appropriate, with assistance from a qualified food service and equipment consultant;

"(2) adequate for the storage and preservation of food;

"(3) in compliance with State and local sanitation and other requirements;

"(4) adequate for the preparation and serving of food; and

"(5) adequate for sanitary storage for all dishes and equipment.

"Subchapter V—Library Services

"Sec. 1266. (a) Library services, which include the location, acquisition, organization, utilization, retrieval, and delivery of materials in a variety of media, shall be available to the facility, in order to support and strengthen its total habilitation program by providing complete and integrated multimedia information services to both staff and residents. Library services shall make available to the facility the resources of local, regional, State, and National library systems and networks. Library services shall be available to all residents, regardless of chronological age, degree of retardation, level of communication skills, or accompanying disabilities or handicaps.

"(b) Library services to residents shall be rendered—

"(1) directly, through personal contact between library staff and residents;

"(2) indirectly, through contact between librarians and other persons working with the residents, designed to—

"(A) maintain an atmosphere that recog-

nizes the rights of the resident to access to information and to personal use of library materials appropriate to his level of development in communication skills or to his desire to confrom to peer groups; and

"(B) enhance interpersonal relationships between direct-care workers and residents, through the mutual enjoyment of written, recorded, or oral literature appropriate to the resident's level of development and preference.

"(c) Library services available to residents should include—

"(1) assistance in team evaluation and assessment of the individual's level of development in communication skills, such as listening, comprehension, reading, and ability to respond to stimuli in a wide range and variety of media;

"(2) provision of informational, recreational, and educational materials appropriate to individual residents at all stages of development in communication skills, including media to stimulate sensory development, both in the library and in the living unit. Such materials should include, but need not be limited to—

"(A) books, including picture, juvenile, adult, high interest-low vocabulary, large print, and talking books;

"(B) magazines, including juvenile, adult pictorial, and magazines on talking books;

"(C) newspapers;

"(D) audiovisual media, including films, filmstrips, slides, video tapes, audio tapes, and records and appropriate equipment;

"(E) graphics;

"(F) experiant materials, such as manipulative materials, toys and games, realia, and animals;

"(3) development of programs for individual or group enjoyment, for development of communication skills, for encouragement and satisfaction of natural human curiosity about anything, including sex and the facts of life, and for general enhancement of self-image. These programs should include, but need not be limited to—

"(A) storytelling, with listener participation through games or other activities;

"(B) reading aloud, including 'reading' pictures;

"(C) film or filmstrip programs;

"(D) listening to recorded media;

"(E) media discussion groups;

"(F) library clubs;

"(G) touching, browsing, exploring, or naming sensory stimuli;

"(H) creative writing, including group composition through dictation, tape recording, etc.;

"(I) puppetry, including the making of puppets;

"(J) creative dramatics;

"(4) opportunities to visit, and make use of, community library services and facilities in the same manner, and on the same terms, as any resident of the community;

"(5) referral services to the community library most convenient to place of residence or employment, when the resident leaves the facility; and

"(6) active participation in, and encouragement of, library programs related to the educational and habilitative services of the facility, including the supplementation, support, and reinforcement of school programs.

"(d) Librarians providing service to residents should act as advocates on their behalf if facility policies or community library policies interfere with the retarded person's freedom to read materials of his own choosing or if they deny or abrogate his right to information or access to library services of any kind, in accordance with the Library Bill of Rights adopted by the American Library Association.

"(e) Library services to staff should include—

"(1) selection, acquisition, organization, classification, cataloging, procurement through interlibrary loan, and dissemination of informational, educational, and instructional library materials and audiovisual equipment;

"(2) provision of reference and bibliographic materials and services, literature searches, bibliography compilation, indexing and abstracting services, and other guides to the literature relevant to mental retardation;

"(3) acquisition of material for evaluation for purchase;

"(4) provision of a current awareness program to alert staff to new materials and developments in their fields;

"(5) orientation to library services and functions, including continuing instruction and assistance in the use of informational sources, and participation in general orientation to the facility;

"(6) provision of written and oral translation services; and

"(7) cooperation in inservice training programs by working with subject specialists and by recommending, providing or producing materials in various media.

"(f) Library services to the facility may include—

"(1) provision of informational materials about the facility and mental retardation in general, through an organized collection of resources;

"(2) assistance with such public relation functions as preparing brochures, program statements, annual reports, writing news releases and feature stories, and offering editorial and research assistance to staff preparing professional books and papers; and

"(3) assistance in preparing grant applications and report writing.

"(g) When library services are provided in the facility—

"(1) there shall be a written statement of objectives that make possible a well-conceived, comprehensive, long-range program of library development, consistent with the overall goals of the facility, adapted to the needs and aptitudes of the residents, and designed to be modified as the program of the facility changes;

"(2) there shall be a separate budget, adequate to carry out the program in accordance with stated goals and objectives;

"(3) library services shall be placed within the organizational structure of the facility in such a way as to be available to, and maximally utilized by, all relevant services and programs;

"(4) there shall be written policies covering the library's day-to-day activities, and the coordination of these activities with those of other services of the facility and with related activities in the community;

"(5) there shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to carry out the program in accordance with stated goals and objectives;

"(6) a qualified librarian shall be responsible for all library services. Where the level of need for services does not require the full-time employment of a professional librarian, coverage may be through the use of consultant service or supervisory personnel, through the pooling of resources and the sharing of services by two or more facilities in a geographic area, or through service supplied through a regional library system;

"(7) the librarian shall participate, when appropriate, in the interdisciplinary planning, development, and evaluation of facility programs;

"(8) the librarian should coordinate the purchasing of all print and nonprint materials for the facility, and act as the facility's informed agent in initiating the purchase of print and nonprint materials, and the library should serve as clearing house for such holdings;

"(9) librarians should participate in—

"(A) educating appropriate members of the community, concerning the library needs of residents;

"(B) planning, with community librarians, the utilization of library resources to optimize resident adjustment;

"(C) developing appropriate expectancies and attitudes within community libraries that residents will use;

"(10) appropriate relationships with other libraries and community agencies shall be established to more effectively accomplish the library's service functions;

"(11) appropriate to the size of the facility, there should be a staff development program designed to maintain and improve the skills of library services staff through means such as—

"(A) staff meetings and inservice training;

"(B) seminars, workshops, conferences, and institutes;

"(C) college and university courses;

"(D) professional organizations;

"(E) participation in interdisciplinary groups;

"(F) visits to other facilities;

"(G) access to relevant professional literature;

"(12) whenever appropriate, the library should provide training for beginning librarians, further the orientation and training of library assistants, technicians, or volunteers, and serve as a training center for library institutes or workshops;

"(13) library services should be located so as to be convenient and accessible to all users;

"(14) all library functions should be integrated within a centralized location, whenever this does not act as a barrier to accessibility for any group;

"(15) space, physical facilities, and equipment shall be adequate to carry out the program, and shall comply with the standards for library services in health care institutions published by the Association of Hospital and Institution Libraries of the American Library Association;

"(16) the hours during which the library is open should meet the requirements of the majority of the library's users, and should be as generous as possible; and

"(17) users of library services shall participate in the planning and evaluation of library programs, by means such as advisory committees.

"(h) If library services are provided outside the facility, there shall be a formal agreement that stipulates lines of communication, areas of responsibility, and kinds of service.

"(i) The individual responsible for maintaining standards of professional and ethical practice in the rendering of library services to the facility—

"(1) shall have a master's degree in library science from a school accredited by the American Library Association; and

"(2) should have preparation in a field relevant to work with the mentally retarded.

"(j) Individuals rendering library services, including librarians, media specialists, library and media technicians, supportive staff, and volunteers, shall have qualifications appropriate to their responsibilities and duties.

"Subchapter VI—Medical Services

"SEC. 1167. (a) Medical services shall be provided in order to—

"(1) achieve and maintain an optimal level of general health for each resident;

"(2) maximize normal function and prevent disability; and

"(3) facilitate the optimal development of each resident.

"(b) Medical services shall be rendered—

"(1) directly, through personal contact between physicians and residents; and

"(2) indirectly, through contact between physicians and other persons working with the residents, which is designed to main-

tain an environment that recognizes and meets the health, hygiene, sanitary, and nutritional needs of the residents.

"(c) Medical services available to the residential facility should include—

"(1) evaluation and diagnosis;

"(2) treatment;

"(3) program development services, including those relating to—

"(A) resident habilitation;

"(B) staff training;

"(C) community participation;

"(4) consultation with, or relating to—

"(A) residents;

"(B) families of residents;

"(C) the administration and operation of the facility;

"(5) medical and ancillary staff training; and

"(6) preventive health services for residents and staff.

"(d) The services of medical and surgical hospitals that are accredited by the Joint Commission on Accreditation of Hospitals shall be available to residents. Only pathology, clinical laboratory, and radiologic services that meet the hospital accreditation standards of the Joint Commission on Accreditation of Hospitals shall be utilized. Electroencephalographic services shall be available as necessary. There shall be evidence, such as may be provided by a record of the deliberations of a utilization review committee, that such hospital and laboratory services are utilized in accordance with proper professional standards.

"(e) Physicians shall participate when appropriate—

"(1) the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and followup of individualized habilitation programs;

"(2) the development for each resident of a detailed, written statement of—

"(A) case management goals, encompassing the areas of physical and mental health, education, and functional and social competence; and

"(B) a management plan detailing the various habilitation or rehabilitation modalities that are to be applied in order to achieve the specified goals, with clear designation of responsibility for implementation.

"(f) The management plan shall ordinarily include, but not necessarily be limited to—

"(1) the resident's day-to-day activity program;

"(2) physical rehabilitation to prevent and correct deformity, to enhance mobility, and to facilitate training in self-help skills;

"(3) provision for adaptive equipment necessary to the rehabilitation plan;

"(4) an educational program;

"(5) a vocational and occupational program;

"(6) stated intervals for review of the management plan; and

"(7) short- and long-term goals, including criteria for release.

"(g) Statement of treatment goals and management plans shall be reviewed and updated—

"(1) as needed, but at least annually; and

"(2) to insure continuing appropriateness of the goals, consistency of management methods with the goals, and the achievement of progress toward the goals.

"(h) Special attention shall be given those residents who, without active intervention, are at risk of further loss of function, by means that include—

"(1) early diagnosis of disease;

"(2) prompt treatment in the early stages of disease;

"(3) limitation of disability by arresting the disease process;

"(4) prevention of complications and sequelae; and

"(5) rehabilitation services to raise the affected individual to his greatest possible level of function, in spite of his handicap, by maximizing the use of his remaining capabilities.

"(i) Preventive health services to residents shall include—

"(1) means for the prompt detection and referral of health problems, through adequate medical surveillance, periodic inspection, and regular medical examination;

"(2) annual physical examinations, that include—

"(A) examination of vision and hearing;

"(B) routine screening laboratory examinations, as determined by the physician, and special studies when the index of suspicion is high;

"(3) maintenance of a graphic record of height and weight for each resident, in a form that permits ready reference to standardized norms;

"(4) immunizations, using as a guide the recommendations of the United States Public Health Service Advisory Committee on Immunization Practices and of the Committee on the Control of Infectious diseases of the American Academy of Pediatrics;

"(5) tuberculosis control, in accordance with the recommendations of the American College of Chest Physicians and/or the section on diseases of the chest of the American Academy of Pediatrics, as appropriate to the facility's population; and

"(6) reporting of communicable diseases and infections in accordance with law.

"(j) Preventive health services to staff shall include—

"(1) preemployment physical examinations; and

"(2) surveys for the detection and prevention of communicable diseases.

"(k) There shall be a formal arrangement for qualified medical care for the facility, including care for medical emergencies on a twenty-four-hour, seven-day-a-week basis. A prysician, fully licensed to practice medicine in the State in which the facility is located, shall be designated to be responsible for—

"(1) maintaining standards of professional and ethical practice in the rendering of medical services in the facility; and

"(2) maintaining the general health conditions and practices of the facility and/or system of health services.

Each resident shall have a personal (primary) physician, who maintains familiarity with his state of health and with conditions within the residential living unit that bear on his health. Qualfied medical specialists of recognized professional ability shall be—

"(1) available for a broad range of specialized care and consultation; and

"(2) appropriately used.

"(l) Appropriate to the size of the facility, an ongoing inservice training program shall be conducted that is designed to maintain and improve the medical skills of its physicians and their knowledge of developmental disabilities, through methods such as staff seminars, outside speakers, attendance at professional medical meetings, and informational exchanges with universities and teaching hospitals.

"(m) There shall be adequate space, facilities, and equipment to fulfill the professional, educational, and administrative needs of the medical service.

"Subchapter VII—Nursing Services

"SEC. 1268. (a) Residents shall be provided with nursing services, in accordance with their needs, in order to—

"(1) develop and maintain an environment that will meet their total health needs;

"(2) foster optimal health;

"(3) encourage maximum self-care and independence; and

"(4) provide skilled nursing care as needed.

"(b) There shall be a written statement of nursing philosophy and objectives that are consistent with the purpose of the facility and that given direction to the nursing program. Nursing personnel shall be responsible for the formulation, review, and revision of the philosophy and objectives. The philosophy and objectives shall be—

"(1) distributed to all nursing personnel; and

"(2) made available and interpreted to all other personnel.

"(c) Nursing services should be provided through—

"(1) direct nursing intervention;

"(2) instruction and supervision of facility staff rendering nursing care;

"(3) supporting, counseling, and teaching the resident, his family, and his direct-care staff, at the facility or in the home;

"(4) consultation and followthrough in the interest of the resident; and

"(5) participation on appropriate facility committees.

"(d) Nursing services to residents shall include, when appropriate—

"(1) professional nurse participation in—

"(A) the preadmission evaluation study and plan;

"(B) the evaluation study, program design, and placement of the resident at the time of admission to the facility;

"(C) the periodic reevaluation of the type, extent, and quality of services and programing;

"(D) the development of discharge plans;

"(E) the referral to appropriate community resources;

"(2) services directed toward the promotion of health, including—

"(A) observation and assessment of the developmental function of the resident, within his environment;

"(B) training in habits of personal hygiene;

"(C) family life and sex education;

"(D) safety education;

"(E) control of communicable diseases and infections, through—

"(i) identification and assessment;

"(ii) reporting to medical authority;

"(iii) implementation of appropriate protective and preventive measures;

"(F) development of a written plan for nursing action, in relation to the total habilitation program;

"(G) modifications of the nursing plan, in terms of the resident's daily needs, at least annually for adults and more frequently for children, in accordance with developmental changes;

"(3) participation in the prevention of disability for all residents, with special attention to those residents who exhibit the lowest level of functional development, including—

"(A) nursing assessment of the functional level of development;

"(B) development, implementation, and coordination of a plan to maintain and encourage optimal level of function, with written provision for direct and indirect nursing intervention; and

"(4) planned, intensive nursing care for every resident who is medically determined to be acutely ill.

"(e) A professional nurse shall participate, as appropriate, in the planning and implementation of training of facility personnel. Direct-care personnel shall be trained in—

"(1) detecting signs of illness or dysfunction that warrant medical or nursing intervention;

"(2) basic skills required to meet the health needs and problems of the residents; and

"(3) first aid in the presence of accident or illness.

"(f) Qualified nurses shall be encouraged to become involved in—

"(1) initiating, conducting, and evaluating nursing research;

"(2) evaluating and applying relevant research findings for the benefit of residents;

"(3) formulating the policies governing research in the facility; and

"(4) serving as resource persons to schools of nursing, and to public health nursing and related agencies.

"(g) There shall be available sufficient, appropriately qualified nursing staff, which may include currently licensed practical nurses and other supporting personnel, to carry out the various nursing service activities. A registered professional nurse shall be designated as being responsible for maintaining standards of professional, legal, and ethical practice in the delivery of nursing services according to the needs of the residents. The individual responsible for the delivery of nursing services—

"(1) should have at least a master's degree in nursing; and

"(2) shall have knowledge and experience in the field of developmental disabilities.

"(h) Nursing service personnel at all levels of experience and competence shall be—

"(1) assigned responsibilities in accordance with their qualifications;

"(2) delegated authority commensurate with their responsibility; and

"(3) provided appropriate professional nursing supervision.

"(i) Organized nursing services and professional nurse practitioners should have recourse to qualified and appropriate consultation as needed. All professional nurses shall be familiar with, and adhere to, the code of ethics published by the American Nurses' Association.

"(j) Appropriate to the size of the facility, there shall be an educational program designed to enhance the clinical competencies and the knowledge of developmental disabilities of its professional nursing staff, through means such as—

"(1) staff meetings and inservice training;

"(2) seminars, workshops, conferences, and institutes;

"(3) college and university courses;

"(4) participation in professional organizations;

"(5) participation in interdisciplinary groups;

"(6) visits to other facilities; and

"(7) access to relevant professional literature.

"(k) To enrich and stimulate the facility's nursing program, and to facilitate its integration and community services, educational experiences for students of all types of professional and vocational nursing schools shall be encouraged and defined by a contractual agreement, whenever the best interests of the residents are thereby served.

"(l) There shall be adequate space, facilities, and equipment to fulfill the professional, educational, and administrative needs of the nursing service. Professional nursing consultation shall be included in the design and modification of areas and facilities that will be used by the ill and the physically handicapped.

"Subchapter VIII—Pharmacy Services

"SEC. 1269. (a) In order to contribute to improved resident care and to promote optimal response to drug therapy by the residents, through the full utilization of the knowledge and skills of the pharmacist, pharmacy services shall be provided under the direction of a qualified pharmacist. There shall be a formal arrangement for qualified pharmacy services, including provision for emergency service, by means appropriate to the facility. Such means may include the services of a pharmacist in a local community or hospital pharmacy that meet the standards listed herein, as well as the operation of its own pharmacy by the facility. There shall be a current pharmacy manual that—

"(1) includes policies and procedures, and defines the functions and responsibilities relating to pharmacy services; and

"(2) is revised annually to keep abreast of current developments in services and management techniques.

"(b) There shall be a formulary system, approved by the responsible physician and pharmacist, and by other appropriate facility staff. Copies of the facility's formulary and of the American Hospital Formulary Service shall be located and available, as appropriate to the facility.

"(c) Upon admission of the resident, a medication history of prescription and nonprescription drugs used shall be obtained, preferably by the pharmacist, and this information shall be entered in the resident's record for the information of the staff. The pharmacist shall—

"(1) receive the original, or a direct copy, of the physician's drug treatment order;

"(2) review the drug regimen, and any changes, for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications, and advise the physician of any recommended changes, with reasons and with an alternate drug regimen;

"(3) maintain for each resident an individual record of all medications (prescription and nonprescription) dispensed, including quantities and frequency of refills;

"(4) participate, as appropriate, in the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and followup of individualized habilitation programs;

"(5) participate in any of the following activities that are undertaken in the facility:

"(A) drug research;

"(B) drug utilization review;

"(C) infection and communicable disease committee;

"(D) safety committee;

"(E) patient care incident review; and

"(6) establish quality specifications for drug purchases, and insure that they are met.

"(d) The pharmacist should—

"(1) prepare a drug treatment plan, as prescribed by the attending physician, for inclusion in the resident's record and for use by the staff, that includes—

"(A) the drug product, dosage form, route of administration, and time of administration, including, when appropriate, the time with respect to meals, other drugs, and activities;

"(B) a schedule of laboratory tests necessary to detect adverse reactions;

"(C) nothing of any potential adverse reactions for the staff's information;

"(2) regularly review the record of each resident on medication, and have contact with selected residents with potential problems, noting in the residents' records and reporting to physicians any observations of response to drug therapy, and of adverse reactions and over or underutilization of drugs;

"(3) provide instructions and counseling on the correct use of his drugs, as prescribed by the attending physician, to each resident on home visit and discharge, and/or to his parents;

"(4) provide education and counseling to residents in independent living units on the correct use of their drugs, as prescribed by the attending physician, and on the results expected from correct use and from over or underuse;

"(5) participate in programs for sex education and drug abuse education;

"(6) provide information on the resident's drug regimen to the receiving facility pharmacist, when the resident is transferred, and, with the approval of the resident or his guardian, to the resident's community pharmacist, his private physician, and/or the community mental retardation service when the resident is discharged from the facility, so as to insure continuity of care;

"(7) participate in inservice education programs for professional and direct-care staff;

"(8) orient and teach students in pharmacy and other professions, regarding pharmacy's services to the residents and regarding drugs and their uses; and

"(9) participate in public education and informational programs on mental retardation.

"(e) Where appropriate to the facility, there shall be a pharmacy and therapeutics committee, that includes one or more pharmacists, to develop policy on drug usage in the facility, and to develop and maintain a current formulary. This committee shall meet not less than once every three months. Minutes of the committee meetings shall be kept on file.

"(f) Written policies and procedures that govern the safe administration and handling of all drugs shall be developed by the responsible pharmacist, physician, nurse, and other professional staff, as appropriate to the facility. The compounding, packaging, labeling, and dispensing of drugs, including samples and investigational drugs, shall be done by the pharmacist, or under his direct supervision, with proper controls and records. Each drug shall be identified up to the point of administration. Procedures shall be established for obtaining drugs when the pharmacy is closed.

"(g) The unit dose or individual prescription system of drug distribution should be used. Wherever possible, drugs that require dosage measurement shall be dispensed by the pharmacist in a form ready to be administered to the patient.

"(h) There shall be a written policy regarding the administration of all drugs used by the residents, including those not specifically prescribed by the attending practitioner. There shall be a written policy regarding the routine of drug administration, including standardization of abbreviations indicating dose schedules. Medications shall not be used by any resident other than the one for whom they were issued. Only appropriately trained staff shall be allowed to administer drugs.

"(i) There shall be a written policy governing the self-administration of drugs, whether prescribed or not.

"(j) Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. All drugs shall be kept under lock and key except when authorized personnel are in attendance. The security requirements of Federal and State laws shall be satisfied in storerooms, pharmacies, and living units. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets, at all locations. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security. A perpetual inventory shall be maintained of each narcotic drug in the pharmacy, and in each unit in which such drugs are kept, and inventory records shall show the quantities of receipts and issues and the person to whom issued or administered. If there is a drug storeroom separate from the pharmacy, there shall be a perpetual inventory of receipts and issues of all drugs by such storeroom.

"(k) The pharmacist should review the drugs in each living unit monthly, and should remove outdated and deteriorated drugs and drugs not being used. Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be returned to the pharmacy for proper disposition.

"(l) There shall be automatic stop orders on all drugs. There shall be a drug recall procedure that can be readily implemented. Medication errors and drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. There shall be a procedure for reporting adverse

drug reactions to the Federal Food and Drug Administration. The pharmacist shall be responsible for the storage and dispensing of investigational drugs. The pharmacist shall provide the residential staff with pharmacological and other necessary information on investigational drugs, including dosage form, dosage range, storage, adverse reactions, usage, and contraindications.

"(m) There shall be an emergency kit—

"(1) readily available to each living unit; and

"(2) constituted so as to be appropriate to the needs of its residents.

"(n) Pharmacy services shall be—

"(1) directed by a professionally competent and legally qualified pharmacist who is a graduate of a school of pharmacy accredited by the American Council of Pharmaceutical Education, or its equivalent, and who serves on a full-time or part-time basis, as the activity of the service requires;

"(2) staffed by a sufficient number of competent personnel, consistent with the facility's needs, and including—

"(A) pharmacists necessary to provide comprehensive pharmacy services;

"(B) technicians and clerical personnel to relieve the pharmacist of nonprofessional and clerical duties;

"(3) pharmacists should have had training and/or experience in providing services to the mentally retarded, and should be sensitive to their needs; and

"(4) all pharmacists shall be familiar with, and adhere to, the code of ethics of the American Pharmaceutical Association.

"(o) Appropriate to the size of the facility, there should be a staff development program, designed to maintain and improve the skills of its pharmacy staff through means such as—

"(1) staff meetings and inservice training;

"(2) seminars, workshops, conferences, and institutes;

"(3) college and university courses;

"(4) participation in professional organizations;

"(5) participation in interdisciplinary groups;

"(6) visits to other facilities; and

"(7) access to relevant professional literature.

"(p) The pharmacy serving the facility shall—

"(1) have sufficient space for necessary compounding, dispensing, labeling, and packaging functions;

"(2) have the equipment necessary for compounding, dispensing, issuing, storing, and administrative functions;

"(3) be clean and orderly; and

"(4) contain current pharmaceutical reference material to provide adequate information concerning drugs.

"(q) Space for the storage of drugs in the storeroom, pharmacy, and living units shall be sufficient to prevent crowding of the drugs. There shall be adequate drug preparation areas, that are—

"(1) properly secured;

"(2) well lighted; and

"(3) located so that personnel will not be interrupted when handling drugs.

(r) If the facility operates its own pharmacy, there should be—

"(1) an office for the pharmacist; and

"(2) a private area for instructing and counseling residents and/or parents on the correct use of drugs.

"Subchapter IX—Physical and Occupational Therapy Services

"SEC. 1270. (a) Although this subsection combines standards for physical and occupational therapy, each is a discrete service that complements the other in a manner similar to their relationships with all other health and medically related services. Both services, therefore, shall be provided, or made available to, residents on a continuing basis, as needed. Physical and occupational therapy services shall be provided in order to—

"(1) prevent abnormal development and further disability;

"(2) facilitate the optimal development of each resident; and

"(3) enable the resident to be a contributing and participating member of the community in which he resides.

The facility shall have a written statement of its physical therapy and occupational therapy objectives for its residents, consistent with—

"(1) the needs of the residents;

"(2) currently accepted physical therapy and occupational therapy theories, principles, and goals;

"(3) the philosophy and goals of the facility; and

"(4) the services and resources provided.

Physical and occupational therapy services shall be provided—

"(1) directly, through personal contact between therapists and residents;

"(2) indirectly, through contact between therapists and other persons involved with the residents to:

"(A) create and maintain an atmosphere that recognizes the physical and psychosocial needs of residents and is conducive to the development and maintenance of optimal physical and psychosocial functioning;

"(B) maximize the effectiveness of all programs for residents, through the application of knowledge concerning the development and maintenance of motor performance and behaviors; and

"(C) implement programs for the improvement of physical and psychosocial functioning in all environmental settings.

Physical and occupational therapists shall have a responsibility for organizing and implementing programs to achieve physical and occupational therapy goals throughout the resident's daily activities.

"(b) Physical and occupational therapy services available to the facility should include—

"(1) screening and evaluation of residents;

"(2) therapy with individuals and groups;

"(3) program development services, including those relating to;

"(A) resident habilitation;

"(B) inservice training of professional, direct-care, and other staff;

"(C) community participation;

"(4) consultation with, or relating to—

"(A) residents;

"(B) families of residents;

"(C) medical, dental, psychological, educational, nursing, and other services;

"(D) the administration and operation of the facility;

"(E) the community served by the facility;

"(5) training of therapy staff;

"(6) training of physical and occupational therapy graduate and/or undergraduate students, interns, supportive staff, and volunteer workers;

"(7) assessment of program effectiveness; and

"(8) conduct of, or participation in, research, and dissemination and appropriate application of research findings.

"(c) Therapists should screen residents, in order to—

"(1) determine the characteristics of the facility's population;

"(2) identify resident needs and establish program priorities; and

"(3) determine the administrative, budgetary, and personnel requirements of the service.

"(d) Evaluation of individual residents by physical and occupational therapists should include—

"(1) observing and testing performance and motivation in sensorimotor, perceptual, behavioral, and self-care activities;

(2) assessment and analysis of findings, to determine level of function and to identify deviations from accepted norms;

"(3) providing information for interdisciplinary staff use, in determining diagnosis, functional capacities, prognosis, and management goals; and

"(4) physical and occupational therapists shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and followup of individualized habilitation programs.

"(e) Physical therapy and occupational therapy staff shall provide treatment-training programs that are designed to—

"(1) preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination, and activities of daily living;

"(2) prevent, insofar as possible, irreducible or progressive disabilities, through means such as the use of orthotic and prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations, and sensory stimulation;

"(3) the therapist shall function closely with the resident's primary physician and with other medical specialists;

"(4) treatment-training progress shall be—

"(A) recorded regularly;

"(B) evaluated periodically; and

"(C) used as the basis for continuation or change of the resident's program.

"(f) Evaluation results; treatment objectives, plans, and procedures; and continuing observations of treatment progress shall be—

"(1) recorded accurately, summarized meaningfully, and communicated effectively;

"(2) effectively used in evaluating progress; and

"(3) included in the resident's unit record.

"(g) Consumers and their representatives, including residents, families, other disciplines, and community groups, shall be utilized in the planning and evaluation of physical therapy and occupational therapy services. There shall be available sufficient, appropriately qualified staff, and supporting personnel, to carry out the various physical and occupational therapy services, in accordance with stated goals and objectives. Physical and occupational therapists shall be—

"(1) graduates of a curriculum accredited by the Council on Medical Education of the American Medical Association in collaboration with the American Physical Therapy Association or the American Occupational Therapy Association;

"(2) if a physical therapist, eligible to practice in the State in which the facility is located; and

"(3) if an occupational therapist, eligible for registration by the American Occupational Therapy Association.

"(h) A physical therapist and an occupational therapist shall be designated as being responsible for maintaining standards of professional and ethical practice in the rendering of their respective therapy services in the facility. Each such therapist shall be qualified as in subsection (g) and, in addition, shall—

"(1) have had three years of professional experience, two years of which should have been in working with mentally retarded persons;

"(2) have demonstrated competence in administration and supervision, as appropriate to the facility's program; and

"(3) preferably have a master's degree, in an area related to the program.

"(i) Therapy assistants shall—

"(1) be certified by the American Occupational Therapy Association or be graduates *of* a program accredited by the American Physical Therapy Association; and

"(2) work under the supervision of a qualified therapist.

"(j) Therapy aides shall—

and that is conducive to the development

"(1) be provided specific inservice training; and

"(2) work under the supervision of a qualified therapist or therapy assistant.

"(k) Physical and occupational therapy personnel shall be—

"(1) assigned responsibilities in accordance with their qualifications;

"(2) delegated authority commensurate with their responsibilities; and

"(3) provided appropriate professional direction and consultation.

"(l) Physical and occupational therapy personnel shall be familiar with, and adhere to, the Code of Ethics and standards of practice promulgated by their respective professional organizations, the American Physical Therapy Association or the American Occupational Therapy Association.

"(m) Physical Therapy and occupational therapy services operated by a facility shall seek consultation, at periodic intervals, from experts in physical therapy and occupational therapy who are not directly associated with the facility. Appropriate to the nature and size of the facility and to the physical and occupational therapy services, there shall be a staff development program that is designed to maintain and improve the skills of physical and occupational therapy personnel, through methods such as—

"(1) regular staff meetings;

"(2) an organized inservice training program in physical and occupational therapy;

"(3) visits to and from the staff of other facilities and programs;

"(4) participation in interdisciplinary meetings;

"(5) provision for financial assistance and time for attendance at professional conferences;

"(6) provisions for encouraging continuing education, including educational leave, financial assistance, and accommodation work schedules;

"(7) career ladders and other incentives to staff recruitment and development;

"(8) workshops and seminars;

"(9) consultations with specialists; and

"(10) access to adequate library resources which include current and relevant books and journals in physical and occupational therapy, mental retardation, and related professions and fields.

"(n) Space facilities, equipment, supplies, and resources shall be adequate for providing efficient and effective physical and occupational therapy services including, but not necessarily limited to—

"(1) facilities for conducting administrative aspects of the program;

"(2) facilities for conducting screenings and evaluations;

"(3) facilities for providing treatment and training for individuals and groups;

"(4) such other space, staff, and services as are essential to support and maintain effective programs; and

"(5) appropriate physical and occupational therapy consultation shall be employed in the design, modification, and equipage of all physical and occupational therapy areas and facilities required to meet the specific goals of physical and occupational therapy services.

"Subchapter X—Psychological Services

"SEC. 1271. (a) Psychological services shall be provided, in order to facilitate, through the application of psychological principles, techniques, and skills, the optimal development of each resident. Psychological services shall be rendered

"(1) directly through personal contact between psychologists and residents;

"(2) indirectly, through contact between psychologists and other persons involved with the residents, designed to—

"(A) maintain an atmosphere that recognizes the psychological needs of residents and maintenance of constructive interpersonal relationships; and

"(B) maximize the effectiveness of all programs for residents, through the application of knowledge concerning the understanding and change of behavior.

"(b) Psychological services available to the residential facility should include—

"(1) evaluation and assessment of individuals and programs;

"(2) therapy with individuals and groups;

"(3) program development services, including those relating to:

"(A) resident habilitation;

"(B) staff training;

"(D) resident, staff, and community motivation;

"(4) consultation with, or relating to—

"(A) residents;

"(B) parents of residents;

"(C) the administration and operation of the facility;

"(D) the community served by the facility;

"(5) psychology staff training; and

"(6) conduct of research, consultation on research design, and dissemination of research findings.

"(c) Psychologists shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual residents, for the purposes of initiation, monitoring, and followup of individualized habilitation programs—

"(1) psychologists shall conduct evaluations necessary to—

"(A) meet legal requirements;

"(B) meet research needs; and

"(C) provide data for biostatistical reporting;

"(2) methods of data collection employed in evaluation and assessment shall include, as appropriate—

"(A) standardized tests and techniques;

"(B) observations in natural and experimental settings, using standardized or generally accepted techniques;

"(C) interviews with—

"(i) the resident (or prospective resident);

"(ii) members of the resident's family and other informants; and

"(D) review of all pertinent records, including the comparison of current and previous status;

"(3) collation, analysis, and interpretation of data shall—

"(A) be performed in accordance with standards generally acceptable in professional psychology;

"(B) provide, as appropriate, both intra- and interindividual comparisons, by reference to normative data; and

"(C) utilize appropriate equipment, which is made available for the purpose;

"(4) the reporting and dissemination of evaluation results shall be done in such a manner as to—

"(A) render the content of the report meaningful and useful to its intended recipient and user;

"(B) enhance clinical understanding of the individual;

"(C) promptly provide information useful to staff working directly with the resident;

"(D) facilitate use of data for research and professional education;

"(E) facilitate use of data for statistical reporting; and

"(F) maintain accepted standards of confidentiality;

"(5) there shall be developed and maintained for each resident a continuing evaluation record that is frequently updated and that includes, but is not limited to, psychometric data.

"(d) Psychologists shall participate, when appropriate, in the development of written, detailed, specific, and individualized habilitation program plans that—

"(1) provide for periodic review, followup, and updating;

"(2) are designed to maximize each resident's development and acquisition of—

"(A) perceptual skills;

"(B) sensorimotor skills;

"(C) self-help skills;

"(D) communication skills;

"(E) social skills;

"(F) self direction;

"(G) emotional stability;

"(H) effective use of time (including leisure time);

"(I) basic knowledge;

"(J) vocational-occupational skills; and

"(K) socio-economic values relevant to the community in which he lives.

"(e) Psychologists should provide individual, and/or groups of, residents with therapy designed to develop, modify, and maintain behavior and attitudes that are rewarding and effective in meeting the demands of their intrapersonal and interpersonal situations. Psychologists should provide consultation and training services to program staff concerning:

"(1) principles and methods of understanding and changing behavior, to the end of devising maximally effective programs for residents;

"(2) principles and methods of individual and program evaluation, for the purposes of assessing resident response to programs and of measuring program effectiveness;

"(3) psychologists should participate in the development of incentive systems designed to maximize motivation and to optimize, by means of provision for feedback, performance, and learning on the part of—

"(A) residents enrolled in habilitation programs;

"(B) staff engaged in resident habilitation programs; and

"(C) personnel involved in resident habilitation resources in the community.

"(f) Psychologists should provide assistance and/or consultation relative to—

"(1) developing and conducting evaluations designed to select and maintain appropriate and effective staff;

"(2) developing job analyses;

"(3) psychological problems of staff, including the making of appropriate referrals;

"(4) data concerning staff, and reports of evaluations of staff, shall—

"(A) be provided in appropriate form, and only to clearly appropriate supervisory staff;

"(B) enable data to be used for classification and reporting purposes;

"(C) enable data to be used for research purposes; and

"(D) maintain acceptable standards of confidentiality.

"(g) Psychologists should participate in—

"(1) educating appropriate members of the community, concerning the domiciliary, vocational, and recreational needs of residents who return to the community;

"(2) planning with community officials the adaptation of domiciliary, vocational, and recreational resources, to optimize resident adjustments; and

"(3) developing appropriate expectancies and attitudes within the community into which residents go.

"(h) There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to carry out the various psychological service activities, in accordance with the needs of the following functions:

"(1) psychological services to residents, including evaluation, consultation, therapy, and program development;

"(2) administration and supervision of psychological services;

"(3) staff training;

"(4) research;

"(5) the facility should have available to it the services of at least one doctoral-level psychologist who is—

"(A) a diplomate of the American Board of Professional Psychology, or is licensed or

certified by a State examining board, or is certified by a voluntary board established by a State Psychological Association;

"(B) knowledgeable and experienced in the area of mental retardation;

"(6) a psychologist, qualified as specified in subsection (h)(5) shall be designated as being responsible for maintaining standards of professional and ethical practice in the rendering of psychological services in the facility;

"(7) all psychologists providing service to the facility shall—

"(A) possess the educational and experiential qualifications required for membership in the American Psychological Association;

"(B) have demonstrated knowledge in the area of mental retardation;

"(8) all psychological technicians, assistants, and clerks employed by the facility shall work under the direct supervision of a psychologist who is qualified as specified in subsection (h)(8);

"(9) all members of the psychological services staff shall have and be familiar with, the Ethical Standards of Psychologists and the Casebook on Ethical Standards of Psychologists, published by the American Psychological Association, and all shall adhere to the ethical standards stated therein;

"(A) all new psychology service employees shall receive this material, and be familiarized with it, as a part of their orientation; and

"(B) the application of the ethical standards to practice with the mentally retarded in residential facilities shall be emphasized.

"(i) Appropriate to the size of the facility, an ongoing inservice training program shall be conducted that is designed to maintain and improve the skills of its psychology staff, through methods such as—

"(1) staff seminars;

"(2) outside speakers;

"(3) visits to and from the staff of other facilities;

"(4) attendance at conferences;

"(5) participation in interdisciplinary groups;

"(6) informational exchanges with universities, teaching hospitals, community mental health and mental retardation centers, and other community resources; and

"(7) adequate library resources, including current and relevant books and journals in psychology and mental retardation shall be available.

"(j) The training of interns and graduate students in psychology shall be encouraged, and appropriate supervision shall be provided. There shall be appropriate space and equipment for psychological services, including—

"(1) offices for professional and clerical staff;

"(2) testing and observation rooms;

"(3) interviewing, counseling, and training/treating rooms;

"(4) play therapy rooms;

"(5) access to conference rooms; and

"(6) access to research and data analysis facilities.

"Subchapter XI—Recreation Services

"SEC. 1272. (a) Recreation services should provide each resident with a program of activities that—

"(1) promotes physical and mental health;

"(2) promotes optimal sensorimotor, cognitive, affective, and social development;

"(3) encourages movement from dependent to independent and interdependent functioning; and

"(4) provides for the enjoyable use of leisure time.

"(b) The facility shall have a written statement of its recreation objectives for residents, consistent with—

"(1) the needs of its residents;

"(2) currently accepted recreation principles and goals;

"(3) the philosophy and goals of the facility; and

"(4) the services and resources the facility offers.

"(c) Recreation services available to the residential facility should include—

"(1) recreation activities for the residents;

"(2) recreation counseling;

"(3) individual and group instruction of residents in creation skills, to achieve maximum proficiency and develop leadership potential;

"(4) therapeutic recreation;

"(5) education and consultation; and

"(6) research and evaluation.

"(d) Recreation activities available to the residents should include, as appropriate to the size and location of the facility, and as adapted to the needs of the residents being served—

"(1) excursions, outings, and other trips to familiarize the residents with community facilities;

"(2) spectator activities, such as movies, television, sports events, and theater;

"(3) participation in music, drama, and dance, such as rhythmics, folk dancing, community sings, group music sessions in the living units, performance in music or dramatic productions, performance in choral or instrumental groups, and informal listening to records or tapes;

"(4) outdoor and nature experiences, including activities such as camping, hiking, and gardening;

"(5) team sports and lead-up activities;

"(6) individual and dual sports, such as bowling, archery, badminton, horseshoes, miniature golf, bicycling, and shuffleboard;

"(7) hobbies, such as collecting, photography, model building, woodworking (including use of power tools) cooking, and sewing;

"(8) social activities, such as clubs, special interest and discussion groups, social dancing, cookouts, parties, and games;

"(9) service clubs and organizations, such as leaders clubs, Scouting, 4-H, Junior Red Cross, Junior Chamber of Commerce, Hi-Y, Tri-Hi-Y, resident councils, and senior citizens clubs;

"(10) aquatics, including waterplay, swimming, and boating;

"(11) arts and crafts, including a wide range of activities from simple to complex, from reproductive to creative, and consistent with activities found in the community;

"(12) physical fitness activities designed to develop efficient cardiovascular and cardiorespiratory functions, strength, endurance, power, coordination, and agility, sufficient for both usual and extra demands;

"(13) library services for reading, listening, and viewing, such as looking at books, listening to records and tapes, and viewing film strips and slides;

"(14) celebration of special events, such as holidays and field days;

"(15) winter activities, including snow sculpture, snowplay, games and sports;

"(16) opportunities to use leisure time in activities of the resident's own choosing in an informal setting under minimal supervision, such as a 'drop-in center';

"(17) frequent coeducational experiences, to promote acceptable social behavior and enjoyment of social relationships; and

"(18) activities for the nonambulatory, including the mobile and nonmobile.

"(e) Maximum use should be made of all community recreation resources. Recreation counseling should be a continuous process that provides for—

"(1) modification of resident's recreation behaviors;

"(2) guidance to residents on how to find, reach, and utilize community recreation resources;

"(3) family counseling in relation to recreation activities; and

"(4) interpretation of residents' needs and abilities to community agencies.

"(f) Therapeutic recreation, defined as purposive intervention, through recreation activities, to modify, ameliorate, or reinforce specific physical, emotional, or social behaviors, should include, as appropriate—

"(1) participation on an interdisciplinary team, to identify the habilitation needs and goals of the resident;

"(2) determination of appropriate recreation intervention, to achieve the stated habilitation goals;

"(3) a written plan for implementing the therapeutic recreation objectives, consistent with the recommendations of the evaluation team; and

"(4) evaluation of the effectiveness of such interventions, and subsequent redefinition of the resident's habilitation needs and goals.

"(g) Education and consultation services should include—

"(1) provision of stimulation, leadership, and assistance with recreation activities, conducted by the direct-care staff;

"(2) staff training and development;

"(3) orientation and training of volunteers;

"(4) training of interns and students in recreation;

"(5) consultation to community agencies and organizations, to stimulate the development and improvement of recreation services for the retarded; and

"(6) public education and information, to encourage acceptance of the retarded in recreation activities.

"(h) Recreational services shall be coordinated with other services and programs provided the residents, in order to make fullest possible use of the facility's resources and to maximize benefits to the residents. Activities in health, music, art, and physical education shall be coordinated with recreation activities relevant to these areas.

"(i) Records concerning residents should include—

"(1) periodic surveys of their recreation interests;

"(2) periodic surveys of their attitudes and opinions regarding recreation services;

"(3) the extent and level of each resident's participation in the activities program;

"(4) progress reports, as appropriate;

"(5) reports on relationships among peers, and between residents and staff; and

"(6) evaluations conducted by personnel at all levels and, where appropriate, by staff from other services.

"(j) Established procedures for evaluating and researching the effectiveness of recreation services, in relation to stated purposes, goals, and objectives, should include—

"(1) utilization of adequate records concerning residents' interests, attitudes, opinions, participations, and achievements;

"(2) time schedules for evaluation that are appropriate to the service or program being evaluated;

"(3) provision for using evaluation results in program planning and development;

"(4) provision for disseminating evaluation results in professional journals and in public education and information programs; and

"(5) encouragement of recreation staff to initiate, conduct, and participate in research studies, under the supervision of qualified personnel.

"(k) There shall be sufficient, appropriately qualified recreation staff, and necessary supporting staff, to carry out the various recreation services in accordance with stated goals and objectives.

"(1) Scheduling of staff shall provide—

"(A) coverage on evenings, weekends, and holidays; and

"(B) additional coverage during periods of peak activity.

"(2) Recreation personnel shall be—

"(A) assigned responsibilities in accordance with their qualifications;

"(B) delegated authority commensurate with their responsibility; and

"(C) provided appropriate professional recreation supervision.

"(3) Personnel conducting activities in recreation program areas should possess the following minimum educational and experiential qualifications:

"(A) a bachelor's degree in recreation, or in a specialty area, such as art, music, or physical education; or

"(B) an associate degree in recreation and one year of experience in recreation; or

"(C) a high school diploma, or an equivalency certificate; and two years of experience in recreation, or one year of experience in recreation plus completion of comprehensive inservice training in recreation; or

"(D) demonstrated proficiency and experience in conducting activities in one or more program areas.

"(4) Personnel performing recreation counseling or therapeutic recreation functions should possess the following minimum education and experiential qualifications, and should be eligible for registration with the National Therapeutic Recreation Society at the Therapeutic Recreation Specialist level:

"(A) a master's degree in therapeutic recreation and one year of experience in a recreation program serving disabled persons; or

"(B) a master's degree in recreation and two years of experience in a recreation program serving disabled persons; or

"(C) a bachelor's degree in recreation and three years of experience in a recreation program serving disabled persons; or

"(D) a combination of education and experience in recreation serving disabled persons that totals six years.

"(5) Education and consultation functions in recreation should be conducted by staff members, in accordance with their education, experience, and role in the recreation program.

"(l) Appropriate to the size of the recreation program, there shall be a staff development program that provides opportunities for professional development, including—

"(1) regular staff meetings;

"(2) an organized inservice training program in recreation;

"(3) access to professional journals, books, and other literature in the fields of recreation, therapeutic recreation, rehabilitation, special education, and other allied professions;

"(4) provisions for financial assistance and time for attendance at professional conferences and meetings;

"(5) procedures for encouraging continuing education, including educational leaves, direct financial assistance, and rearrangement of work schedules;

"(6) provision for workshops and seminars relating to recreation, planned by the recreation and other professional and administrative staff; and

"(7) provision for staff consultation with specialists, as needed, to improve recreation services to residents.

"(m) Recreation areas and facilities shall be designed and constructed or modified so as to—

"(1) permit all recreation services to be carried out to the fullest possible extent in pleasant and functional surroundings;

"(2) be easily accessible to all residents, regardless of their disabilities;

"(3) appropriate recreation consultation shall be employed in the design or modification of all recreation areas and facilities;

"(4) toilet facilities, appropriately equipped in accordance with the needs of the residents, should be easily accessible from recreation areas; and

"(5) appropriate and necessary maintenance services shall be provided for all recreation areas and facilities.

"(n) Indoor recreation facilities should include, as appropriate to the facility—

"(1) a multipurpose room;

"(2) a quiet browsing room;

"(3) access to a gymnasium;

"(4) access to an auditorium;

"(5) access to suitable library facilities;

"(6) access to kitchen facilities;

"(7) adequate and convenient space for storage of supplies and large and small equipment; and

"(8) adequate office space for the recreation staff.

"(o) Outdoor recreation facilities should include, as appropriate to the facility—

"(1) access to a hard-top, all-weather-surface area;

"(2) access to gardening and nature activity areas;

"(3) access to adequately equipped recreation areas; and

"(4) the facility's residents should have, as appropriate and feasible, access to year-round swimming and aquatic facilities.

"(p) Adequate transportation services for recreation programs shall be provided. Recreation equipment and supplies in sufficient quantity and variety shall be provided to carry out the stated objectives of the activities programs. Toys, games, and equipment shall be—

"(1) selected on the basis of suitability, safety, durability, and multiplicity of use; and

"(2) adapted as necessary to the special needs of the residents.

"(q) If a music therapy program is provided, it should include—

"(1) participation by the music therapist, when appropriate, on an interdisciplinary evaluation team to identify the resident's needs and ways of meeting them;

"(2) determination of music therapy goals for the resident and development of a written plan for achieving them;

"(3) periodic progress reports, reevaluations, and program changes, as indicated;

"(4) direction by a therapist eligible for registration with the National Association for Music Therapy; and

"(5) appropriate space, facilities, and equipment, with special consideration of the acoustical characteristics of rooms used for performing and listening.

"Subchapter XII—Religious Services

"SEC. 1273. (a) Religious services shall be made available to residents, in accordance with their needs, desires, capabilities, and in accordance with their basic right to freedom of religion, in order to—

"(1) develop and enhance their dignity;

"(2) provide for the most meaningful and relevant practice of their religion; and

"(3) provide spiritual programs designed to aid their development and growth as persons.

"(b) Implementation of religious services should utilize community resources, whenever and wherever this is possible and in the best interests of the residents. The objectives of the facility's religious services for its residents shall be directed toward full integration into, and membership in, their faith, and should include—

"(1) upholding the dignity and worth of the individual;

"(2) building moral and ethical standards of behavior;

"(3) preparing for religious growth in their faith groups;

"(4) establishing healthy self, world, and God concepts;

"(5) establishing constructive value systems;

"(6) giving direction toward greater personal maturity;

"(7) strengthening interpersonal relationships; and

"(8) contributing to growth in personal adequacy and happiness.

"(c) Religious services shall be made available to all residents, regardless of their degree of retardation. Participation in religious programs shall be voluntary, in accordance with the wishes of the resident, if he expresses them, or with the wishes of his parent or guardian.

"(d) Religious services to residents should include—

"(1) worship opportunities, sacraments, and religious rites, according to the needs and abilities of the residents and consonant with the practices of their respective faiths;

"(2) religious education programs geared to the needs and abilities of the residents;

"(3) observation of dietary practices in keeping with the religious requirements of residents' faith groups;

"(4) observation of religious holidays and holy days in keeping with the religious requirements of residents' faith groups;

"(5) pastoral counseling, both individual and group, to residents and their families;

"(6) pastoral visits to residents, with special emphasis on the care of the troubled, the sick and the dying;

"(7) pastoral consultation with person concerned with the residents welfare; and

"(8) referral and communication between religious workers in the facility and in the community.

"(e) Those who serve the religious needs of the residents, including clergy, religious educators, and volunteers, should whenever possible—

"(1) assert and safeguard the full human and civil rights of the residents;

"(2) participate, as appropriate, in team and other interdisciplinary planning regarding programs for individual residents, as well as in facility-wide or community programs;

"(3) keep appropriate record of significant religious events in the lives of each resident;

"(4) participate in training programs for facility personnel, inluding orientation of direct-care personnel in how they may help to further the religious programs for residents;

"(5) participate in training programs for community clergy, theological students, and others;

"(6) become involved with community clergy, and with religious and other groups, in their concerns for the spiritual care of the retarded;

"(7) promote public understanding and acceptance of the retarded; and

"(8) participate in their own faith group meetings, as required to maintain their standing.

"(f) There shall be available sufficient, appropriately qualified personnel, which may include clergy or religious leaders, religious educators, volunteers, and clerical and supporting personnel, to carry out the various religious programs—

"(1) religious services to residents shall be under the direction of a person who, in keeping with the size and nature of the facility, may be one of the following:

"(A) a chaplain certified for work with the mentally retarded by a recognized certifying agency;

"(B) a clergyman or religious leader in good standing in his religious body;

"(C) a religious educator; or

"(D) a responsible person, who secures the services of qualified persons in carrying out the worship and education aspects of the program;

"(2) chaplains serving residential facilities for the retarded, on a full- or part-time basis, should—

"(A) be clergymen or religious leaders in good standing in their religious bodies; or

"(B) be endorsed or assigned by their recognized religious bodies; and

"(C) have B.A. and B.D. degrees, or their equivalents; and

"(D) be certified for work with the mentally retarded by a recognized certifying agency;

"(3) professional religious educators serving residential facilities for the retarded, on a full- or part-time basis, should—

"(A) be endorsed or assigned by their recognized religious bodies; or

"(B) have a bachelor's degree, or its equivalent; and

"(C) be certified for work with the mentally retarded by a recognized certifying agency;

"(4) nonprofessional religious services personnel, including volunteers, should—

"(A) be screened for ability to perform their assigned duties;

"(B) be oriented to, and trained for, their assignments; and

"(C) be provided ongoing supervision by a clergyman, religious leader, or religious educator of the respective faith.

"(g) Appropriate to the size of the facility, there shall be an educational program designed to enhance the competencies of religious services personnel, through means such as:

"(1) staff meetings and inservice training;

"(2) seminars, workshops, conferences, and institutes;

"(3) college and university courses;

"(4) participation in professional organizations;

"(5) participation in interdisciplinary groups;

"(6) visits to other facilities;

"(7) access to relevant professional literature; and

"(8) religious services personnel should have access to qualified and appropriate consultation, as needed.

"(h) Religious services personnel should be encouraged, when possible, to involve themselves in activities such as—

"(1) offering clinical pastoral education programs;

"(2) providing educational experiences for students;

"(3) developing innovative religious education materials;

"(4) developing innovative worship services;

"(5) conducting specific research and development projects; and

"(6) exploring and expanding citizen advocacy programs.

"(i) Residents shall have access to places appropriate for worship and religious education that are adequate to meet the needs of all. Religious services personnel shall be provided with office and other space, equipment, and supplies adequate to carry out an effective program.

"Subchapter XIII—Social Services

SEC. 1274. (a) Social services shall be available to all residents and their families, in order to foster and facilitate—

"(1) maximum personal and social development of the resident;

"(2) positive family functioning; and

"(3) effective and satisfying social and community relationships.

"(b) Social services shall be provided, directly and indirectly, to—

"(1) the resident;

"(2) his family;

"(3) individuals or groups who represent different aspects of the social environment of the resident; and

"(4) the community.

"(c) Consumers and their representatives, including residents, families, other disciplines, and community groups, shall participate in the planning and evaluation of social service programs. Social services, as part of an interdisciplinary spectrum of services, shall be provided through the use of social work methods directed toward—

"(1) maximizing the social functioning of the resident;

"(2) enhancing the coping capacity of his family;

"(3) modifying environmental influences leading to, or aggravating, mental retardation;

"(4) increasing public understanding and acceptance of mental retardation and its associated problems;

"(5) creating a favorable climate to assist each retarded person to achieve as nearly normal living as is possible for him;

"(6) asserting and safeguarding the human and civil rights of the retarded and their families; and

"(7) fostering the human dignity and personal worth of each resident.

"(d) Social services available to the facility should include, as appropriate—

"(1) preadmission evaluation and counseling, with referral to, and use of, other community resources, as appropriate;

"(2) psychosocial assessment of the individual resident and his environment, as a basis for formulating an individual treatment plan;

"(3) implementation of an individual social work treatment plan for the resident and his family;

"(4) planning for community placement, discharge, and followup;

"(5) participation in policy and program development within the facility in relation to—

"(A) the residents' psychosocial needs and development;

"(B) serving the families of the resident;

"(C) use of community supportive and habilitative services;

"(D) staff training and development;

"(6) consultation with, or in relation to—

"(A) programs offered by other disciplines;

"(B) administration and operation of the facility;

"(C) agencies and individuals in the community served by the facility;

"(7) collaboration with other service delivery systems in planning and implementing programs for residents; and

"(8) participation in social work and interdisciplinary program evaluation and research.

"(e) During the evaluation process, which may or may not lead to admission, the resident and his family should be helped by social workers to—

"(1) know the rights and services to which they are entitled, including the means of directing their appeals to the proper sources;

"(2) obtain advocacy on their behalf if rights and services are denied them; and

"(3) consider alternative services, based on the retarded person's status and salient family and community factors, and make a responsible choice as to whether and when residential placement is indicated.

"(f) During the preadmission process, the resident and his family should be helped by social workers to—

"(1) cope with problems of separation inherent in placement;

"(2) initiate planning for the resident's return to his family and/or community;

"(3) begin involving themselves as partners with the residential facility staff in developing a treatment/habilitation plan;

"(4) become oriented to the practices and procedures of the facility; and

"(5) share information about themselves that will provide the facility's staff with maximum understanding of their situation, so that effective services can be delivered.

"(g) Social workers shall participate, when appropriate, in the continuing interdisciplinary evaluation of individual residents for the purposes of initiation, monitoring, and followup of individualized habilitation programs.

"(h) During the retarded person's admission to, and residence in, the facility, or while he is receiving services from the facility, social workers shall provide liaison between him, the facility, the family, and the community, so as to:

"(1) help the resident to—

"(A) cope with problems accompanying separation from family and community;

"(B) learn the roles and use the resources that will enable him to maximize his development;

"(C) participate in programs, in accordance with his individual treatment plan, that will maximize his ability for independent living, in or out of the residential facility;

"(2) help the staff to—

"(A) individualize and understand the needs of the resident and his family in relation to each other;

"(B) understand social factors in the resident's day-to-day behavior, including staff-resident relationships;

"(C) prepare the resident for changes in his living situations;

"(3) help the family to develop constructive and personally meaningful ways to support the resident's experience in the facility through—

"(A) counseling concerned with problems associated with changes in family structure and functioning;

"(B) utilization of the family's and the resident's own strengths and resources;

"(C) referral to specific services, as appropriate; and

"(4) help the family to participate in planning for the resident's return to home or other community placement.

"(i) After the resident leaves the facility, social workers shall provide systematic followup, including—

"(1) counseling with the resident;

"(2) counseling with family, employers, and other persons significant to the resident's adjustment in the community; and

"(3) referral to appropriate community agencies.

"(j) Social services shall help to integrate residential and other community services, through—

"(1) providing liaison between the residential facility and the community;

"(2) providing consultation to community agencies to facilitate the identification of needed resources for the retarded and his family;

"(3) interpreting the residential facility and its program to relevant sectors of the community;

"(4) collaborating with other disciplines to help the community develop appropriate resources; and

"(5) involvement with social policy issues that affect the retarded.

"(k) Social services shall develop and maintain comprehensive, current records, useful for its own programs and those of other services. There shall be available sufficient, appropriately qualified staff and necessary supporting personnel to carry out the various social service activities.

"(1) The facility should have available to it a social worker who—

"(A) has a master's or doctoral degree from an accredited school of social work;

"(B) has had three years of post-master's experience in the field of social welfare;

"(C) meets the educational and experiential qualifications for certification by the Academy of Certified Social Workers; and

"(D) is knowledgeable and experienced in mental retardation.

"(2) A social worker having the qualifications specified in subsection (k) (1) shall be designated as being responsible for maintaining standards of professional practice in the rendering of social services to the facility, and for staff development.

"(3) Social workers providing service to the facility shall—

"(A) have a master's degree from an accredited school of social work; or

"(B) meet the educational qualifications required for full membership in the National

Association of Social Workers and shall have had three years of experience in the field of social welfare.

"(4) Social work assistants or aides employed by the facility shall work under the supervision of a social worker having the qualifications specified in subsection (k)(3).

"(5) Social service personnel, at all levels of experience and competence, shall be—

"(A) assigned responsibilities in accordance with their qualifications;

"(B) delegated authority commensurate with their responsibilities; and

"(C) provided appropriate professional social work supervision.

"(6) A full-time supervisor should be responsible for the direct supervision of not more than six staff members, plus related activities.

"(7) All social service personnel shall be familiar with, and adhere to, the code of ethics of the National Association of Social Workers.

"(l) Appropriate to the size of the facility's social service program, an ongoing program of staff development shall be provided to improve the skills of the social work staff through such means as—

"(1) inservice training;

"(2) affiliation with schools of social work;

"(3) staff consultation with specialists, as needed, to improve social services to residents;

"(4) conference attendance, and other educational opportunities and forms of professional exchange; and

"(5) career ladders and other incentives to staff recruitment and development.

"(m) Space, facilities, equipment, supplies, and resources shall be adequate for providing effective social services, including—

"(1) offices for social service and clerical staff;

"(2) private interviewing rooms;

"(3) rooms suitable for conferences and group activities;

"(4) dictating and transcribing equipment;

"(5) telephone service;

"(6) travel provisions;

"(7) provision for recordkeeping and information retrieval; and

"(8) library services.

"Subchapter XIV—Speech Pathology and Audiology Services

"SEC. 1275. (a) Speech pathology and audiology services shall be available, in order to—

"(1) maximize the communication skills of all residents; and

"(2) provide for the evaluation, counseling, treatment, and rehabilitation of those residents with speech, hearing and/or language handicaps.

"(b) The specific goals of speech pathology and audiology services shall be—

"(1) appropriate to the needs of the residents served;

"(2) consistent with the philosophy and goals of the facility;

"(3) consistent with the services and resources offered by the facility; and

"(4) known to, and coordinated with, other services provided by the facility.

"(c) Speech pathology and audiology services shall be rendered through—

"(1) direct contact between speech pathologists and audiologists and residents;

"(2) participation with administrative personnel in designing and maintaining social and physical environments that maximize the communication development of the residents; and

"(3) working with other personnel, such as teachers and direct-care staff, in implementing communication improvement programs in environmental settings.

"(d) Speech pathology and audiology services available to the facility shall include, as appropriate—

"(1) audiometric screening of—

"(A) all new residents;

"(B) children under the age of ten, at annual intervals;

"(C) other residents at regular intervals;

"(D) any resident referred;

"(2) speech and language screening of—

"(A) all new residents;

"(B) children under the age of ten at annual intervals;

"(C) all residents, as needed;

"(3) comprehensive audiological assessment of residents, as indicated by screening results, to include tests of pure-tone air and bone conduction, speech audiometry, and other procedures, as necessary, and to include assessment of the use of visual cues;

"(4) assessment of the use of amplification;

"(5) provision for procurement, maintenance; and replacement of hearing aids, as specified by a qualified audiologist;

"(6) comprehensive speech and language evaluation of residents, as indicated by screening results, including appraisal of articulation, voice, rhythm, and language;

"(7) participation in the continuing interdisciplinary evaluation of individual residents for purposes of initiation, monitoring, and followup of individualized habilitation programs;

"(8) treatment services, interpreted as an extension of the evaluation process, that include—

"(A) direct counseling with residents;

"(B) speech and language development and stimulation through daily living activities;

"(C) consultation with classroom teachers for speech improvement and speech education activities;

"(D) direct contact with residents to carry on programs designed to meet individual needs in comprehension (for example, speech reading, auditory training, and hearing aid utilization) as well as expression (for example, improvement in articulation, voice, rhythm, and language);

"(E) collaboration with appropriate educators and librarians to develop specialized programs for developing the communication skills of multiple handicapped residents, such as the deaf retarded and the cerebral palsied;

"(9) consultation with administrative staff regarding the planning of environments that facilitate communication development among residents in—

"(A) living areas;

"(B) dining areas;

"(C) educational areas;

"(D) other areas, where relevant;

"(10) participation in inservice training programs for direct-care and other staff;

"(11) training of speech pathology and audiology staff;

"(12) training of speech pathology and audiology graduate and/or undergraduate students, interns, supportive staff, and volunteer workers;

"(13) consultation with, or relating to—

"(A) residents (for example, self-referral);

"(B) parents of residents;

"(C) medical (octological, pediatric, and so forth), dental psychological, educational and other services;

"(D) the administration and operation of the facility;

"(E) the community served by the facility; and

"(14) program evaluation and research.

"(e) Comprehensive evaluations in speech pathology and audiology shall consider the total person and his environment. Such evaluations should—

"(1) present a complete appraisal of the resident's communication skills;

"(2) evidence concern for, and evaluation of, conditions extending beyond observed speech, language, and hearing defects;

"(3) consider factors in the history and environment relevant to the origins and maintenance of the disability;

"(4) consider the effect of the disability upon the individual and the adjustments he makes to the problem as he perceives it; and

"(5) consider the reaction of the resident's family, associates, and peers to the speech and/or hearing problem.

"(f) Evaluation and assessment results shall be reported accurately and systematically, and in such manner as to—

"(1) define the problem to provide a basis for formulating treatment objectives and procedures;

"(2) render the report meaningful and useful to its intended recipient and user;

"(3) where appropriate, provide information useful to other staff working directly with the resident;

"(4) conform to acceptable professional standards, provide for intraindividual and interindividual comparisons, and facilitate the use of data for research and professional education; and

"(5) provide evaluative and summary reports for inclusion in the resident's unit record.

"(g) Treatment objectives, plans, and procedures shall—

"(1) be based upon adequate evaluation and assessment;

"(2) be based upon a clear rationale;

"(3) reflect consideration of the objectives of the resident's total habilitation program;

"(4) be stated in terms that permit the progress of the individual to be assessed;

"(5) provide for periodic evaluation of the resident's response to treatment and of treatment effectiveness;

"(6) provide for revision of objectives and procedures as indicated; and

"(7) provide for assistance or consultation when necessary.

"(h) Continuing observations of treatment progress shall be—

"(1) recorded accurately, summarized meaningfully, and communicated effectively; and

"(2) effectively utilized in evaluating progress.

"(i) There shall be established procedures for evaluating and researching the effectiveness of speech pathology and audiology services, including—

"(1) utilization of adequate records concerning residents' response and progress;

"(2) time schedules for evaluation that are appropriate to the service being evaluated;

"(3) provision for using evaluation results in program planning and development;

"(4) encouragement of speech pathology and audiology staff to participate in research activities; and

"(5) provision for dissemination of research results in professional journals.

"(j) There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to carry out the various speech pathology and audiology services, in accordance with stated goals and objectives—

"(1) A speech pathologist or audiologist, who is qualified as specified in paragraph (2) of this subsection, and who, in addition, has had at least three years of professional experience, shall be designated as being responsible for maintaining standards of professional and ethical practice in the rendering of speech pathology and audiology services in the facility.

"(2) Staff who assume independent responsibilities for clinical services shall possess the educational and experiential qualifications required for a Certificate of Clinical Competence issued by the American Speech and Hearing Association (ASHA) in the area (speech pathology or audiology) in which they provide services.

"(3) Staff not qualified for ASHA certification shall be provided adequate, direct, active, and continuing supervision by staff qualified for certification in the area in which supervision is rendered.

"(A) Supervising staff shall be responsible for the services rendered by uncertified staff under their supervision.

"(B) Adequate, direct, and continuing supervision shall be provided nonprofessionals, volunteers, or other supportive personnel utilized in providing clinical services.

"(4) Students in training and staff fulfilling experience requirements for ASHA certification shall receive direct supervision, in accordance with the requirements of the American Boards of Examiners in Speech Pathology and Audiology.

"(5) All speech pathology and audiology staff shall be familiar with, and adhere to, the code of ethics published by the American Speech and Hearing Association.

"(k) Appropriate to the nature and size of the facility and to the speech pathology and audiology service, there shall be a staff development program that is designed to maintain and improve the skills of speech pathology and audiology staff, through methods such as—

"(1) regular staff meetings;

"(2) an organized inservice training program in speech pathology and audiology;

"(3) visits to and from the staff of other facilities and programs;

"(4) participation in interdisciplinary meetings;

"(5) provision for financial assistance and time for attendance at professional conferences;

"(6) provisions for encouraging continuing education, including educational leave, financial assistance, and accommodation of work schedules;

"(7) workshops and seminars;

"(8) consultations with specialists; and

"(9) access to adequate library resources, which include current and relevant books and journals in speech pathology and audiology, mental retardation, and related professions and fields.

"(l) Space, facilities, equipment, and supplies shall be adequate for providing efficient and effective speech pathology and audiology services, in accordance with stated objectives, including—

"(1) adequate and convenient evaluation, treatment, counseling, and waiting rooms;

"(2) specially constructed and sound-treated suites for audiological services, meeting U.S.A.S.I. standards;

"(3) design and location such as to be easily accessible to all residents, regardless of disability;

"(4) specialized equipment needed by the speech pathologist;

"(5) specialized equipment needed by the audiologist, including an audiometer, with provisions for sound field audiometry, and equipment capable of performing at least the following procedures: hearing screening, pure-tone air and bone conduction with contralateral masking, speech audiometry, site-of-lesion battery, nonorganic hearing loss battery, and hearing aid evaluation;

"(6) provisions for adequate maintenance of all areas, facilities, and equipment, including—

"(A) electroacoustic calibration of audiometers at regular, at least quarterly, intervals;

"(B) calibration logs on all audiometers; and

"(7) appropriate speech pathology and audiology consultation shall be employed in the design, modification, and equipage of all speech pathology and audiology areas and facilities.

"Subchapter XV—Vocational Rehabilitation Services

"SEC. 1276. (a) The facility shall provide all its residents with habilitation or rehabilitation services, which includes the establishment, maintenance, and implementation of those programs that will ensure the optimal development or restoration of each resident, physically, psychologically, socially, and vocationally—

"(1) The facility shall have a written, public statement of its rehabilitation objectives for its residents, consistent with—

"(A) the needs of its residents;

"(B) currently accepted rehabilitation principles and goals;

"(C) the facility's philosophy and goals; and

"(D) the services and resources the facility offers.

"(2) While the habilitation/rehabilitation concept and process embrace all efforts to achieve the optimal development of each resident, specific habilitation/rehabilitation services shall focus on the maximum achievement of—

"(A) self-help skills;

"(B) social competence, including communications skills;

"(C) vocational competence; and

"(D) independent living.

"(b) The ultimate objective of vocational rehabilitation services shall be to assist every resident to move as far as he can along the continuum from vocational afunction to remunerative employment and entry into the mainstream of society as an independent citizen and worker. Vocational rehabilitation services shall be rendered—

"(1) directly, through personnel contact between vocational rehabilitation personnel and residents; and

"(2) indirectly, through contact between vocational rehabilitation personnel and other persons working with the residents, designed to enhance and facilitate the development and maintenance of a rehabilitative environment.

"(c) Vocational rehabilitation services available to the residents, in accordance with their needs, shall include—

"(1) vocational evaluation;

"(2) the formulation of written vocational objectives for each resident;

"(3) the formulation of a written plan to achieve the stated objectives;

"(4) implementation of the vocational plan through—

"(A) individual counseling;

"(B) prevocational programs;

"(C) vocational training;

"(D) vocational placement;

"(E) referral to appropriate sources for other services; and

"(F) followup.

"(d) Vocational evaluation of each resident shall—

"(1) be initiated within one month after admission to the facility;

"(2) arise out of a written comprehensive interdisciplinary evaluation (medical, psychological, social, and educational) that generates data relevant to vocational objectives and goals, such as information concerning—

"(A) aptitudes and abilities;

"(B) self-help and independent living skills;

"(C) interests;

"(D) self and vocational perception;

"(E) sensorimotor coordination;

"(F) communication skills;

"(G) current social adjustment;

"(H) educational history; and

"(I) vocational and avocational history;

"(3) be adequate for the formulation of vocational goals and of a detailed plan for the achievement of such goals;

"(4) be adequate for the assessment of current vocational status and for the prediction of possible future status; and

"(5) provide for periodic, but at least semiannual, reevaluation, consistent with the progress of the resident toward the stated goals.

"(e) The written vocational plan for each resident shall—

"(1) be consistent with the vocational evaluation;

"(2) specify the program to be undertaken to achieve his vocational objectives;

"(3) indicate the order in which the program is to be undertaken;

"(4) provide for the implementation of the evaluation team's recommendations; and

"(5) assign the responsibility to carry out the plan.

"(f) The resident shall be fully involved in his vocational evaluation, and in the formulation of his program plan. Prevocational services shall contribute to the development of work readiness in the resident, and shall provide—

"(1) vocationally relevant academic instruction;

"(2) instruction in the self-help and social skills necessary for vocational success;

"(3) instruction and practice in the social skills necessary for maximally independent functioning in the community, such as travel, handling of money, and use of community resources;

"(4) an orientation to the world of work;

"(5) development of work attitudes needed for vocational success;

"(6) rotated exploration and try-out of job tasks;

"(7) continuous evaluation of vocational potential; and

"(8) any necessary supportive services, including physical and mental restoration.

"(g) Vocational training programs shall meet all applicable legal requirements, and shall be provided through means such as:

"(1) work training stations;

"(2) work activity centers;

"(3) transitional sheltered workshops;

"(4) work-study programs;

"(5) on-the-job training;

"(6) trade training, in the classroom or on the job;

"(7) vocational training programs shall—

"(A) provide for an evaluation of training progress at least every three months;

"(B) make maximum use of job training resources—

"(i) within the facility;

"(ii) within the community;

"(8) facilities conducting vocational training programs shall have vocational training personnel assigned, in such numbers and for such times as are necessary and appropriate to the situation, to supervise the training in each training area; and

"(9) written, detailed training guides and curricula shall be available for all vocational training areas.

"(h) Job placement services shall assist the individual to enter into appropriate kinds of employment, such as:

"(1) competitive, remunerative employment;

"(2) trade training programs;

"(3) transitional or extended sheltered workshops;

"(4) sheltered employment;

"(5) homebound employment;

"(6) homemaker; and

"(7) in conjunction with job placement services, the individual shall be provided assistance related to off-the-job needs, activities, and resources, such as—

"(A) living arrangements;

"(B) social and recreation activities;

"(C) medical services;

"(D) educational resources;

"(E) religious activities;

"(F) transportation;

"(G) legal affairs;

"(H) financial affairs; and

"(I) counseling.

"(i) Systematic follow-up services shall be provided that—

"(1) continue to be available to the individual for at least one year following placement;

"(2) involve contact with—

"(A) the individual;

"(B) the individual's family or family-substitute; and

"(C) The individual's employer, if appropriate;

"(3) generate data concerning vocational outcomes to evaluate and improve the effec-

tiveness of vocational rehabilitation programs.

"(j) There shall be a clearly designated person or team responsible for the implementation, evaluation, and revision of the facility's vocational rehabilitation program.

"(1) There shall be available to each resident in a vocational rehabilitation program a counselor who is responsible for seeing that the resident's vocational rehabilitation program is effectively carried out.

"(2) A vocational rehabilitation counselor shall—

"(A) have a master's degree in rehabilitation counseling, or a master's degree in a related area plus training and skill in the vocational rehabilitation process; or

"(B) have a bachelor's degree and work under the direct supervision of a person qualified as in (A).

"(3) Vocational rehabilitation personnel providing training to residents in vocational areas shall be—

"(A) vocational instructors certified by the appropriate State agency; or

"(B) tradesmen who have attained at least journeyman status.

"(k) Appropriate to the nature and size of the facility, provisions shall be made for vocational rehabilitation staff development, through such means as—

"(1) inservice training;

"(2) short-term workshops;

"(3) seminars;

"(4) attendance at conferences; and

"(5) visits to other facilities.

"(l) Every facility that has a vocational rehabilitation program shall seek to establish working relationships with public and private rehabilitation agencies in the community. Each facility should have working relationships with university training programs in rehabilitation, including provision for—

"(1) research opportunities;

"(2) practicum experiences;

"(3) internships; and

"(4) consultation.

"Subchapter XVI—Volunteer Services

"SEC. 1277. (a) Volunteer services shall be provided in order to enhance opportunities for the fullest realization of the potential of each resident by—

"(1) increasing the amount, and improving the quality, of services and programs; and

"(2) facilitating positive relationships between the facility and the community which it serves.

"(b) The facility shall have a written statement of the goals and objectives of its volunteer services program that are—

"(1) appropriate to the needs of the residents;

"(2) consistent with the philosophy and goals of the facility;

"(3) developed in collaboration with the facility's staff;

"(4) specific and measurable; and

"(5) continuously assessed and periodically revised.

"(c) Volunteers shall provide services, which may be direct or indirect, that are based on resident needs, staff requests, and volunteer skills, and that enhance programs, develop social competence, and build self-esteem—

"(1) volunteer services shall supplement, but shall not be used in lieu of, the services of paid employees;

"(2) volunteer participation shall comply with State laws, such as those relating to labor and insurance;

"(3) volunteer participation shall be open to persons of both sexes, and of all ages, races, creeds, and national origins; and

"(4) volunteer services shall be available to all residents, regardless of age, ability, or handicaps.

"(d) Direct services provided to residents by volunteers, as appropriate to the facility's program and in cooperation with its staff, may include, but are not limited to—

"(1) physical, occupational, and music therapy assistance;

"(2) psychological testing assistance;

"(3) behavior modification and programed instruction assistance;

"(4) teacher or classroom assistance;

"(5) religious instruction;

"(6) recreation and leisure time activities;

"(7) social skills development;

"(8) library services;

"(9) nursing services;

"(10) transportation and escort assistance;

"(11) visits, vacations, and trips;

"(12) job and home finding; and

"(13) citizen advocacy.

"(e) Indirect services provided by volunteers, as appropriate to the facility's program and in cooperation with its staff, may include, but are not limited to—

"(1) conducting tours;

"(2) clerical and laboratory assistance;

"(3) gift shop and canteen operation;

"(4) public relations and community education; and

"(5) contributions.

"(f) Volunteer services staff should provide the following services—

"(1) to the facility's staff—

"(A) orientation in the need for, and philosophy of, volunteer services;

"(B) identification of how and where volunteers can be utilized; and

"(C) assistance in developing training for volunteers;

"(2) to the volunteers—

"(A) orientation, training, and placement;

"(B) opportunities to participate in planning and evaluating their experiences; and

"(C) appropriate recognition of their services and contributions.

"(g) Volunteer services staff functions shall include—

"(1) development and implementation of a plan for recruitment, selection, deployment, orientation, training, supervision, evaluation, recognition, advancement, and separation of volunteers;

"(2) development in collaboration with appropriate staff, of job descriptions for volunteers;

"(3) maintenance of complete and accurate records, including, not now necessarily limited to—

"(A) hours of volunteer service rendered;

"(B) individuals and organizations providing services;

"(C) materials and moneys received; and

"(D) operational budget.

"(h) The staff members responsible for facility programs utilizing volunteers shall be responsible for providing such volunteers with on-the-job training, supervision, and consultation.

"(i) The cooperation and involvement of staff and community, which is essential to a successful volunteer services program, should be achieved by means as—

"(1) a standing staff committee on volunteer services, to foster communications and cooperation, to evaluate and coordinate existing programs, and to stimulate new programs;

"(2) a volunteer services advisory committee, composed of representatives of appropriate community organizations;

"(3) encouragement of, and involvement with, parents groups;

"(4) collaboration with appropriate agencies and community groups; and

"(5) recruiting volunteers representative of the community served by the facility, in respect of age, sex, socioeconomic, religious, racial, and ethnic groups.

"(j) There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to carry out the volunteer services program, in accordance with stated goals and objectives.

"(1) A facility staff member shall be designated to be responsible and accountable for volunteer services—

"(A) where the size of the facility and scope of the program warrant, the person responsible for volunteer services shall devote full time to this area;

"(B) volunteer services shall be organized with the administrative structure of the facility in such a way as to be available to, and maximally utilized by, all relevant services and programs; therefore, the staff member responsible for volunteer services should report to an individual with facility-wide administrative responsibility; and

"(C) the staff member responsible for volunteer services should have the same relationship to volunteers as a personnel officer has to paid employees.

"(2) The staff member responsible for volunteer services shall have—

"(A) the necessary interpersonal, consultative, leadership, and organizational and administrative skills and abilities;

"(B) demonstrated ability to identify, mobilize, and deploy volunteer resources to meet the needs of residents;

"(C) knowledge of community organization;

"(D) knowledge of current practices and concepts in mental retardation; and

"(E) training and/or experience in organizing and administering volunteer services, as appropriate to the nature and size of the facility, and preferably—

"(i) a baccalaureate degree in a behavioral science; and

"(ii) three years of experience in volunteer services or related area.

"(k) Appropriate to the size of the facility, there should be a staff development program designed to maintain and improve the skills of volunteer services staff, through means such as—

"(1) seminars, workshops, and conferences;

"(2) college and university courses;

"(3) participation in professional organizations;

"(4) participation in interdisciplinary groups;

"(5) visits to other facilities; and

"(6) access to relevant professional literature.

"(l) There shall be adequate and accessible space, facilities, equipment, and supplies for providing efficient and effective volunteer services. If a canteen is operated by the facility, it shall—

"(1) be operated for the benefit of the residents;

"(2) be open to residents, staff, families, and visitors, without segregation by space or hours of use, so as to facilitate interaction;

"(3) provide opportunities for residents to purchase items for their personal needs;

"(4) provide opportunities for the training of residents; and

"(5) be operated so that any profits derived are utilized for the benefit of residents.

"Chapter 4.—RECORDS

"Subchapter I—Maintenance of Residents' Records

"SEC. 1278. (a) A record shall be maintained for each resident that is adequate for—

"(1) planning and continuous evaluating of the resident's habilitation program;

"(2) providing a means of communication among all persons contributing to the resident's habilitation program;

"(3) furnishing documentary evidence of the resident's progress and of his response to his habilitation program;

"(4) serving as a basis for review, study, and evaluation of the overall programs provided by the facility for its residents;

"(5) protecting the legal rights of the residents, facility, and staff; and

"(6) providing data for use in research and education.

"(b) All information pertinent to the above-stated purposes shall be incorporated in the resident's record, in sufficient detail to enable those persons involved in the resident's program to provide effective, continuing services. All entries in the resident's record shall be—

"(1) legible;

"(2) dated; and

"(3) authenticated by the signature and identification of the individual making the entry.

"(c) Symbols and abbreviations may be used in record entries only if they are in a list approved by the facility's chief executive officer and a legend is provided to explain them. Diagnoses should be recorded in full and without the use of symbols or abbreviations.

"Subchapter II—Content of Records

"SEC. 1279. (a) The following information should be obtained and entered in the resident's record at the time of admission to the facility:

"(1) name, date of admission, date of birth, place of birth, citizenship status, marital status, and social security number;

"(2) father's name and birthplace, mother's maiden name and birthplace, and parents' marital status;

"(3) name and address of parents, legal guardian, and/or next of kin;

"(4) sex, race, height, weight, color of hair, color of eyes, identifying marks, and recent photograph;

"(5) reason for admission or referral problem;

"(6) type and legal status of admission;

"(7) legal competency status;

"(8) language spoken or understood;

"(9) sources of support, including social security, veterans' benefits, and insurance;

"(10) provisions for clothing and other personal needs;

"(11) information relevant to religious affiliation;

"(12) report(s) of the preadmission evaluations(s); and

"(13) reports of previous histories and evaluations.

"(b) Within the period of one month after admission there shall be entered in the resident's record—

"(1) a report of the review and updating of the preadmission evaluation;

"(2) a statement of prognosis that can be used for programing and placement;

"(3) a comprehensive evaluation and individual program plan, designed by an interdisciplinary team; and

"(4) a diagnosis based on the American Association on Mental Deficiency (AAMD) Manual on Terminology and Classification in Mental Retardation and, where necessary, the Diagnostic and Statistical Manual of Mental Disorders, second edition (DSM–II), published by the American Psychiatric Association.

"(c) Records during residence should include—

"(1) reports of accidents, seizures, illnesses, and treatments thereof, and immunizations;

"(2) record of all periods of restraint, with justification and authorization for each;

"(3) report of regular, at least annual, review and evaluation of the program, developmental progress, and status of each resident;

"(4) observations of the resident's response to his program, recorded with sufficient frequency to enable evaluation of its efficacy;

"(5) record of significant behavior incidents;

"(6) record of family visits and contacts;

"(7) record of attendance and leaves;

"(8) correspondence;

"(9) periodic updating of the information recorded at the time of admission; and

"(10) appropriate authorizations and consents.

"(d) At the time of discharge from the facility, a discharge summary shall be prepared that should—

"(1) include a brief recapitulation of findings, events, and progress during residence, diagnosis, prognosis, and recommendations and arrangements for future programing;

"(2) be completed and entered in the resident's record within seven days following discharge; and

"(3) with the written consent of the resident or his guardian, be copied and sent to the individual or agency who will be responsible for future programing of the resident.

"(e) In the event of death—

"(1) a copy of the death certificate should be placed in the residents' record; and

"(2) when a necropsy is performed, provisional anatomic diagnoses should be recorded within seventy-two hours, where feasible, and the complete protocol should be made part of the record within three months.

"Subchapter III—Confidentiality of Records

"SEC. 1280. (a) All information contained in a resident's records, including information contained in an automated data bank, shall be considered privileged and confidential—

"(1) the record is the property of the facility, whose responsibility it is to secure the information against loss, defacement, tampering, or use by unauthorized persons;

"(2) the record may be removed from the facility's jurisdiction and safekeeping only in accordance with a court order, subpena, or statute;

"(3) there shall be written policies governing access to, duplication of, and dissemination of information from the record; and

"(4) written consent of the resident or his guardian shall be required for the release of information to persons not otherwise authorized to receive it.

"Subchapter IV—Central Record Service

"SEC. 1281. (a) The facility shall maintain an organized central record service for the collection and dissemination of information regarding residents. A centralized or decentralized system of record keeping may be used, in accordance with the needs of the facility—

"(1) there shall be a unit record that contains all information pertaining to an individual resident for all admissions to the facility;

"(2) where particular professional services require the maintenance of separate records, a summary of the information contained therein shall be entered in the unit record at stated intervals;

"(3) records shall be readily accessible to authorized personnel;

"(4) where a centralized system is used, appropriate records shall also be available in the resident-living units; and

"(5) a periodic review of the content of the records should be made by—

"(A) record personnel, to assure that they are current and complete; and

"(B) a committee of appropriate staff, including the record librarian, to assure that they meet the standards set forth in section 1278;

"(6) there shall be a master alphabetical index of all residents admitted to the facility; and

"(7) records shall be retained for the period of time specified by the facility, but at least for the period of time consistent with the statute of limitations of the State in which the facility is located.

"Subchapter V—Statistical Records

"SEC. 1282. (a) While the type and amount of statistical information will depend upon the facility's particular needs, such information should include at least the following:

"(1) number of residents by age groups, sex, race, and place of residence;

"(2) number of residents by level of retardation, according to the AAMD classification;

"(3) number of residents by level of adaptive behavior, according to the AAMD classification;

"(4) number of residents with physical disabilities;

"(5) number of residents who are ambulatory and nonambulatory (mobile and nonmobile);

"(6) number of residents with sensory defects;

"(7) number of residents with oral and other communication handicaps;

"(8) number of residents with convulsive disorders, grouped by level of seizure control;

"(9) number of residents by etiological diagnoses, according to the AAMD, and, where necessary, the DSM–II classifications;

"(10) movement of residents into, out of, and within the facility; and

"(11) length of stay.

"(b) Data shall be reported to appropriate Federal and other agencies as requested.

Subchapter VI—Records Personnel

SEC. 1283. (a) There shall be available sufficient, appropriately qualified staff, and necessary supporting personnel, to facilitate the accurate processing, checking, indexing, filing, and prompt retrieval of records and record data.

(b) The record system should be supervised, on a full- or part-time basis, according to the needs of the facility, by an individual who—

"(1) is a registered record librarian; or

"(2) is an accredited record technician; or

"(3) has demonstrated competence and experience in administering and supervising the maintenance and use of records and reports.

"(c) Record personnel should—

"(1) be involved in educational programs relative to their activities, including orientation, on-the-job training, and regular in-service education programs; and

"(2) participate in workshops, institutes, or correspondence education courses available outside the facility.

"(d) There shall be adequate space, facilities, equipment, and supplies for providing efficient and effective record services.

"Chapter 5.—RESEARCH

"Subchapter I—Encouragement of Research

"SEC. 1284. (a) Recognizing that the understanding, prevention, and amelioration of mental retardation ultimately depends upon knowledge gained through research, the administration and staff of the facility (and, in the case of public facilities, the appropriate governmental agency) shall encourage research activity.

"(1) opportunities and resources should be made available to members of the staff who are equipped by interest and training to conduct applied and/or basic research. Research resources and/or necessary research assistance should be made available to all staff members who have identified researchable problems related to the programs for which they are responsible;

"(2) research by qualified investigators who are not staff members of the facilities shall be encouraged. There shall be a written policy concerning the conduct of research in the facility by investigators who are not staff members. Outside researchers shall fulfill the same obligations relative to staff information and feedback as do facility staff members. Consideration should be given to the assignment of a facility staff member to each research project conducted by outside investigators; and

"(3) where feasible, there shall be ongoing, cooperative programs of research and research training with colleges, universities, and research agencies.

"(b) The administration of the facility shall make provision for the design and conduct, or the supervision, of research that will objectively evaluate the effectiveness of

program components and contribute to informed decisionmaking in the facility.

"Subchapter II—Review of Research Proposals

"SEC. 1285. (a) An interdisciplinary research committee shall review all proposed studies to insure—

"(1) adequacy of research design; and

"(2) implementation of ethical standards in the design.

"(b) Facility staff members shall be consulted regarding the planning of research and the utilization of research findings in their areas of competence and interest.

"Subchapter III—Conduct of Research

"SEC. 1286. (a) The facility shall follow, and comply with, the appended Statement on the Use of Human Subjects for Research of the American Association on Mental Deficiency, and with the statement of assurance on research involving human subjects required by the United States Department of Health, Education, and Welfare for projects supported by that Agency.

"(b) Investigators and others directly involved in the research shall—

"(1) adhere to the ethical standards of their professions concerning the conduct of research; and

"(2) have access to the record of informed consent.

"Subchapter IV—Reporting Research Results

"Sec. 1287. (a) The principal investigator of each research project shall be responsible for communicating to the staff of the facility the purpose, nature, outcome, and possible practical or theoretical implications of the research. Copies of the reports resulting from research projects shall be maintained in the facility.

"(b) Where research findings are made public, care shall be taken to assure the anonymity of individual residents and parents.

"(c) Clearly defined mechanisms shall exist for informing staff members of new research findings that have applicability to the programs and administration of the facility. There shall be evidence that currently applicable research results are being implemented in the facility's programs.

"Chapter 6.—SAFETY AND SANITATION

"Subchapter I—Safety

"SEC. 1288. (a) The requirements of the Secretary shall be met, with specific reference to the following—

"(1) provision of adequate and alternate exits and exit doors;

"(2) provision of exit ramps, with nonskid surface and slope not exceeding one foot in twelve; and

"(3) provision of handrails on stairways.

"(b) There shall be records that document strict compliance with the regulations of the state or local fire safety authority that has primary jurisdiction over the facility—

"(1) aisles and exits shall be free from all encumbrances and floors shall be uncluttered;

"(2) flammable materials shall be properly stored and safeguarded;

"(3) attics and basements shall be kept orderly and free of rubbish; and

"(4) there shall be records of periodic fire safety inspections and reports.

"(c) There shall be a written staff organization plan and detailed, written procedures, which are clearly communicated to, and periodically reviewed with, staff, for meeting all potential emergencies and disasters pertinent to the area, such as fire, severe weather, and missing persons.

"(1) The plans and procedures should include—

"(A) plans for the assignment of personnel to specific tasks and responsibilities;

"(B) instructions relating to the use of alarm systems and signals;

"(C) information concerning methods of fire containment;

"(D) systems for notification of appropriate persons;

"(E) information concerning the location of firefighting equipment; and

"(F) specification of evacuation routes and procedures.

"(2) the plans and procedures shall be posted at suitable locations through the facility.

"(d) Evacuation drills shall be held at least quarterly, for each shift of facility personnel and under varied conditions, in order to—

"(1) insure that all personnel on all shifts are trained to perform assigned tasks;

"(2) insure that all personnel on all shifts are familiar with the use of the firefighting equipment in the facility;

"(3) evaluate the effectiveness of disaster plans and procedures;

"(4) evacuation drills shall include actual evacuation of residents to safe areas during at least one drill each year, on each shift. There shall be special provisions for the evacuation of the physically handicapped, such as fire chutes and mattress loops with poles; and

"(5) there shall be a written, filed report and evaluation of each evacuation drill.

"(e) An active safety program shall be maintained by a multidisciplinary safety committee that investigates all accidents and makes recommendations for prevention. Records of the activities of the safety committee shall be kept. There shall be adequate safety shields on the moving parts of all dumb waiters, elevators, and other machinery, as provided for in applicable standards and codes.

"(f) All buildings and outdoor recreation facilities constructed after 1971 shall be accessible to, and usable by, the nonambulatory and shall meet standards of the Secretary for making buildings accessible to, and usable by, the physically handicapped—

"(1) all existing buildings and outdoor recreation facilities shall be modified so as to conform to the above standards by December 31, 1976; and

"(2) existing facilities shall provide—

"(A) entrance ramps wide enough for wheelchairs, not exceeding a rise of one foot in twelve, with nonslip surfaces, and with rails on both sides;

"(B) doorways and corridors wide enough for wheelchairs; and

"(C) grab bars in toilet and bathing facilities.

"(g) Paint used in the facility shall be lead free. Old paint or plaster containing lead shall have been removed, or covered in such manner that it is not accessible to residents.

"(h) Appropriate provisions shall be made for emergency auxiliary heat by means of alternate sources of electric power, alternate fuels, and/or standby equipment.

"Subchapter II—Sanitation

"SEC. 1289. (a) There shall be records that document strict compliance with the sanitation, health, and environmental safety codes of the State or local authorities having primary jurisdiction over the facility. Written reports of inspections by State or local health authorities, and records of action taken on their recommendations, shall be kept on file at the facility.

"(b) The holding, transferring, and disposal of waste and garbage shall be done in a manner that will not create a nuisance, nor permit the transmission of disease, nor create a breeding place for insects or rodents—

"(1) waste that is not disposed of by mechanical means shall be—

"(A) kept in leakproof, nonabsorbent containers with close-fitting covers; and

"(B) disposed of daily.

"(2) containers shall be thoroughly cleaned inside and out, each time they are emptied; and

"(3) impervious plastic liners should be used.

"(c) Handwashing facilities shall be available in, or immediately adjacent to—

"(1) bathrooms;

"(2) toilet rooms;

"(3) sleeping areas; and

"(4) kitchens.

"(d) There shall be adequate insect screens on all windows and doors, where needed and adequate janitorial equipment and storage space in each unit of the facility.

Chapter 7.—ADMINISTRATIVE SUPPORT SERVICES

"Subchapter I—Functions, Personnel, and Facilities

"SEC. 1290. (a) Adequate, modern administrative support shall be provided to efficiently meet the needs of, and contribute to, program services for residents, and to facilitate attainment of the goals and objectives of the facility. Such support shall make available a variety of resources, which may include, but need not be limited to, the following kinds of services; clerical, communication, dietary, financial, housekeeping, laundry, personnel, physical plant, records, safety and security, and supply and purchasing.

"(b) Administrative support functions should be directed by a qualified administrator, trained and experienced to provide skilled and efficient coordination of these services, to adequately meet the facility's program objectives. In larger facilities, provision may be made for both executive direction, via a chief executive officer (superintendent, director, and so forth), and administration of support services (via a business manager, and so forth). In smaller facilities, a single person may provide both program direction and administration of support services—

"(1) the administrator of support services should—

"(A) have at least a baccalaureate degree and three years of experience in a responsible and relevant administrative position; or

"(B) have completed formal graduate education in health administration or its equivalent,

"(2) all administrative support personnel shall have sufficient understanding and appreciation of the nature and behavior of the mentally retarded resident, to assure that each employee's work and his relations to the residents contribute positively to their welfare.

"(c) There shall be adequate office space, facilities, equipment, and supplies for the efficient conduct of all administrative support functions.

"Subchapter II—Fiscal Affairs

"SEC. 1291. (a) Funds shall be budgeted and spent in accordance with the principles and procedures of program budgeting.

"(1) the budget requests submitted by the facility shall—

"(A) adequately reflect the program needs of the residents, as developed by program staff; and

"(B) be adequately documented and interpreted.

"(2) budget preparation shall be the product of team management;

"(3) budget preparation and implementation shall include active participation of professional team members;

"(4) budget development shall include incorporation of effectiveness measures; and

"(5) there shall be sufficient latitude to permit rebudgeting of funds in response to changing program needs, and in accordance with the principles and procedures of program budgeting.

"(b) Individuals acting on the facility's budget requests (board members, State budget officials, members of appropriations committees, and so forth) should have firsthand knowledge of its operation and needs, ob-

tained by regular visitation and observation of its programs.

"(c) Budget performance reports shall be prepared at appropriate intervals and submitted to those individuals participating in budgeting and management responsibilities.

"(d) Funds for community (that is, nonresidential) programs and services shall not be included in computing the per capita (that is, per resident) cost of operation. The per capita expenditure for residential services, divided by the cost of living index for the State or area, should compare favorably with the same ratio for the Nation as a whole, that is, come within 90 per centum of the Nation as a whole or, preferably, exceed 100 per centum. Maintenance expenditures should be at least the same as would be required by age peers in the community.

"(e) There shall be a formal system of internal control in handling the fiscal affairs of the facility. The facility shall have an adequate 'responsibility' accounting system.

"(f) A full audit of the facility's fiscal activities shall be performed regularly, preferably annually, by a qualified accountant independent of the facility.

"(g) Fiscal reports shall be prepared and communicated to the facility's public at least annually.

"(h) Facilities charging for services shall have a written schedule of rates and charge policies, which shall be available to all concerned.

"(i) Where the size of the facility's operation warrants a fiscal officer, he shall have appropriate training and experience in accounting and auditing. Sufficient accountants, account clerks, and clerk-typists shall be provided to assure maximum support to the efforts of personnel directly involved in services to resident.

"Subchapter III—Purchase, Supply, and Property Control

"SEC. 1292. (a) There shall be written purchasing policies regarding authority and approvals for supplies, services, and equipment.

"(b) There shall be adequate documentation of the purchasing process, including, where appropriate, requisitions, bids from a number of suppliers, purchase orders, and receiving reports.

"(c) The inventory control system and stockroom operation shall be adequate for—

"(1) receiving supplies;

"(2) issuing supplies as needed in programs;

"(3) maintaining necessary stock level;

"(4) establishing responsibility for stocks; and

"(5) there shall be appropriate storage facilities for all supplies and surplus equipment

"(d) Where the size of the facility's operation warrants, the person responsible for directing purchase, supply, and property control should have had several years of progressively more responsible experience in these fields, and/or related training. There shall be sufficient trained and experienced personnel to accomplish the necessary purchase, supply, and property control functions.

"Subchapter IV—Communications

"SEC. 1293. (a) There shall be adequate communication service, including adequate telephone service, whenever residents are in the facility.

"(b) The communication system shall assure—

"(1) prompt contact of on-duty personnel; and

"(2) prompt notification of responsible personnel in the event of emergency.

"Subchapter V—Engineering and Maintenance

"SEC. 1294. (a) The facility shall have an appropriate and written preventive maintenance program.

"(b) Where the size of the facility warrants, engineering and maintenance shall be directed by an engineer who—

"(1) has had at least three years of progressively more responsible experience in institutional engineering and maintenance;

"(2) is licensed or certificated, as appropriate to the nature of the facility; and

"(3) there shall be sufficient trained and experienced personnel to accomplish the required engineering and maintenance functions.

"Subchapter IV—Housekeeping Services

"SEC. 1295. Appropriate to the size and nature of the facility, the person responsible for directing housekeeping services should have had—

"(1) several years of progressively more responsible experience in this field, and/or related training;

"(2) formal training in short courses or vocational schools; and

"(3) experience and training in supervision and management.

"Subchapter VII—Laundry Services

"SEC. 1296. (a) Laundry services shall be managed so that—

"(1) daily clothing and linen needs are met without delay; and

"(2) there is minimum loss and damage to clothing.

"(b) Appropriate to the size and nature of the facility, the person responsible for directing laundry services should have had several years of progressively more responsible experience in this field, and/or related training. The person responsible for directing laundry service shall have the ability to supervise residents who work in the laundry.

"Chapter 8.—DEFINITIONS

"SEC. 1297. As used in this part the term—

"(1) 'Advocacy' means that which is done by an advocate.

"(2) 'Advocate' means an individual, whether a professional employed by a private or public agency, or a volunteer (a citizen advocate), who acts on behalf of a resident to secure both the services that the resident requires and the exercise of his full human and legal rights.

"(3) 'Ambulatory' means able to walk independently, without assistance.

"(4) 'Chief executive officer' means the individual appointed by the governing body of a facility to act in its behalf in the overall management of the facility. Job titles may include, but are not limited to, superintendent, director, and administrator.

"(5) 'Developmental disabilities' means disabilities that originate in childhood, are expected to continue indefinitely, constitute a substantial handicap to the affected individual, and are attributable to mental retardation, cerebral palsy, epilepsy, or other neurological condition closely related to, or requiring treatment similar to that required by, mental retardation.

"(6) 'Direct-care staff' means individuals who conduct the resident-living program; resident-living staff.

"(7) 'Facility' means a residential facility for the mentally retarded.

"(8) 'Generic services' means services offered or available to the genera' public, as distinguished from specialized services intended only for the mentally retarded.

"(9) 'Governing board' means a group of individuals that constitutes the governing body of a facility; one form of a governing body. A governing board may be called a board of trustees, board of directors, or board of governors.

"(10) 'Governing body' means the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

"(11) 'Guardian' means an individual who has legal control and management of the person, or of the property or estate, or of both the person and the property, of a resident. A natural guardian is a parent lawfully in control of the person of his minor child; natural guardianship terminates when the child attains his majority. A legal guardian is one appointed by a court. A guardian of the person is one appointed to see that the resident has proper care and protective supervision in keeping with his needs. A guardian of the property is one appointed to see that the financial affairs of the resident are handled in his best interests. A guardian ad litem is one appointed to represent a resident in a particular legal proceeding, without control over either the resident's person or his estate. A public guardian is a public official empowered to accept court appointment as a legal guardian. A testamentary guardian is one designated by the last will and testament of a natural guardian.

"(12) 'Legal incompetence' means the legal determination that a resident is unable to exercise his full civil and legal rights, and that a guardian is required.

"(13) 'Living unit' means a resident-living unit that includes sleeping, dining, and activity areas.

"(14) 'Mobile nonambulatory' means unable to walk independently or without assistance, but able to move from place to place with the use of devices such as walkers, crutches, wheel chairs, wheeled platforms, and so forth.

"(15) 'Nonambulatory' means unable to walk independently, without assistance.

"(16) 'Nonmobile' means unable to move from place to place.

"(17) 'Normalization principle' means the principle of letting the mentally retarded 'obtain an existence as close to the normal as possible,' making available to them 'patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society.' Specifically, 'the use of means that are as culturally normative as possible to elicit and maintain behavior that is as culturally normative as possible.'

"(18) 'Public financial support programs' include, but are not limited to, services for crippled children; aid to the disabled, old age, survivors, and disability insurance, and other benefits available under the Social Security Act; and benefits administered by the Veterans' Administration.

"(19) 'Resident' means the general term used in the standards to refer to an individual who receives service from a residential facility, whether or not such individual is actually in residence in the facility. The term thus includes individuals who are being considered for residence in a facility, individuals who were formerly in residence in a facility, and individual who are receiving services other than domiciliary from a facility. (A residential facility, on the other hand, may use the term 'resident' to refer only to those individuals actually in residence, and may thus distinguish between resident and nonresident recipients of its services.)

"(20) 'Resident-living' means pertaining to residential or domiciliary services provided by a facility.

"(21) 'Residential facility' means a facility that provides twenty-four-hour programing services, including residential or domiciliary services, directed to enhancing the health, welfare, and development of individuals classified as mentally retarded. While the facility must provide twenty-four-hour programing for residents, in accordance with their needs, it need not itself operate any programs or services other than residential or domiciliary.

"(22) 'Rhythm of life' means relating to the normalization principle, under which

making available to the mentally retarded 'patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society' means providing a normal rhythm of the day (in respect to arising, getting dressed, participating in play and work activities, eating meals, retiring, and so forth), normal rhythm of the week (differentiation of daily activities and schedules), and normal rhythm of the year.

"(23) 'Surrogate' means an individual who functions in lieu of a resident's parents or family.

"(24) 'Time out' means time out from positive reinforcement. A behavior modification procedure in which, contingent upon the emission of undesired behavior, the resident is removed from the situation in which positive reinforcement is available.".

SEC. 4. (a) Section 1 of the Public Health Service Act is amended by striking out "titles I to X" and inserting in lieu thereof "titles I, II, and XII".

(b) The Act of July 1, 1944 (58 Stat. 682) is further amended by renumbering title XI (as in effect prior to the date of enactment of this Act) as title XII and by renumbering sections 1101 through 1114 (as in effect prior to such date) and references thereto sections 1201 through 1214 respectively.

SECTION-BY-SECTION ANALYSIS

(By Congressional Research Service, Library of Congress)

BILL OF RIGHTS FOR THE MENTALLY RETARDED

The opening section of the bill states the overall general aims of the bill—to provide for the humane care, treatment, habilitation and protection of the mentally retarded in residential facilities through the establishment of strict quality operation and control standards and the support of the implementation of such standards by Federal assistance; to establish State plans requiring a survey of need for assistance to facilities to enable them to be in compliance with such standards, seek to minimize inappropriate admission to residential facilities and develop strategies to stimulate the development of regional and community programs for the mentally retarded which include the integration of such residential facilities.

Sec. 2 of the bill presents the findings of the Congress concerning the mentally retarded in the United States and the care that is provided them in residential facilities. These findings are concerned with such matters as:

(1) the numbers of mentally retarded currently living in residential facilities for the retarded,

(2) the prime purpose of residential services,

(3) the basic obligation of residential services,

(4) the considerations on which admissions to a residential facility should be based,

(5) the importance of legal guardians for both adult and minor residents of institutions,

(6) the need for residential facilities to be humane and safe, to provide basic human needs, and to be located in the community served and provide normal contacts within the community life,

(7) the realization that the first consideration in research and planning for the retarded must be the protection of the human dignity, the integrity and the life of the mentally retarded, and

(8) the necessity for both an upgrading of existing facilities for the retarded and the establishment of new, small, homelike units integrated into community living situations

Part (b) of Sec. 2 states that the purpose of the Act is to establish standards for the operation of residential facilities, to improve the provision of services to the retarded by encouraging and supporting the planning and development of strategies to implement these standards, to minimize inappropriate admissions to residential facilities, and to stimulate the development of regional and community programs integrating the facilities conforming to these standards. A further purpose of the Act is to encourage and support planning and development of strategies to survey and analyze residential facilities and their compliance with the standards established under the Act and to stimulate regional and community programs and services for the retarded which integrate such residential facilities.

TITLE XI OF THE PUBLIC HEALTH SERVICE ACT—SUPPORT OF RESIDENTIAL FACILITIES FOR THE MENTALLY RETARDED

Sec. 3 of the bill creates a new title XI in the Public Health Service Act entitled Support of Residential Facilities for the Mentally Retarded.

Part A—State Strategy Planning

Part A of this title, entitled "State Strategy Planning" authorizes two programs of grants, each totalling $15 million a year for fiscal year 1973 and the next two succeeding fiscal years.

The first program of grants, described in sec. 1101(a), will be used to help the States conduct comprehensive surveys and analyses of the cost of bringing existing residential facilities into compliance with the standards established under this Act, to review State plans and develop strategies including implementation and monitoring mechanisms to fulfill the overall stated purposes of the Act, such as to minimize inappropriate placement in residential facilities particularly by providing alternative programs of care, and to coordinate and integrate existing residential facilities with existing and future regional and community mental retardation programs and services. The bill provides that this be done in cooperation with the National Advisory Council on Standards for Residential Facilities for the Mentally Retarded which is established by a later section of the Act, section 1109. This first grant program will also be used to study administrative relationships, including the identification of legal, economic, social, and other barriers to compliance with the standards established under this Act, as well as the involvement of public and private sources in programs and services for the mentally retarded, with recommendations for improvement.

The second program of grants, described in section 1101(b), will be used to assist the States in improving the services provided by existing residential facilities for the mentally retarded. These grants will not exceed $300,000 per institution and will cover costs of administering and operating demonstration facilities and training programs. These grants awards will be evaluated for effectiveness in improving residential care for the mentally retarded.

Part B—Delivery of Mental Retardation Programs and Services

Part B of the new title is entitled "Delivery of Mental Retardation Programs and Services". Section 1102 of this part authorizes such sums as are necessary in grants to assist the States in meeting direct and indirect expenses for bringing residential facilities into conformity with the standards established under this Act. Priority in awarding these grants will be given to those applicants whose facilities are in the greatest need of assistance.

A State desiring to receive a grant must submit a plan:

(1) setting forth a schedule for compliance with the established standards for each facility;

(2) designating a State planning and advisory council, with a membership drawn from local agencies and nongovernmental organizations concerned with services for the mentally retarded, and with at least one-third representing consumers of such services;

(3) assuring reasonable State financial participation in the cost of carrying out the plan and how the facility will complement and augment rather than duplicate or replace other community services for the retarded;

(4) setting forth a schedule of costs to achieve compliance with the standards;

(5) designating how placement in residential facilities will be minimized through alternative regional and community programs and services.

Sec. 1103(b) provides for approval of plans which set forth a reasonable time for compliance and provides that plans will not be disapproved without reasonable notice and opportunity for a hearing.

Sec. 1104 provides that individual project grants will not exceed 75 percent of the cost of the project and that payments will be made in advance or by reimbursement.

Sec. 1105 assures maintenance of effort by the States; that is, that grants to the States will not result in any decrease in the level of already existing funds, but will be used to supplement and increase the level of such funds.

Sec. 1106 establishes procedures for the withholding of grants if there has been a failure to comply with the State plan or if any program assisted fails to comply with any applicable provisions of the Act. Payments will be withheld until the Secretary is satisfied that there is no longer any failure to comply or that the noncompliance will be promptly corrected. When a State has received a grant under sec. 1102 and has not complied with the standards of the Act within a reasonable period of time, that State will not be eligible for any further funds on behalf of any person who is a resident of any residential facility for the retarded which does not meet the standards described in part C of the title. The section provides that any funds to which a person would otherwise be entitled to have paid on his behalf to a residential facility will be reserved for him and administered by the Social Security Administration in the same manner as benefits under title II of the Social Security Act would be administered on his behalf if he were entitled to them. Five years after the enactment of this Act, no residential facility that does not comply to the standards established by this Act will be eligible to receive any direct or indirect payments under any Federal law.

Sec. 1107 provides for an extension of time for grantees and other residential facilities for the retarded to meet the established standards if appropriations for grants under sec. 1102 do not meet authorizations.

Section 1108 authorizes such sums as may be necessary for three years beginning in fiscal year 1973 for a program of grants to public or private nonprofit agencies, organizations, or institutions to meet the costs of development, improvement, extension, or expansion of community resources and community living situations for the mentally retarded other than living-in residential facilities for the mentally retarded. The section authorizes the Secretary to prescribe regulations describing the applications that will be used to apply for grants, and directs the Secretary to give priority to those applicants whose proposals he determines are of special significance because they demonstrate new or relatively effective or efficient methods of delivery of services to the mentally retarded.

Sec. 1109 provides for the establishment of a fifteen-member National Advisory Council on Standards for Residential Facilities for the Mentally Retarded. Members will be appointed from representatives of professional and voluntary organizations concerned

with the mentally retarded, consumers of services from residential facilities for the retarded (for example, parents of the mentally retarded), and leaders in the fields of service to the mentally retarded. A majority of the membership will represent the interests of consumers of services.

The Council will advise the Secretary on regulations implementing standards, will study and evaluate such standards through site visits and other methods to determine their effectiveness, and will recommend any changes or improvements in the standards.

Council members will be compensated.

Part C—Standards for Mental Retardation Facilities for the Mentally Retarded

The major proportion of the bill is contained in Part C, which is entitled "Standards for Residential Facilities for the Mentally Retarded" and which consists of a comprehensive and detailed description of the standards a residential facility for the mentally retarded must comply with in order to qualify for assistance under this Act, and eventually, for assistance and funds under any Federal program. This part is divided into eight chapters and each chapter is broken down into subchapter.

Chapter 1—Administrative policies and practices

The first subchapter of Chapter I describes the standards for the philosophy under which a residential facility should operate, and the standards under which such a facility should be located and operated. These standards stress the fostering of humanization of mentally retarded residents and the importance of providing as normal an atmosphere as possible. The standards demphasize the use of institutional terms in dealing with the retarded and their problems. Under these standards, the residential facility will be integrated into the community and the general population as much as possible. The residents will use community resources such as schools, religious facilities, medical and other professional services, recreation facilities, stores, and employment facilities as extensively as possible. The facility will be designed and operated to help residents to move from structured, dehumanized, institutional living to a less structured, more individualized, and independent life. Facilities will emphasize groupings of program and residential units designed to meet residents' needs and integrated into, instead of segregated from, community life.

The second subchapter of Chapter I outlines general policies and practices under which a residential facility shall operate. It requires a facility to have generally available a written outline of the philosophy, objectives, and goals it is striving to achieve. The facility will also have a manual of policies and procedures describing what it is doing to achieve its objectives and goals. In addition, a statement of policies and procedures concerning the rights of residents will be required.

The facility is required to have a statement of policies and procedures that protect the financial interests of residents, manuals describing procedures in the major operating units of the facility, a summary of laws and regulations relevant to mental retardation and to the function of the facility, and a plan for a continuing management audit.

Public facilities will have documents describing their statutory basis of existence and the administration of the governmental department in which they operate. Private facilities will have documentation, including charters, constitutions and bylaws, and State licenses.

This subchapter describes the general duties of the governing body of a facility and the responsibilities of the chief executive officer and other persons responsible for the operation of the facility.

The subchapter also describes the general overall management, organization, and administration of the facility, including such matters as delegation of authority and responsibility, decisionmaking, proper utilization of staff, and effective channels of communications. There will be a plan for improvement of staff and services.

There will be provisions for effective staff and resident participation and communication, including use of staff meetings and standing committees. The facility will use a percentage of operating budget for self-renewal purposes. The findings of these activities will be disseminated to staff and consumer representatives. There will be a system of collection and recording of data describing the population of the facility.

The facility will have a publicly available description of services for residents. The facility will provide, by various means, for meaningful and extensive participation in the policymaking and operation of the facility by consumer representatives and the public.

The facility will establish an extensive public education and information program to develop understanding and acceptance of the mentally retarded in all aspects of community living.

Subchapter III of Chapter I describes standards for admission and release of mentally retarded residents of facilities. These provide that only those who can be helped by the facility's programs will be admitted, and that numbers of admissions will not exceed the facility's capacity and provisions for adequate programming.

Laws, regulations, and procedures for admission, readmission, and release will be summarized and available for distribution. The matter of legal incompetence will be separate from the matter of the need for residential services, and admission to a facility will not automatically imply legal incompetence.

Before admission, a resident must have a complete physical, emotional, social and cognitive evaluation. Service need for each resident will be defined without regard to the actual availability of all the desirable options. A retarded person will be admitted to a facility only when it can be determined that this would be the best measure for him. When admission is not the best idea, but cannot be avoided, this must be acknowledged clearly and plans must be made to explore alternatives. The primary beneficiary of the admission to a facility must be clearly specified as the resident, his family, his community, society, and several of these. All admissions are to be regarded as temporary.

A medical evaluation by a physician will be made within a week of admission. Provision is made for continuing and regular evaluations of the resident and his progress in the facility.

Provision is made for physical inspection of the resident for signs of injury or disease prior to and following temporary or permanent release from the facility. Procedures are described for reporting on the resident's status at the time of permanent release or transfer from the facility.

In the event of serious illness or accident, impending death, or death, provision is made for informing next of kin or guardian, and the following of the wishes of that person concerning religious matters. In case of death of a resident, provision is made for autopsy, with permission, for suitable religious services and burial, if wished, and for informing coroner or medical examiner, in accordance with law.

Subchapter IV of Chapter I outlines the personnel policies a resident facility for the mentally retarded must follow in order to comply with this law. It provides for a personnel director if warranted, for a written description of current personnel policies and practices to be available to all employees and for initial screening and regular evaluation of all personnel.

The subchapter provides that staffing should be sufficient so that the facility is not dependent upon residents or volunteers for the performance of productive services. It describes procedures under which residents can be involved in such services. The subchapter describes procedures for the establishment of an appropriate staff training program and the qualifications of the person responsible for this program. Also described are provisions for creating relations with nearby colleges and universities for advanced training of the facility's staff, for the use of facility resources for training and research by the colleges and universities, and for exchange of staff between the facility and the colleges and universities.

Chapter II—Resident living

The first subchapter of Chapter II describes staff-resident relationships and activities. Staff of the facility's living units will devote their attention to the care and development of residents in the atmosphere of the living units as follows:

(1) by providing sufficient attention to each resident each day;

(2) by training residents in activities of daily living and in development of self-help and social skills;

(3) by provididng a warm, family-or homelike environment;

(4) by not being diverted by housekeeping, clerical, and other nonresident-care activities; and

(5) by maintaining stability and consistent interpersonal relationships.

Living unit staff will participate with an interdisciplinary team in the overall care and development of the resident. Provision is made for evaluation and program plans for each resident to be available to living unit staff and to be reviewed regularly by the interdisciplinary team.

Activity schedules for each resident free of "dead time" of more than one hour and allowing for individual and group free activities will be available to living unit staff and implemented daily. Life in the living unit will resemble as much as is possible the cultural norm of nonretarded age peers. Residents will be assigned responsibilities in the living unit, and an effort will be made to enhance self-respect and to develop independent living skills. Provision must be made for appropriate out-of-bed and bedroom activities for multiple handicapped and nonambulatory residents. Residents will have planned periods of time out doors and will be instructed on how to use freedom of movement both within and without the facility's grounds. Special events, such as birthdays, will be observed and provisions will be made for appropriate heterosexual interaction. Residents' view and opinions on matters concerning them will be elicited and considered. They will be instructed in the use of and will have appropriate access to communication processes, such as telephones and mail. They will be permitted appropriate personal possessions and the possession and the use of money.

There will be provision for the recognition and management of behavioral problems in the living unit. There will be a written statement of appropriate policies and procedures for the control and discipline of residents. Corporal punishment will not be permitted and residents will not discipline other residents, except as part of an organized self-government program. Seclusion in a locked room will not be employed. Physical restraint will be used only when necessary to protect the resident from injury to himself or to others, and not for punishment, convenience of the staff, or as a substitute for program. Policies for the use of restraint will be in writing and will follow certain guidelines. Procedures are described for the appropriate use of mechanical supports, chemical restraints, and behavior modification programs.

The second subchapter of Chapter II describes the standards for food services in the resident facility. It provides that food serv-

ices meet the needs of each resident and be professionally planned and nutritionally adequate. It provides for a written statement of goals, policies, and procedures of the facility's food service. A qualified nutritionist or dietitian will be employed or consulted regularly. The standards require that well-balanced meals be served to residents three times a day at appropriate intervals in dining rooms which are suitably designed and equipped. The food service of the facility, like all other services, must be designed and operated to meet the needs of the residents. Suitable supervision and systematic training in the development of appropriate eating skills will be provided. Provision must be made for cleaning equipment and for handwashing facilities.

Subchapter III of the second Chapter is concerned with provisions for clothing of the residents. Each resident will be provided an adequate supply of clothing comparable to the clothing worn in the community. Provision is made for the supplying of appropriate clothing to residents with special needs, such as the multiply handicapped, the nonambulatory, and the incontinent. Residents will be trained and encouraged to choose their own clothing, select their daily clothing, dress themselves, and maintain their clothing as independently as possible.

Subchapter IV describes provisions for the health, hygiene, and grooming of residents. Residents will be trained to become as independent as possible in these matters of personal care, such as daily bathing, brushing teeth, etc. Staff assistance will be provided where appropriate, such as helping female residents in caring for menstrual needs, or in providing toilet training where needed.

Each living unit will have a properly adapted drinking unit and residents will be taught the proper use of such units.

Procedures will be established for regular weighing and height measurement of residents and for the maintenance of suitable records. Care of infections and contagious diseases will conform to State and local health regulations. A physician will review regularly all orders prescribing bed rest and prohibition of outdoor activities. Such devices as dentures, eyeglasses, hearing aids, and braces will be furnished and maintained by appropriate specialists.

Subchapter V describes standards for grouping and organization of living units. These living units will be small enough to insure proper development of interpersonal relationships among residents and between residents and staff. A single unit, including sleeping, dining, and activity areas, should provide for the housing of not more than sixteen residents, and program groups within the unit should not exceed eight.

Any deviation from either of these two size limitations would have to be justified on the basis of meeting program needs of the residents.

Residential units should house both male and female residents insofar as this conforms to prevailing cultural norms. Residents of widely varying ages, developmental levels, and social needs will not be housed together unless this is planned to promote growth and development. Residents will not be segregated solely on the basis of their handicaps. The living unit is not intended to be a self-contained program unit, but should be coordinated with activities residents engage in outside the living unit. Residents will be allowed free use of all living areas within the living unit, with due regard to privacy and personal possessions. A resident will have access to a private area where he can withdraw when not engaged in structured activities. Outdoor play and recreation areas will be accessible to all living units.

Subchapter VI of Chapter II defines the policies and practices of the resident-living staff. It stipulates staff-resident ratios for each of the three shifts in a twenty-four day and for each type of living unit in the facility, so that there is adequate coverage of residents twenty-four hours a day, seven days a week.

Subchapter VII outlines standards for design and equipage of living units, so that they are appropriate for the fostering of personal and social development, appropriate to the program, flexible enough to accommodate variations in program to meet changing needs, and such as to minimize noise and permit communication at normal conversation levels. The interior design of living units will simulate the functional arrangements of a home. The subchapter provides standards for minimum space requirements, and for the design and equipage of bedrooms, storage facilities, and toilet areas. It describes provisions for the safety, sanitation, and comfort of the residents by ventilation, temperature and humidity control, temperature of hot water, emergency lighting, and supply of clean linen.

Chapter 3—Professional and special programs and services

This chapter outlines in great detail the various types of professional services that will be available to residents of a qualified residential facility for the mentally retarded. These professional and special programs and services will be provided in accordance with the residents' needs. They may be provided by programs within the facility or by arrangements between the facility and other agencies or persons. In order to promote normalization, all professional services will be rendered whenever possible in the community. The programs and services will meet standards for quality of service. Individuals providing the programs and services will be identified with appropriate professions, disciplines, or areas of service. Interdisciplinary teams for evaluating needs, planning individualized habilitation programs, and periodically reviewing residents' response to programs and revising programs accordingly, will be made up of persons drawn from or representing the revelant professions, disciplines, or service areas.

The standards in the subchapters describing each type of service are to be interpreted to mean that necessary services are to be provided efficiently and competently, without regard to the professional identifications of the persons providing them, unless only members of a single profession are qualified or legally authorized to perform the stated service. Therefore, services listed under the duties of one profession may be rendered by members of other professions who are equipped by training and experience to do so. Members of professional disciplines must work together in cooperative, coordinated, interdisciplinary fashion to achieve the objectives of the facility.

Programs and services and the pattern of staff organization and function within the facility will be focused upon serving the individual needs of residents and provide the following:

(1) comprehensive diagnosis and evaluation of each resident;

(2) design and implementation of an individualized habilitation program to meet the needs of each resident;

(3) regular review, evaluation, and revision, of each individual program as necessary;

(4) freedom of movement of individuals from one level of achievement to another as is warranted; and

(5) an array of those services that will enable each resident to develop to his maximum potential.

Each of the subchapters in Chapter 3 describes a specific type of service. Each subchapter describes the purposes for which the service is provided, describes the types of services that will be available, describes provisions for diagnosis and evaluation, defines qualifications of education experience with the mentally retarded, and professional certification of the personnel supervising and providing the services, and describes the physical necessities of space, equipment, and facilities for providing the services. The specific services are as follows:

(1) Dental Services,
(2) Educational Services,
(3) Food and Nutrition Services,
(4) Library Services,
(5) Medical Services,
(6) Nursing Services,
(7) Pharmacy Services,
(8) Physical and Occupational Therapy Services,
(9) Phychological Services,
(10) Recreation Services,
(11) Religious Services,
(12) Social Services,
(13) Speech Pathology and Audiology, Services,
(14) Vocational Rehabilitation Services, and
(15) Volunteer Services.

Chapter 4—Records

The first subchapter provides for the maintenance of adequate records for each resident. These records will be used to:

(1) plan and evaluate each resident's habilitation program;

(2) provide a means of communication among all persons contributing to each habilitation program;

(3) furnish evidence of the resident's progress and response to program;

(4) serve as a basis for review, study, and evaluation of the overall programs provided by the facility;

(5) protect the legal rights of the resident, facility, and staff; and

(6) provide data for use in research and education.

All records will be sufficiently detailed to meet these needs and will be legible, dated, and authenticated.

The second subchapter lists types of information that will be included in the content of each resident's record, and provides that certain items be recorded at time of admission, within one month after admission, during residence, at the time of discharge from the facility, and in the case of death.

The third subchapter describes procedures that will be followed to assure confidentiality of records.

The fourth subchapter provides for the maintenance of an organized central record service for the collection and dissemination of information regarding residents.

Subchapter 5 describes the types of statistical records that will be kept by the resident facility and provides that statistical data will be reported to appropriate Federal and other agencies as requested.

The sixth subchapter describes standards for sufficiently qualified records personnel, supervised by a qualified individual, and provided with adequate space, facilities, equipment, and supplies.

Chapter 5—Research

This chapter provides standards for the encouragement of research, review of research proposals, conduct of research, and the reporting of research results.

Chapter 6—Safety and Sanitation

The first subchapter describes safety requirements for resident facilities for the mentally retarded. There is provision for adequate exit doors and ramps, and for handrails on stairways. There must be documentation of compliance with State and local fire safety regulations. Each facility must have plans and procedures known to, and reviewed with, staff, for meeting potential emergencies and disasters. Evacuation drills will be held quarterly. Each facility will maintain an adequate active safety program. All buildings and facilities will be designed and constructed to be accessible to the physically handicapped and the nonambulatory. Paint used in the

facility will be lead free and provision must be made for emergency auxiliary sources of heat.

The subchapter on sanitation requires each facility to have documentation on compliance with sanitation, health, and environmental safety codes of State or local authorities. It requires adequate procedures for the holding, transferring, and disposal of waste and garbage. It provides for the availability of handwashing facilities and for the provision of insect screens where needed and for adequate janitorial equipment and storage space in each unit of the facility.

Chapter 7—Administration Support Services

The chapter describes standards for the provision of adequate, modern administrative support to meet the needs of, and contribute to, program services for residents, and to facilitate attainment of the goals and objectives of the facility. It provides for a qualified administrator to supervise these services and for adequate office space, facilities, equipment, and supplies. The specific administrative services for which standards are described are:

(1) Fiscal affairs,
(2) Purchase, supply, and property control,
(3) Communication service,
(4) Housekeeping services, and
(5) Laundry services.

Chapter 8—Definitions

This chapter defines the following terms used in the bill:

(1) Advocacy,
(2) Advocate,
(3) Ambulatory,
(4) Chief executive officer,
(5) Developmental disabilities,
(6) Direct-care staff,
(7) Facility,
(8) Generic services,
(9) Governing board,
(10) Governing body,
(11) Guardian,
(12) Legal incompetence,
(13) Living unit,
(14) Mobile nonambulatory,
(15) Nonambulatory,
(16) Nonmobile,
(17) Normalization principle,
(18) Public financial support programs,
(19) Resident,
(20) Resident-Living,
(21) Residential facility,
(22) Rhythm of life,
(23) Surrogate, and
(24) Time out.

Sec. 4 of the bill amends the Public Health Service Act to provide for the insertion of this new title XI.

EDWARD R. KLEBE,
Education and Public Welfare Division.

EXHIBIT 3

DISCUSSION OF ISSUES

Thus, this legislation establishes strict standards for residential facilities for the mentally retarded—the fruition of a partnership of governmental agencies, of professional organizations of practitioners in the field, and of consumer representatives, working together in the interest of improving services to the mentally retarded—and, at the same time, stimulates States to establish plans for regional and community programs for the mentally retarded and minimize admissions to institutional residential facilities while providing funds for alternative programs of community care.

Our country's mentally retarded are much like the aged—they have done no harm, yet they are treated as burdensome problems, rather than with the love they deserve as human beings. Our society looks at youth, mobility, activity, and quickness of thought as being of the utmost importance in our day-to-day lives. When a person cannot have these qualities, he should not be shunned, disrespected, denigrated, and ignored. For the institutionalized mentally retarded, this is most assuredly true. Once a resident in the institution, the mentally retarded individual is generally looked upon as "put-away," no longer a bother to the society as a whole. How can we, the richest country in the world, treat innocent human beings in such an inhumane fashion? It is our responsibility as legislators to mandate the necessary authority to help alleviate the horrifying prevailing conditions that exist in these institutions, and to seek alternative solutions to institutionalizaion, more beneficial to the retarded individual, his family, and society.

The residential environment of the retarded individual is a supremely significant component in his development. If the residential setting is warm, devoid of dehumanizing conditions, the individual has a much greater opportunity to develop to his full capacity. It is often thought that in comparison to an individual with normal development, a person with slow development of intelligence has a greater number of failures and consequently is more dependent on his environment. If the environment is a poor one, as those in so many of our institutions are, or the professional individuals within it are unwilling to understand the handicapped child, or lack the much needed patience, then the child's readiness for failure must logically, but tragically be increased and the positive aspects of his behavior are not reinforced. Let me seize on this point. Almost all mentally retarded individuals can develop and learn something, only it takes them longer and puts greater demands upon the environment than it does with nonretarded persons. We must not only understand these realities, but accept them and be willing to act on them if we truly want to effect responsible humane legislation for the mentally retarded.

Within the past 10 years, the average cost per capita per day per resident has gone from $4.64 to $11.62. The number of institutions has increased 76 percent between 1960 and 1970 from 108 in 1960 to 190 in 1970. An estimated 117,327 persons were employed full time in public institutions in 1970. This is more than double the number employed ten years ago; however, the overwhelming majority are attendants, matrons and maintenance employees. Only about 11 percent of these are teachers and nurses. Fewer than 2 percent of all institution personnel are classified as psychiatrists, psychologists and social workers. The turnover of the personnel within the institutions takes away from the resident any real possibility of continuity of care, which could be most beneficial to continued progress and development. A survey of the 26 institutions in the 16 Southeastern States showed that, on the average, 20 percent are replaced in a year. In two of the 26 institutions, fully 50 percent of the attendants were replaced in 1 year.

A large part of the reason for the inadequate qualifications of attendants and for their high turnover rate is undoubtedly the low status they are accorded and the base pay they receive. Among the majority of the 26 institutions just mentioned, the maximum possible salary for attendants was more than $1,000 below the median income of the families in the county in which the institutions were located.

As I have stated previously, I have been in close contact with many groups who are involved with the provision of services to the mentally retarded. I have come to understand that although there is unanimous support for those goals which my bill seeks to accomplish, the best methodology is an issue about which reasonable people differ. There has been reasonable concern expressed about the impact of some of the provisions of this bill on the Developmental Disabilities Act. I recognize the issue and am most sympathetic to the more generic developmental disability concept to benefit the mentally retarded. I do not intend this measure to foreclose our options to more tightly tie into the act when the committee considers that bill.

In regard to the retention of the voluntary approach to standards, this bill meets the issue by setting standards in law, but permits the very same groups that developed the standards to be established as a National Advisory Council to recommend revisions and improvements to the standards for effective regulatory action.

I do not intend by law to lock into concrete either standards that cannot be improved and modified nor provide the most efficient and effective oversight of such standards in the best interests of the mentally retarded.

This bill shows the way for prompt action to accomplish objectives which provide for the common good of the mentally retarded which I know all share. It would keep all our options open, as the experts in mental retardation testify how to best achieve this goal.

Mr. TAFT. Mr. President, I am happy to cosponsor this much needed piece of legislation—a bill of rights for the mentally retarded. I have long supported and worked for legislation to protect the rights of the mentally retarded. The very first bill I introduced during my first term in the Ohio Legislature in 1955 was in behalf of these unfortunate people.

For too long, many of the mentally retarded have been inappropriately institutionalized in inadequate facilities and forgotten by society. This bill which I am cosponsoring today, would establish standards to assure humane care, treatment, habilitation, and protection of the mentally retarded in residential facilities and improve the system for the deliverance of services.

Every human life has meaning and value and this bill represents a major step forward in giving that meaning and value to the mentally retarded. I offer my support and assistance for its speedy passage.

Mr. RIBICOFF. Mr. President, today I am joining with Senators WILLIAMS, JAVITS, and other Senators in reintroducing a bill of rights for the mentally retarded.

Too often the problems of the mentally retarded are hidden behind locked doors. Rather than attempting to face head on the problem of caring for the retarded we have chosen to ignore those who are less fortunate. As a result the mentally retarded population often must endure dehumanized and primitive conditions at a time when modern medicine and health care have made rapid strides forward.

It appears that the 93d Congress will be coming to grips with an increasing amount of health legislation. We must be careful to assure that the mentally retarded receive adequate attention. Last year we took some significant steps in this area. The Finance Committee, of which I am a member, developed legislation—now enacted into law—which provides medicaid coverage for the cost of caring for impoverished children in mental hospitals.

By taking this step we began the process of establishing rights for the retarded. Now it is time to pass comprehensive legislation to set out the rights of those afflicted with mental retardation.

This legislation we are introducing today would significantly improve the en-

vironment of retarded individuals, allowing them to live in a warm and personalized setting that allows them to develop to the full extent of their potential.

The legislation would authorize $15 million each year for 3 years to assist the States in conducting comprehensive surveys and analyses of the cost of bringing residential facilities into compliance with the standards established, in reviewing existing State plans, and in developing strategies to fulfill the overall purposes of the act.

The bill would also authorize $45 million over 3 years to assist the States by demonstration grants in improving the services provided by existing residential facilities for the mentally retarded.

In addition, moneys would be made available to assist nonprofit institutions to develop, improve, extend, or expand community resources and community living situations for the mentally retarded as alternatives to institutionalized care. Priority would be given to those applicants whose proposals the Secretary determines are of special significance because they demonstrate new or relatively effective or efficient methods of delivery of services to the mentally retarded.

This provision is similar to the proposal I made earlier this year to set up demonstrations and pilot projects to test innovative new programs and facilities to care for the aged.

The bill also establishes "Standards for Residential Facilities for the Mentally Retarded" which would set forth a comprehensive and detailed description of the requirements with which a residential facility for the mentally retarded must comply in order to qualify for assistance under this act, and eventually for assistance and funds under any Federal program.

Such sums as are necessary would be authorized to assist the States in meeting direct and indirect expenses for bringing residential facilities into conformance with the standards established under this act.

Five years after enactment, a residential facility that does not comply with the standards established will not be eligible to receive any direct or indirect payments under any Federal law on behalf of an individual resident.

This landmark legislation would establish strict standards of care, treatment and protection of the mentally retarded in residential facilities, and would authorize funding for existing institutions to come into compliance with these standards. Also authorized are pilot projects to provide new methods of caring for those who are now institutionalized.

More than 200,000 mentally retarded individuals live their lives in residential institutions. Many of these people receive adequate care. Connecticut, for example, has led the way in providing comprehensive high-quality care for the retarded. Its institutions and standards are models which should be followed by other States and the Federal Government. Thousands of mental patients in other States live in snakepit conditions. The recent disclosures of subhuman conditions at the Willowbrook Institution in New York dramatically illustrate the neglect that the institutionalized retarded population suffers. Tragically, there are "Willowbrooks" all across this Nation.

As the mentally retarded population grows—and it is increasing by the birth of 120,000 retarded infants a year—the institutions to care for them must be expanded and improved. The Federal and State Governments must play a larger and more effective role in aiding private and public institutions who care for the mentally infirm.

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

S. 459. A bill to require the Secretary of Agriculture to carry out a rural environmental assistance program. Referred to the Committee on Agriculture and Forestry.

A BILL TO CONSERVE THE IRREPLACEABLE LAND FOR FUTURE GENERATIONS

Mr. TALMADGE. Mr. President, I am pleased to join today with my distinguished colleague from Vermont (Mr. AIKEN) in introducing a bill that seeks to preserve the rural environmental assistance program, formerly known as the ACP program.

The ACP program was begun in 1936 to provide that the Federal Government pay a share of the total cost borne by the farmer in instituting practices that conserve soil and water resources.

It has been effective in preventing soil erosion and has helped prevent the pollution of our streams with debris and sedimentation.

Since this program began, it has succeeded in providing 2,000,000 water storage reservoirs, controlled water erosion on 114 million acres of land, and through various practices has conserved another 94 million acres of land. The farmers have paid up to 70 percent of these costs that benefit the entire Nation.

My colleagues will recall that this Congress appropriated $225.5 million for this program last year. On September 29, the Department of Agriculture announced that it would initially release $140 million of this amount, holding out the prospect that more would be released.

However, on December 26, USDA announced that this program would be terminated. On that same day, in Brooks County in my home State of Georgia, USDA was announcing the availability of the REAP program to county farmers. Obviously, someone's signals were crossed, and this is a clear indication that the decision to terminate the REAP program was not made at the Department of Agriculture.

The effect of the legislation introduced today by my colleague from Vermont and I, would be to make only one simple change in existing law. Under the present law, the Secretary of Agriculture is authorized to carry out the REAP program. This legislation would require the Secretary to carry out the program to the full extent of the moneys appropriated by Congress for this purpose.

Mr. President, I ask that a copy of the proposed legislation be included in the RECORD at this point.

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

S. 459

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 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is amended by striking out the words "shall have power to" and inserting in lieu thereof the word "shall", and by striking out the phrase "in amounts determined by the Secretary to be fair and reasonable in connection with the effectuation of such purposes", and inserting in lieu thereof the phrase "in an aggregate amount equal to the sums appropriated therefor."

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

S. 460. A bill to revise and restate certain functions and duties of the Comptroller General of the United States; to change the name of the General Accounting Office to "Office of the Comptroller General of the United States," and for other purposes. Referred to the Committee on Government Operations.

AN IMPROVED GAO

Mr. RIBICOFF. Mr. President, I introduce the Budget and Accounting Improvement Act of 1973 for appropriate reference.

There is broad agreement that the 93d Congress must assert greater authority over the operations of the executive branch. But the exercise of this authority must be accompanied by greater responsibility in the legislative process. If the Congress is to be an equal partner with the executive branch in our Government, it must have the necessary information on which to make sound policy judgments. Too often we do not have the facts we need to evaluate properly important legislation.

The dilemma of most Members was aptly described by Senator SCHWEIKER, when he said:

> The pressures of time are so great for Senators and Congressmen that it is often impossible for us to go into much detail. How can a legislator meet his responsibilities to his constituents when it comes to voting on a $20 billion bill, if he does not know what is in it?

With a Federal budget of $250 billion and thousands of programs in more than 150 departments and agencies, it is obvious that the 535 Members of Congress cannot personally review every program or analyze in detail every legislative proposal. We need help to carry out these responsibilities.

The purpose of my bill is to broaden and strengthen the role of the General Accounting Office in assisting the Congress to legislate more effectively. It is an outgrowth of hearings held in 1969 by the Subcommittee on Executive Reorganization on the capability of GAO to analyze and audit Federal programs.

The bill amends the Budget and Accounting Act of 1921 by assigning significant new responsibilities to GAO, which is renamed the Office of the Comptroller General of the United States. It is identical to S. 4432, in the 91st Congress, which passed the Senate unanimously.

The bill has three principal parts. First, the Comptroller General is authorized to conduct studies of pending legislation and alternative proposals at the request of either House of Congress, a committee, or an individual Member of Congress. These studies will evaluate the long-term costs and benefits of each pro-

posal, the analysis used in justifying them, and the validity of the supporting data.

Second, the Comptroller General is required to report annually, and at other appropriate times, on the status of major Federal research, development, and procurement programs in both the defense and civilian sectors. These reports will keep the Congress informed of the current cost estimates, changes in costs or specifications, and time, schedules of multimillion-dollar weapons systems, construction projects, and other Government contracts.

Third, the bill provides several new tools for the Office of the Comptroller General to carry out its upgraded functions. These include—augmented staff, elimination of outmoded statutory auditing procedures, access to department and agency records, subpena power over the records of Government contractors, and the right to bring suit in cases where the Comptroller General differs with the Attorney General on the legality of the Federal action.

I have added a provision to the bill in that title 8 enables the GAO to audit the records of nonappropriated fund activities throughout the executive branch. I introduced this measure, as a separate bill, S. 2782, December 2, 1971, as part of the corrective actions proposed by the Senate Permanent Subcommittee on Investigations following the 3-year inquiry into open mess systems, post exchanges and other nonappropriated fund activities in the Republic of Vietnam and elsewhere. The GAO should have this authority, for, while nonappropriated funds are not in fact approved by the Congress, these activities are nontheless sanctioned and sponsored and to a large extent subsidized by the Congress through appropriated moneys. If the GAO is to have all the tools required to carry out the congressional mandate of auditing Federal programs, it must have the right to examine the records of nonappropriated fund activities. It is worth noting that nonappropriated fund activities are not limited to the Department of Defense. I am advised that virtually every Federal department has nonappropriated fund programs of one kind or another.

A brief summary of the bill follows:

Title 1. Grants the Comptroller General authority to—

First, analyze legislation before Congress at the request of Members;

Second, audit periodically Federal research, development, construction, and procurement programs; and

Third, employ additional personnel to carry out his new responsibilities.

Title 2. Redesignates the General Accounting Office the "Office of the Comptroller General of the United States," renames the Assistant Comptroller General the "Deputy Comptroller General" and established two new positions of Assistant Comptroller General.

Titles 3 and 4. Amend the audit requirements for Government corporations and revolving funds to specify that they be audited only once every 3 years, rather than every year.

Title 5. Authorizes the Comptroller General to pay experts and consultants at the rate of level II on the executive pay scale. The highest rate GAO can now pay is GS–18.

Title 6. Grants GAO subpena power over the records of contractors it is otherwise entitled to review and provides for the enforcement of subpenas.

Title 7. Provides that where the Comptroller General and the Attorney General differ as to the legality of a certain Federal expenditure, the Comptroller General may bring suit in court, unless Congress disapproves such action, to represent his own position and seek a resolution of the dispute.

Title 8. Provides for the review by the GAO of nonappropriated fund activities within the executive branch of the Government.

GAO's reports have resulted in the saving of millions of dollars and in the reform of many Federal programs. However, these reports frequently are issued long after the event in question has occurred. I believe that the GAO can be more useful by focusing on current legislative proposals as well, so that Congress can select the most effective program alternatives.

This bill will put GAO at the service of Congress in the legislative process. Its reviews and reports will provide the material on which to make better informed decisions on the issues before us. As a result, the quality of the work of Congress will be improved and vital public confidence in Congress will be enhanced.

By Mr. MOSS:

S. 466. A bill to designate the High Uintas Wilderness in Ashley and Wasatch National Forests, in the State of Utah. Referred to the Committee on Interior and Insular Affairs.

HIGH UINTAS WILDERNESS

Mr. MOSS. Mr. President, I am today introducing a bill to designate a region in northeastern Utah of supreme beauty and great national worth as the High Uintas Wilderness. The area so designated would encompass portions of both the Wasatch National Forest and the Ashley National Forest long noted for outstanding wilderness qualities.

As one of the cosponsors of the 1964 Wilderness Act, and a participant in the continuing review of areas proposed for addition to the national wilderness preservation system under the provisions of that act, I am delighted to seek congressional approval for placing the High Uintas within the system.

The proposal is based on a review of the High Uintas primitive area conducted in accordance with the procedures set forth in the Wilderness Act. The Secretary of Agriculture submitted his report recommending establishment of the High Uintas Wilderness on December 30, 1968, and President Johnson sent his recommendations on this to Congress on January 17, 1969, shortly before he left office.

The President proposed, however, that the Secretary of the Interior be allowed to complete investigations as to the relationship of the Uinta River drainage to planning for the ultimate phase of the central Utah project, before any wilderness is established. It was essential that this provision be honored, since Utah is dependent upon the full development of all of its available water resources if we are to continue to grow and prosper. We cannot afford to lock up any area which has a potential of helping supply water to meet our expanding needs.

Now, however, these important water investigations have been completed and we know what areas in the High Uintas are required for implementation of the ultimate phase of the central Utah project. The time has come when we can move with assurance to establish a wilderness area.

The bill I am introducing sets boundaries for the establishment of a High Uintas Wilderness Area of 319,538 acres. This is about 3,464 acres less than the 322,998 acres recommended originally by the Forest Service. The small excluded area, known as unit D, is located in the southeastern corner of the proposed wilderness area.

Its exclusion will permit construction of a feeder canal to divert flows of the Uinta River as part of the potential Ute Indian unit of the ultimate phase, central Utah project. Furthermore, the bill authorizes the Secretary of the Interior to continue to operate and maintain existing facilities of the central Utah project within the designated area and conduct hydrologic and climatological programs necessary to the project while minimizing the impact of such activities on the wilderness character of the areas affected.

The Governor of Utah has advocated the establishment of the High Uintas Wilderness Hearings in Utah revealed broad popular support for designation of these lands as wilderness. The area proposed for wilderness now is somewhat larger than the present primitive area.

Mr. President, the High Uintas meets the criteria set forth in the Wilderness Act as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." Its preservation is distinctly in keeping with the spirit that led to realization of a national wilderness system. I hope that the 93d Congress will give this resource that unique form of protection.

By Mr. RANDOLPH (for himself, Mr. MONTOYA, Mr. MUSKIE, and Mr. BURDICK):

S. 467. A bill to extend the Public Works and Economic Development Act of 1965, as amended, for 1 year, and for other purposes. Referred to the Committee on Public Works.

Mr. RANDOLPH. Mr. President, since 1965, the programs carried out under Public Works and Economic Development Act have been benefiting millions of Americans in communities throughout the United States. They have permitted these communities to establish their own programs for economic improvement, and assistance has been provided in building badly needed public works facilities to make communities better places in which to live as well as more attractive to economic expansion.

Two years ago the Senate Public Works Committee began examining all economic development programs. We

wished to know how they have functioned and what changes are required. From our inquiries grew the belief that there was a need for revision of our present efforts so that they would apply more effectively on a nationwide basis rather than only in those areas which suffer from economic hardship. Legislation was introduced last year, but its consideration was not completed in time for final action by the Congress. This program is now before the 93d Congress.

While a new program is being developed, we obviously cannot permit the existing effort to collapse. Last fall, Mr. President, the Congress passed legislation continuing the existing programs of the Economic Development Administration for 1 year, with some modifications. Regrettably, the President vetoed this bill following the adjournment of Congress in October. The consequences of his action would force the discontinuance of economic development programs at the end of the current fiscal year if prior to that time the Congress is unable to act on legislation establishing a new program.

As I observed in a Senate hearing yesterday on the nomination of Mr. Caspar Weinberger to be Secretary of Health, Education, and Welfare, the executive branch is bent on killing legislative intent and the EDA veto was another example of this practice.

I have received regular reports that the administration intends to abandon all economic development programs. In fact, I am told that EDA employees are already beginning to receive notice that their employment will be terminated.

Obviously, Mr. President, this is not a good situation, particularly in the many communities that have benefited from economic development programs.

Mr. President, at its first meeting of the year, held this morning, the Committee on Public Works agreed that we should once again propose legislation to extend the activities of the Economic Development Administration for 1 year. Accordingly I introduce such a bill with the cosponsorship of Senators MUSKIE, MONTOYA, and BURDICK.

The committee has agreed to hold 1 day of hearings on this bill to obtain testimony from representatives of the administration. It will be valuable to know the position of the administration before the bill is reported from the committee. It is my intention that the hearing be held as soon as possible so that this measure can be expedited.

My State of West Virginia has been deeply involved with the Economic Development Administration. Many areas of my State have benefited from this program and, in fact, a regional office of the agency is located at Huntington, W. Va., and from there serves a number of States. There is considerable concern in Huntington with the administration's plans to close this office. Congressional passage of the bill I introduce today will provide the leverage we need to persuade the administration that the economic development offices throughout the United States should remain functional.

Another important feature of this bill is the continuation of the moratorium on redesignating counties as eligible for assistance under the act. The moratorium expired last year, but this legislation reimposes it. Under redesignation, 300 areas throughout the United States, including 13 counties in West Virginia, were declared no longer eligible for participation in economic development programs. I believe it to be fair and equitable that all designated areas continue to receive benefits from Economic Development Administration activities, because of their need and because of the likelihood that the Congress will revise the total economic development program in the very near future.

Mr. President, this is a very short bill in terms of words, but its impact is widespread. It is a matter of great and continuing concern to the Committee on Public Works that economic development programs, responsive to the needs of all the people, be carried out under the sponsorship of the Federal Government. Enactment of this bill will permit these programs to continue while a comprehensive examination is made of their impact and new legislation is developed.

Mr. President, Senator BAKER very much wanted to be with me at this time, for we wanted to hold a colloquy on the introduction of this bill. However, I notice that he cannot be in the Chamber at this moment, and as the Senate may soon adjourn for the day, I ask unanimous consent that his statement be printed in the RECORD immediately following my own.

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

STATEMENT BY SENATOR BAKER

Mr. President, the programs initiated under the Public Works and Economic Development Act have made a valuable contribution in depressed and high unemployment areas of the country—as have those of the Appalachian Regional Commission, another important program initiated by this Committee in 1965—and I consider that there is a continued need for this type assistance. However, the policies to carry out these objectives, and the future organization of this effort, is less clear.

The Public Works Committee is very much interested in reviewing the whole approach of the Act, and in considering alternative programs and institutional structures. The simple one-year extension introduced by the Chairman today is not the final legislative effort in this area by the Committee, and I very much desire, as I am sure do other members of the Committee, that we explore alternatives—not only those represented by the bill introduced earlier this year S. 232, but also the President's reorganization and revenue sharing proposals, the Rural Development Act of 1972, and other new ideas.

Introduction of the extension bill today will, I hope, serve to elicit the more specific proposals of the Administration, which may well be forthcoming in the budget and other messages to the Congress, and will provide an opportunity for the Administration to present its views. I point out in this respect that the Public Works Committee has not ordered the bill reported, nor is the bill introduced today the same as that vetoed by the President at the close of last session.

We do have a cooperative and constructive chairman, and a Committee which has been largely non-partisan in the past. I may say that it was at my request that this proposed extension not be acted on immediately by the Committee—but that the bill be introduced and at least one day of hearings be held, for the specific purpose of receiving the Administration's comments, proposals and ideas. I wanted also, of course, our new Committee members—particularly Senator McClure, the ranking minority member of the Economic Development Subcommittee—to have an opportunity to consider this important area of our jurisdiction.

With this explanation of my position, which I believe is shared by the minority and perhaps other members, I thank the Chairman for his usual courtesy and the opportunity to join in this discussion.

By Mr. THURMOND:

S. 468. A bill to provide an income tax credit for certain expenses incurred in furnishing or obtaining a higher education—including postsecondary trade and vocational schools. Referred to the Committee on Finance.

TUITION TAX CREDITS FOR HIGHER EDUCATION

Mr. THURMOND. Mr. President, in the 91st Congress, I introduced legislation that would provide a tax credit against individual income for certain expenses incurred at an institution of higher learning. The Senate has recognized the rising problem and has passed similar legislation three times. Unfortunately, the House of Representatives has consistently refused to accept the Senate's solution to this matter maintaing the argument that the great loss of tax revenues made the proposals unsatisfactory.

Today I am introducing a bill which is intended to help families in the low- and middle-income groups provide advanced or vocational education for their chilren. The cost of obtaining a higher education is skyrocketing, and we in the Congress must accept the challenge of assisting as many as desire to obtain a more complete education.

Mr. President, this bill would allow parents a maximum credit of $350 per dependent attending a college, postsecondary trade or vocational school. The credit would be computed on the basis of 100 percent of the first $200 of qualifying expenditures including tuition, fees, books, supplies, and equipment, and 50 percent of the next $300. No additional credit will be available for expenses that exceed $500.

My bill defines an institution of higher education to include a recognized "business or trade school, technical institution or other technical or vocational school" providing postsecondary vocational or technical education.

Because my proposal is aimed at helping the low- to middle-income groups, the available credit begins to gradually phase out as the family's income exceeds $18,000 a year.

Mr. President, I am convinced that my formula is a reasonable one. It allows the maximum credit for the first $200 of expenses, but no credit for expenses exceeding $500; and also provides for a termination of the credit when the family income reaches $36,000. This bill will have the dual effect of decreasing the tax revenue loss and encouraging children of families in the low- to middle-income groups to obtain advanced or specialized education.

Mr. President, I request that this bill be appropriately referred and ask unanimous consent that it be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks.

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

S. 468

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by renumbering section 42 as 43, and by inserting after section 41 the following new section:

"SEC. 42. Expenses of higher education.

"(a) General Rule.—There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount, determined under subsection (b), of the expenses of higher education paid by him during the taxable year to one or more institutions of higher education in providing an education above the twelfth grade for himself or for any other individual.

"(b) Limitations.—

"(1) Amount per individual.—The credit under subsection (a) for expenses of higher education of any individual paid during the taxable year shall be an amount equal to the sum of—

"(A) 100 percent of so much of such expenses as does not exceed $200, and

"(B) 50 percent of so much of such expenses as exceeds $200 but does not exceed $500.

"(2) Proration of credit where more than one taxpayer pays expenses.—If expenses of higher education of an individual are paid by more than one taxpayer during the taxable year, the credit allowable to each such taxpayer under subsection (a) shall be the same portion of the credit determined under paragraph (1) which the amount of expenses of higher education of such individual paid by the taxpayer during the taxable year is of the total amount of expenses of higher education of such individual paid by all taxpayers during the taxable year.

"(3) Reduction of credit.—The credit under subsection (a) for expenses of higher education of any individual paid during the taxable year, as determined under paragraphs (1) and (2) of this subsection, shall be reduced by an amount equal to 2 percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $18,000.

"(c) Definitions.—For the purposes of this section—

"(1) Expenses of higher education.—The term 'expenses of higher education' means—

"(A) tuition and fees required for the enrollment or attendance of a student at a level above the twelfth grade at an institution of higher education and

"(B) fees, books, supplies, and equipment required for courses of instruction above the twelfth grade at an institution of higher education.

Such term does not include any amount paid, directly or indirectly, for meals, lodging, or similar personal, living, or family expenses. In the event an amount paid for tuition or fees includes an amount for meals, lodging, or similar expenses which is not separately stated, the portion of such amount which is attributable to meals, lodging, or similar expenses shall be determined under regulations prescribed by the Secretary or his delegate.

"(2) Institution of higher education.—The term 'institution of higher education' means—

"(A) an educational institution (as defined in section 151(e)(4))—

"(i) which regularly offers education at a level above the twelfth grade; and

"(ii) contributions to or for the use of which constitute charitable contributions within the meaning of section 170(c); or

"(B) a business or trade school, or technical institution or other technical or vocational school in any State, which (i) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; and (ii) is accredited by a nationally recognized accrediting agency or association listed by the United States Commissioner of Education; and (iii) has been in existence for 2 years or has been specially accredited by the Commissioner as an institution meeting the other requirements of this subparagraph.

"(3) State.—The term 'State' includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

"(d) Special Rules.—

"(1) Adjustment for certain scholarships and veterans' benefits.—The amounts otherwise taken into account under subsection (a) as expenses of higher education of any individual during any period shall be reduced (before the application of subsection (b)) by any amounts received by such individual during such period as—

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which under section 117 is not includible in gross income, and

"(B) education and training allowance under chapter 33 of title 38 of the United States Code or educational assistance allowance under chapter 35 of such title.

"(2) Noncredit and recreational, etc., courses.—Amounts paid for expenses of higher education of any individual shall be taken into account under subsection (a)—

"(A) in the case of an individual who is a candidate for a baccalaureate or higher degree, only to the extent such expenses are attributable to courses of instruction for which credit is allowed toward a baccalaureate or higher degree, and

"(B) in the case of an individual who is not a candidate for a baccalaureate or higher degree, only to the extent such expenses are attributable to courses of instruction necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective.

"(3) Application with other credits.—The credit allowed by subsection (a) to the taxpayer shall not exceed the amount of the tax imposed on the taxpayer for the taxable year by this chapter, reduced by the sum of the credits allowable under this subpart (other than under this section and section 31).

"(3) Disallowance of Expenses as Deduction.—No deduction shall be allowed under section 162 (relating to trade or business expenses) for any expense of higher education which (after the application of subsection (b)) is taken into account in determining the amount of any credit allowed under subsection (a). The preceding sentence shall not apply to the expenses of higher education of any taxpayer who, under regulations prescribed by the Secretary or his delegate, elects not to apply the provisions of this section with respect to such expenses for the taxable year.

"(f) Regulations.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the provisions of this section."

(b) The table of sections for such subpart A is amended by striking out the last item and inserting in lieu thereof the following:

"Sec. 42. Expenses of higher education.

"Sec. 43. Overpayments of tax."

(c) The amendments made by this Act shall apply to taxable years beginning after December 31, 1973.

By Mr. WILLIAMS (for himself, Mr. BENNETT, and Mr. TOWER):

S. 470. A bill to amend the Securities Exchange Act of 1934 to regulate the transactions of members of national securities exchanges, to amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define certain duties of persons subject to such acts, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

THE SECURITIES ACT OF 1973

Mr. WILLIAMS. Mr. President, on behalf of Senators BENNETT, TOWER, and myself, I am reintroducing a bill dealing with the question of "institutional membership" and other vexing problems which are currently facing the securities industry. This bill represents a bipartisan approach to problems which require congressional resolution if the industry is to move forward with the development of a central market system that will adequately serve the future needs of public investors.

I am particularly pleased that Senators BENNETT and TOWER have joined me in cosponsoring this bill. Over the years that we have worked together on the Banking Committee, Senators BENNETT, TOWER, and I have cooperated in the resolution of many difficult issues in a manner that was fair to all competing interests. I hope that our joint efforts on this occasion will be equally productive.

The problem called "institutional membership"—more properly the question of the combination of brokerage and money management—is a complex one. The proposals put forth thus far to resolve the problem have served mainly to exacerbate the controversy. As the Department of Justice pointed out, the SEC proposal is not only unjustified but the procedures being followed by the SEC are not authorized by the statute.

The absence of congressional resolution of the question seems likely to impede for a long time our progress toward a more efficient and responsive market structure. I believe that, in this bill, we have found a formula which resolves the conflicting positions of different segments of the industry, and does it in a way which will assure adequate brokerage service in the future for both individual and institutional investors.

Essentially, this bill will prohibit any member of a stock exchange from effecting any transactions for any institutional account which it manages. An institution would not be prohibited from having a subsidiary or affiliate which was an exchange member, but it would not be able to do any of its portfolio business through that member. Similarly, a stock exchange member could manage or advise pension funds, mutual funds or other institutions, but it would not be able to do any of the brokerage business for those institutions. These prohibitions would eliminate competitive unfairness between different groups of money managers and would remove some of the most serious conflicts of interest.

A substantial number of institutions have obtained memberships on regional stock exchanges for the purpose of re-

ducing the excessive commission costs levied on their beneficiaries under the present fixed commission rates. In recognition of the interests of those beneficiaries, institutions which presently have affiliated stock exchange members will be permitted to continue doing business through those affiliates as long as fixed rates are maintained on transactions larger than $100,000. Under the schedule presently envisioned by the SEC and the New York Stock Exchange, fixed commission above the level should be eliminated within a 12- to 18-month period.

Also, in order to provide an adequate transition period for stock exchange members which presently do a substantial amount of brokerage business for managed institutional accounts, they would be allowed an additional 2 years to phase out such business. They will be permitted to do up to 20 percent of their business with managed institutional accounts during the first year after the end of fixed rates on large transactions, and up to 10 percent during the second year. Thereafter, the full prohibition will become applicable to all firms.

The second question to which this bill addresses itself is the manner in which institutional research should be paid for under competitive commission rates. At present, much of that research is paid for with "soft" commission dollars available under fixed rates. The fear has been expressed that under competitive commission rates, institutional managers would not be able to pay brokers for research services because of their obligation to seek out the firm offering the lowest commission rate for the execution of the order. I do not believe that the law presently prohibits such payments, provided they are properly disclosed and represent compensation for valuable services to the fund. However, it is important that we set this question to rest, so that it does not impede progress toward a fully competitive rate structure.

This bill therefore contains provisions permitting fund managers to pay higher commissions on portfolio transactions for the purpose of obtaining research which they determine to be of value to the fund beneficiaries. Full disclosure of any such payments will be required to insure that this permission is not used to mask reciprocal practices or otherwise divert fund assets.

Finally, the bill addresses problems relating to the sale of management companies which have advisory contracts with mutual funds.

This problem was not considered by the Congress when it enacted the 1970 amendments to the Investment Company Act. Under court decisions at that time, there was no legal bar to the sale of a mutual fund management company, provided no unfair burdens were imposed on the fund shareholders. However, the 1971 decision of the Second Circuit Court of Appeals in the case of Rosenfeld against Black—the "Lazard" case—created uncertainty as to when a management company could be sold at a profit without incurring liability to fund shareholders.

Last June, I introduced a bill, at the request of the SEC, which would have permitted such sales under certain conditions and which was designed to protect mutual fund shareholders. One section of that legislation provided that, for 5 years, none of the managed funds could have any officer or director who had any interest in the management company. Representatives of the mutual fund industry have urged that this is an unduly harsh restriction, and could result in additional costs to the funds, because of the need to hire new people not connected with the management company.

Accordingly, this bill modifies the original SEC proposal by requiring that for 3 years after the sale of a management company at least 75 percent of the directors of the managed funds would have to consist of persons having no interest in the management company. It would also, of course, contain the other provisions in the original bill designed to prevent overreaching or imposition of additional burdens on fund shareholders. This bill reaffirms the understanding of the Congress at the time it considered the 1970 amendments, that the sale of a management company is legally permissible provided no unfair burdens are imposed on the fund shareholders. I believe this bill contains the provisions necessary to protect fund shareholders against such impositions.

Mr. President, I hope that this bill will receive broad support from all segments of the industry and the investing public, and that it will form the basis of constructive and forward-looking securities legislation in 1973.

Mr. BENNETT. Mr. President, I join with the Senator from New Jersey in sponsoring this legislative proposal because I hope it will bring about the resolution of some major problems which have confronted the securities industry for several years. These include: First, the proper relationship between the brokerage business and money management; second, the proper relationship between research and brokerage commissions; and third, the sale of management companies which have contracts with investment companies.

On June 23, 1970, I sponsored legislation intended to bring the issue of stock exchange membership of institutions not primarily engaged in the brokerage business before the Congress for a decision. Nearly 3 years have passed, and Congress has not yet taken any official action on this problem other than hearings and studies.

I realize that this is a complex issue which had to be considered fully before a decision could be reached by the Congress, but in my opinion there is certainly no reason for further delay. We have now had several studies and hearings which presented an opportunity for all points of view to be expressed. This proposal takes into account all of the opposing views and is an attempt to work out the differences on the three major issues which I have mentioned. I believe it represents a good faith effort and a significant step in the resolution of these issues. There are particularly strong feelings on the issue of national securities exchange members trading for affiliated accounts and managed institutional accounts because the future structure of securities markets as well as individual firms will be greatly affected by the relationship permitted. Regardless of how difficult it may be, I believe it is the responsibility of Congress to determine the relationship that will best serve the public. We should also do what we can to make it possible for those firms which are adversely affected by our decision to readjust their operations to meet the new pattern which we establish.

The Securities and Exchange Commission along with other interested parties has been involved in the development of this proposal which we introduce today. This, however, does not mean that the Commission agrees with all of its provisions. I am not sure that anyone agrees with all of its provisions. One of the issues on which there is a difference is the degree to which a brokerage firm may affect transactions for nonaffiliated institutional accounts. This proposal would not permit any such transactions after a transitional period if the member firm has the power to make day-to-day investment decisions even though some other person may have ultimate responsibility for such investment decisions.

It is my understanding that the SEC would prefer to make a determination on transactions for managed institutional accounts on the basis of control by the brokerage firm over the account as shown by the facts in each case. Just how much actual difference there is between these two positions is not clear at this point.

Another point of difference is that this proposal completely separates the brokerage business from institutional money management. The Commission's proposed rule requires that members of securities exchanges do at least 80 percent of the value of their transactions with nonaffiliated persons, thus permitting some combination of money management and brokerage business. Again, it is difficult to determine how much difference there is between this proposal and the position of the Securities and Exchange Commission. The Commission indicated in its statement on the future structure of the securities markets in February of last year that it could not make the determination that money management and brokerage business should be completely separated. The report stated that Congress authorized this relationship and has permitted it to continue. It concluded:

> We therefore believe that the conflict of interest problem which is inherent in the combination of money management and brokerage is a matter to be resolved by Congress. Only that body should decide whether or not this potential conflict can continue to be dealt with in the same manner as other conflicts mentioned above, by a combination of disclosure and enforcement of fiduciary obligations, or whether it is sufficiently troublesome to require separation of the two functions.

Mr. President, although the Securities and Exchange Commission recommended

a congressional decision, they have not sat idly by to let present problems continue unchallenged. These issues have been so important the Commission felt they must, in addition, take whatever administrative action possible. They have proceeded on the basis that they have sufficient authority to act on the exchange membership issue even though that authority has been seriously challenged. Having been criticized for not acting aggressively enough in the past, it is only natural that the Commission would take action to discharge their responsibilities in this respect, since the question of authority is not settled. At the same time, the Commission has recommended legislation on the issues contained in this bill and I feel sure they will do all they can to assist in the enactment of appropriate legislation.

Mr. President, it is apparent to me that the solution of these major problems can only come about through congressional action. While differences of opinion may exist, we must work out solutions at the earliest possible date. It is my hope that the introduction of this bill at this time will make it possible for us to resolve these issues early in the session.

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

S. 471. A bill to encourage State and local governments to reform their real property tax systems so as to decrease the real property tax burden of low- and moderate-income individuals who have attained age 65. Referred to the Committee on Finance.

EMERGENCY PROPERTY TAX RELIEF ACT

Mr. CHURCH. Mr. President, on behalf of the Senator from Washington (Mr. MAGNUSON) and myself, I introduce for appropriate reference the "Emergency Property Tax Relief Act."

Many elderly homeowners now find themselves financially paralyzed by escalating property taxes.

Since January 1969 property taxes have increased by 36 percent, nearly twice the rise in the overall cost of living. All in all, they are now at an alltime record high of more than $41 billion.

In many communities throughout our Nation, this tax bite has doubled—and in some cases tripled—during the past decade. And older Americans have been harder hit than any other age group in our society.

Aged homeowners pay, on the average, about 8.1 percent of their incomes for real estate taxes. In sharp contrast, the typical urban family of four turns over only 3.4 percent of its family income to the local tax assessor.

A recent study by the Advisory Commission on Intergovernmental Relations shows that aged homeowners living on less than $2,000 a year pay almost 16 percent of their meager incomes for this regressive tax. Perhaps even more startling, more than 1 out of every 5 elderly homeowners—or approximately 1.3 million aged households—fall within this category.

Large numbers are compelled to liquidate their assets to continue to live in their own homes. Many are also forced to subsist in abject poverty, because the never ending spiral continues to be unchecked.

Quite frequently, a desperately needed social security increase is obliterated in a matter of months because of a steep rise in the property tax assessment.

Low- and moderate-income renters also feel the squeeze from high property taxes, because the landlord may shift the lions share of this burden to them.

Assuming that 25 percent of gross rent constitutes property tax, nearly 70 percent of all aged renters living on less than $5,000—or more than 1.9 million households headed by a person age 65 or older—pay the equivalent of 8.75 percent or more of their incomes for property tax.

The bill I introduce now—the Emergency Property Tax Relief Act—is designed to protect elderly homeowners and tenants from being saddled with these extraordinary tax burdens. Briefly stated, this measure would make Federal financial assistance available to States which establish "circuit breaker" systems for property owners and renters aged 65 or older.

The "circuit breaker" would come into operation automatically whenever the property tax becomes excessive in relation to income, thereby shielding the elderly homeowner and tenant from a tax overload situation. A "tier" or "step" system would be built into the formula to direct the relief to persons in greatest need.

In the case of elderly homeowners living on $3,000 or less, relief would be available whenever the property tax exceeds 4 percent of the household income. Thereafter, the "circuit breaker" threshold would be increased by 1 percent for each $1,000 of family income until it eventually reaches 7 percent for persons in the $5,001 to $6,000 income category.

For renters, relief would be available provided two conditions are met:

First. Their gross rent exceeds 25 percent of their household income; and

Second. Their total household income is not greater than $6,000.

Many older Americans now have the greatest portion of their net worth tied up in their homes. At the same time they usually have little in the form of liquid assets.

As a consequence, protection from extraordinary property tax burdens—whether directly or indirectly in the form of higher rents—is crucial for the elderly.

The Emergency Property Tax Relief Act would not only help to provide this protection in a timely fashion, but it also has numerous other advantages as well.

First, it can help to restore a long overdue element of economic justice to the property tax system by assuring that the elderly poor would not be saddled with an onerous tax bill.

Second, a "circuit breaker" approach can provide the most effective relief for the amount of money spent. This is because the relief is targeted at persons in greatest need—the low- and moderate-income aged.

Third, a circuit breaker system can provide direct protection and without cumbersome procedures. For example, as soon as the property tax bill arrives, an elderly homeowner may file a statement and receive a credit, refund, or rebate.

Rising property taxes now affect millions of older Americans throughout our Nation—whether they live in congested cities or sparsely populated rural areas. This problem has now reached crisis proportions and demands immediate attention.

For these reasons, I strongly urge early and favorable consideration of the Emergency Property Tax Relief Act.

Mr. President, I ask unanimous consent that the text of this 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. 471

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

SECTION 1. Short Title.

This Act may be cited as the "Emergency Property Tax Relief Act".

SEC. 2. Definitions.

For purposes of this Act—

(1) The term "jurisdiction" means a State, a political subdivision of a State, and the District of Columbia.

(2) Secretary.—The term "Secretary" means the Secretary of the Treasury.

(3) Personal income tax.—The term "personal income tax" means a tax imposed by a jurisdiction on the income of individuals.

(4) Real property tax.—The term "real property tax" means an ad valorem tax imposed by a jurisdiction on real property.

(5) Qualifying head of household.—The term "qualifying head of household" means an individual—

(A) who has attained age 65, and

(B) provides more than 50 percent of the support household which is his principal residence.

SEC. 3. Reimbursement to jurisdictions providing real property tax relief to low and moderate income older individuals.

(a) Entitlement to Reimbursement.—If the Secretary determines that a jurisdiction has established a qualifying real property tax relief program which meets the requirements of subsection (b), he shall reimburse such jurisdiction for one-half of the qualifying revenue losses attributable to such program (as determined under subsection (c)) sustained by it during each fiscal year.

(b) Qualifying Real Property Tax Relief Program.—For purposes of this section—

(1) In general.—The term "qualifying real property tax relief program" means a program established by law of a jurisdiction which provides for eligible households a credit against a personal income tax or real property tax imposed by the jurisdiction, or a rebate or other cash payment in lieu of such a credit.

(2) Eligible household.—The term "eligible household" means a household of a qualifying head of household if the direct tax burden or indirect tax burden, as the case may be, of such household exceeds the applicable amount determined under the following table:

If the household income is:	And the direct tax burden exceeds:	Or the indirect tax burden exceeds:
$3,000 or less	4 percent of household income	25 percent of household income
Over $3,000 but not over $4,000	$120, plus 5 percent of household income over $3,000	25 percent of household income
Over $4,000 but not over $5,000	$170, plus 6 percent of household income over $4,000	25 percent of household income
Over $5,000 but not over $6,000	$230, plus 7 percent of household income over $5,000	25 percent of household income

(3) Household income.—The term "household income" means the aggregate annual income of all individuals occupying the same household as their principal residence. For purposes of this paragraph, the term "income" means net income from whatever source derived and without regard to whether it is subject to the Federal individual income or the personal income tax of the jurisdiction in which the recipient resides.

(4) Direct tax burden.—The term "direct tax burden" means the amount of real property taxes imposed on the real property occupied as his principal residence by a qualifying head of household if such real property is owned, and such taxes are paid, by him or another member of the household.

(5) Indirect tax burden.—The term "indirect tax burden" means the amount of rent paid for occupancy of real property occupied as his principal residence by a qualifying head of household, if such rent is paid by him or another member of the household.

(c) Qualifying Revenue Losses.—For purposes of this section, the qualifying revenue losses attributable to a qualifying real property tax relief program sustained by a jurisdiction during a fiscal year is the sum of—

(1) the credits allowed during the fiscal year with respect to eligible households against a personal income tax or real property tax imposed by the jurisdiction, and

(2) the rebates and other cash payments made during the fiscal year with respect to eligible households under such program, but, with respect to any eligible household, only to the extent the amount of credit, rebate, or other payment does not exceed $500, in the case of an eligible household which has a direct tax burden, or $300, in the case of an eligible household which has an indirect tax burden.

SEC. 4. Administration.

(a) Application, Etc.—

(1) A jurisdiction which desires to qualify for payments under this Act shall make an application therefor at such time, in such manner, and containing such information as the Secretary shall prescribe by regulations. Payments may be made to a jurisdiction only if its application is approved by the Secretary. The Secretary may not finally disapprove any application submitted under this Act, or any modification thereof, without first affording the jurisdiction submitting the application reasonable notice and opportunity for a hearing.

(2) Whenever the Secretary, after reasonable notice and opportunity for a hearing to a jurisdiction which has had an application approved under paragraph (1), finds that such jurisdiction no longer has a qualifying property tax relief program, he shall notify such jurisdiction that it will not be eligible to receive payments under this Act until he is satisfied that the jurisdiction has a qualifying property tax relief program.

(b) Judicial Review.—

(1) If any jurisdiction is dissatisfied with the Secretary's final action with respect to the approval of its application submitted under subsection (a)(1) or with his final action under subsection (a)(2), such jurisdiction may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which the jurisdiction is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(c) Payment.—Payment of the amount to which a jurisdiction is entitled for a fiscal year shall be made at such time after the close of the fiscal year as the Secretary shall prescribe by regulations.

(d) Fiscal Year.—For purposes of determining eligibility for, and the amount of, payments to a jurisdiction under this Act, any reference in this Act to "fiscal year" shall be considered to be a reference to the annual accounting period of such jurisdiction.

(e) Regulations and Guidelines.—The Secretary shall prescribe such regulations as may be necessary to carry out this Act and such guidelines as may be necessary to enable jurisdictions to apply for and qualify for payments under this Act.

(f) This Act is not to be construed to discourage States from establishing a qualifying real property tax relief program which provides credits, rebates, or payments benefiting eligible households in excess of the qualifying limitations established under this Act.

SEC. 5. Appropriations.

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

SEC. 6. Effective date.

Payments may be made under this Act with respect to fiscal years beginning on or after January 1, 1974.

By Mr. KENNEDY (for himself, Mr. STEVENS, Mr. BIBLE, Mr. EAGLETON, Mr. GRAVEL, Mr. HART, Mr. HUGHES, Mr. HUMPHREY, Mr. MAGNUSON, Mr. MOSS, Mr. MUSKIE, and Mr. WILLIAMS):

S. 472. A bill to amend title 13, United States Code, to establish within the Bureau of the Census a Voter Registration Administration to carry out a program of financial assistance to encourage and assist the States and local governments in registering voters. Referred to the Committee on Post Office and Civil Service.

VOTER REGISTRATION ASSISTANCE ACT OF 1973

Mr. KENNEDY. Mr. President, on behalf of the distinguished senior Senator from Alaska, Mr. STEVENS, and Senators BIBLE, EAGLETON, GRAVEL, HART, HUGHES, HUMPHREY, MAGNUSON, MOSS, MUSKIE, WILLIAMS, and myself, I send to the desk of the Senate for appropriate reference the Voter Registration Assistance Act of 1973. The purpose of this bill is to establish an effective program of Federal financial assistance to State and local governments in carrying out their existing voter registration programs, and to provide specific financial incentives to encourage State and local governments to modernize their registration procedures.

The bill contains four major features:

First, the bill is based on the principle of a voluntary, not mandatory, program of Federal assistance to State and local jurisdictions in the area of voter registration. No State or local government will be compelled to take any action under this bill, but those who wish to take advantage of its financial assistance provisions will be able to do so.

Second, the bill establishes a number of types of Federal grants available to State and local governments:

Grants to pay up to 10 cents per eligible voter to defray the cost of existing voter registration programs.

Grants to pay up to 50 percent of the cost of new programs to expand voter registration, such as deputy registrars, mobile registrars, door-to-door canvasses, and additional locations and extended hours for registration. The maximum grant to any jurisdiction under this category is 10 cents per eligible voter.

Grants to plan computerized registration systems. The maximum grant here is one-half cent per eligible voter or $15,000, whichever is greater.

Grants to pay the full cost of registration-by-mail programs.

Grants and technical assistance for the prevention and control of fraud.

Third, the new program will be administered by a bipartisan Voter Registration Administration created in the Census Bureau. The Director of the Census is authorized to carry out the program until the new administration is established.

Fourth, the bill contains a 3-year, $135 million authorization for the program, providing $45,000,000 each year for the next 3 fiscal years.

Of all the figures to come out of the 1972 presidential election last November, perhaps the most distressing is the current estimate that only 56 percent of those who were eligible to vote actually went to the polls on election day. If these preliminary figures are correct, then it appears that the percentage of the voter turnout in 1972 was five points lower even than in the low-turnout year of 1968, itself one of the lowest voter turnouts in any presidential election in this century and the lowest turnout since 1948.

We do not have to look far to find the reason. Again and again, in recent years, we have learned that registration is the villian, and 1972 is no exception.

For a nation that likes to call itself the greatest democracy in the history of

the world, the system of voter registration in modern America is a national scandal, a blight on our most basic political process. Incredible as it may seem, of all the fundamental rights that Americans hold dear, the way we exercise the right to vote is the one we have neglected most.

Time and again, we have fought to extend the franchise, in order to insure that every citizen has the right to share in the political life of the Nation through participation at the polls. The 15th amendment, adopted in 1870, guaranteed the vote to citizens regardless of their race. The 19th amendment, adopted in 1920, extended the franchise to women. The 24th amendment, adopted in 1964, abolished the poll tax. And the 26th amendment, adopted in 1971, extended the vote to 18-year-olds. All these constitutional milestones are monuments to our continuing concern.

But after every milestone, we always rested on our laurels. We left the job half done. For millions of Americans, the right to vote was a thing they could admire, but never use.

The reason is clear. For generations—indeed, throughout the 20th century—every American who sought to exercise his right to vote has had to run a gauntlet of arbitrary, unfair, and obsolete requirements of voter registration. Confronted by such requirements, millions of potential voters fall by the wayside at each election, and millions more refuse to even try.

And when I say millions, I mean millions. Take the figures for presidential elections, the elections in which Americans traditionally, have had the strongest incentive to participate. In the election of 1960, 39 million eligible voters failed to go to the polls. In 1964, the figure climbed to 43 million. In 1968, it rose to 47 million. And in 1972, if the estimates are accurate, there were 62 million Americans who did not vote.

If any single figure has come to symbolize the crisis of voter turnout in America, it is these millions of lost voters—62 million in 1972. Of the 139 million potential voters in the presidential election last year, only 77 million—or 56 percent—actually went to the polls, the lowest turnout since 1948. Sixty-two million people stayed home, at a time when President Nixon was receiving 47 million votes and Senator McGovern was receiving 29 million votes.

The voting record of America becomes even more dismal when we compare it to the record of other Western democracies. In 1970 in Britain, 71 percent of the eligible voters went to the polls, and they called it one of the lowest turnouts in British history. In recent elections in other European nations, the turnout has been even higher—74 percent in Canada, 77 percent in France, and 91 percent in West Germany, to name but three.

We know that the situation has not always been this way in the United States. Throughout the latter half of the 19th century, voter turnout in our Presidential elections consistently ranged in the neighborhood of 70 to 80 percent. Twice, it exceeded 80 percent. Only once did it drop as "low" as 70 percent.

Since 1900, however, we have not seen even the 70 percent level again. Eight times in this century—including 1972, the first time since 1948—the turnout has fallen below 60 percent. Twice it fell below 50 percent. Clearly, in spite of the enormous progress that the 20th century has brought us in so many other areas, we have moved backward in the crucial area of voter participation.

The cause is not far too seek. Study after study in recent years has demonstrated that the heart of the problem is our archaic system of voter registration. It is no accident that the sharp decline in voter turnout at the beginning of the 20th century coincided with the advent of voter registration legislation.

As historians have shown, the present pattern of voter registration in virtually every State is a legacy of the wave of electoral reform that swept America at the turn of the century. In many States, registration was adopted as a means to end widespread voting frauds and other abuses that marred elections in city after city across the Nation. In others, registration was adopted for the darker purpose of discouraging minorities and other ethnic groups from going to the polls, especially black citizens in the South.

Today, in spite of the enormous progress we have made in so many other areas of public life, we are still using voter registration methods which were, perhaps, sophisticated at the turn of the century, but which are generations out of date today.

In almost every other sphere in which government now operates—at the Federal, State, or local level—it uses the tools of the modern world, especially in the area of communications with the people. But if governments collected taxes the way they register voters today, they would be so bankrupt that revenue-sharing could never bail them out. Why is it that Americans pay their taxes by mail, when they still have to register to vote by methods as obsolete as the Pony Express or the model T?

To paraphrase the famous epigram of Justice Oliver Wendell Holmes, it is revolting to have no better reason for a rule of law than the fact that it was laid down in the time of William McKinley. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.

There is ample evidence that reform in voter registration is the key to improvement in voter turnout. The figure I have cited—56 percent voter participation in 1972—does not tell the whole story. In fact, according to preliminary Census data, of the Americans who were registered to vote in 1972, fully 87 percent went to the polls and cast their ballots on election day.

Put another way, of the 62 million citizens who stayed home on election day in 1972, the vast majority were not registered to vote. They could not have voted, even if they had wanted to. Only a small percentage of those who stayed home on election day were registered to vote.

This is the real lesson for the future. Americans who register are Americans who vote. If our goal is to bring America to the polls, the place to start is with voter registration.

Again and again, in recent years, detailed studies have demonstrated that the principal factor in the crisis over voter turnout is voter registration, not voter apathy. An extensive study of voting behavior in 104 cities in the 1960 election concluded that registration requirements are a more effective deterrent to voting than anything that normally operates to deter citizens from voting, once they have registered. According to the study, 80 percent of those who have failed to vote in 1960 were disfranchised by the burden of existing registration requirements.

Similar studies on the 1968 election also concluded that the most significant impediment to the exercise of the franchise is the registration requirement. For example, the report of the Freedom To Vote Task Force, published in 1969, found that registration systems posed the most serious single impediment to full participation in the Nation's elections. And, in Texas, a recent study concluded that for every additional month the registration books stay open before election day, an additional 2.7 percent of the population would be registered.

Equally significant is the report last year by the League of Women Voters, entitled "Administrative Obstacles to Voting." The report, issued in the spring of 1972, was based on a study of election practices in hundreds of communities across the Nation during the fall elections of 1971. The report condemns in unmistakable terms the enormous burden that our present system of registration imposes on citizens throughout the country.

In part, of course, the dramatically higher voter turnout in foreign countries is a result of the fact that the United States stands virtually alone among the democratic nations of the world in tolerating a passive role of government in registration, and in basing registration primarily on the initiative of the individual rather than on Government action.

Thus, in Britain, registration officials prepare annual voting lists in each election district, using mail and door-to-door canvass methods.

In Canada, registration officials prepare ad hoc voting lists before each Federal election by making a door-to-door canvass in each polling subdivision in urban areas—cities or towns with a population of 5,000 or more—during a 6-day period 7 weeks before the election, with a final revision of the list taking place 2½ weeks before election day. A modified procedure is used for rural areas. Before the June 1968 election, for example, 81,000 Canadian officials registered 11 million citizens—98 percent of the eligible voters—at a cost of approximately $7.5 million, or slightly less than 69 cents a voter. If this Canadian experience could be extrapolated to the United States, the cost of a similar registration canvass would be approximately $100 million.

But in large part, the higher voter turnout in nations like Britain and Canada is also due to the unreasonable bur-

dens that our "individual initiative" system imposes on citizens attempting to register. Instead of an "individual initiative" system, our system might more appropriately be called a "law of the jungle" or a "survival of the fittest" system.

In State after State, we see the chaos and complexity and confusion in our present registration system. Wherever we look, we find that registration is an obstacle course for the voter, instead of the easy path to the polls it ought to be.

The defects of the present system are not confined to any State or geographic region. They go by names like early closing deadlines, unreasonable purges of voting rolls, unfair re-registration requirements, inaccessible registration offices, and lack of absentee registration. The burdens are almost endless:

In some States, registration closes months before the election. A recent study cited 15 States in which the registration books closed more than a month before the election. Often, the closing date is much earlier. Such early closing deadlines serve no legitimate administrative purpose. In 1968 in Idaho, for example, the registration books were closed only two days before the election, and 72 percent of the eligible voters cast their ballots on election day.

In many of the Nation's cities and counties, there is no real local registration office. The only place a citizen can register to vote is at city hall or at the central downtown office of the board of elections.

In other cities, the problem is even worse. The only place to register may be the county courthouse outside the city limits.

In thousands of rural areas, registration means a long and time-consuming journey into town.

For millions of residents in communities like these, the inconvenience of a trip downtown or out of town or into town is an insurmountable barrier to registration. Often, the expense of the trip or the loss of income or time away from the job is sufficient by itself to inhibit registration—in effect, a tax that denies the right to vote as surely as the outlawed poll tax used to do.

For millions of the Nation's elderly, disabled, or sick—those who simply do not have the physical ability to travel to the registration office to register in person—the lack of any effective procedure for absentee registration means that they are denied the right to vote at all.

And, those who find their way to the registration office often learn that their problems have just begun. Often, the office is open only an hour or two a day, or a day or two a week. Sometimes, it may be necessary to make an appointment in advance. Other times, the registrar simply shuts the office early, if no applicants arrive that day. In still other cases, all but the most determined voters give up the face of the endless lines and waiting periods they find inside the door of the registration office.

Such examples are legion. The ones I have cited could be multiplied many times over. They are found in almost every State. But they are enough, I think, to identify the problem and to demonstrate the need for early and effective action by Congress.

And, as in so many other situations, the burden of our complex and capricious registration system weighs especially heavily on disadvantaged groups in our society.

Only 66 percent of the Nation's black citizens were registered in 1968, while the figure was 76 percent for the white population.

Only 53 percent of those in families with incomes of less than $3,000 were registered in 1968, while 82 percent of those in families with incomes between $10,000 and $15,000 were registered.

Only 69 percent of the Nation's manual workers were registered to vote, while 83 percent of the Nation's white collar workers were registered.

Only 49 percent of those with a formal education of 1 to 4 years were registered in 1968, while 87 percent of those with a college degree were registered.

The preliminary Census data for 1972 indicate that essentially the same pattern was followed last November, with two additional groups at a serious disadvantage—18 to 21 year olds, only about 40 percent of whom went to the polls, and Mexican-Americans, of whom only about 30 percent voted.

Clearly, on the basis of statistics like these, the burden of our present registration system falls most heavily on the poor, the black, the less-educated, the blue collar worker, the young, and the Spanish speaking.

But it is not just the disadvantaged who are caught by the existing system. The chaos and the defects of the system are not confined to any single population group or geographic region. They trap us all—the businessman in his office, the housewife in her suburb, the worker in his factory, the doctor in his clinic. Rarely, in fact, has any movement for reform so clearly cut across all political, economic, social, and geographic lines.

Left to individual State action, the comprehensive reforms we need will never happen. Registration is a national problem, and it demands a national solution. Without legislation at the Federal level, the inertia of nearly a century of past and present practice will continue, and we shall lose this timely and fertile opportunity to make government more responsive to the people.

Now, with the passions of an election year behind us, Congress has the opportunity to breathe new life into the political process in America. There is perhaps no more important step we can now take to make our democracy responsive to all the people. If we act to end the morass of voter registration, we can revitalize all our public institutions and build a stronger nation to meet the many difficult challenges we face at home and overseas.

Thanks to the leadership of Senator GALE MCGEE and the Senate Post Office Committee in the Senate, and of Congressman CHARLES WILSON and his Postal Subcommittee in the House, Congress has already compiled an outstanding record of bipartisan support for reform, and I am confident that the 93d Congress will enact the measures we need, and end the shame of America's lost voters.

Mr. President, I ask unanimous consent that the text of the bill may be printed in the RECORD, together with the following additional materials: Table I, giving a State by State summary of the voter turnout in the November 1972 Presidential election; table II, giving a summary of voter turnout in Presidential elections in the United States since 1824; table III, giving a summary of voter turnout in recent elections in certain foreign democratic nations; and the 1972 report of the League of Women Voters Education Fund, entitled "Administrative Obstacles to Voting."

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

S. 472

A bill to amend title 13, United States Code, to establish within the Bureau of the Census a Voter Registration Administration to carry out a program of financial assistance to encourage and assist the States and local governments in registered voters

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 "Voter Registration Assistance Act of 1973".

SEC. 2. (a) Title 13, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 11—VOTER REGISTRATION

"Sec.
"401. Definitions
"402. Establishment of Voter Registration Administration
"403. Functions of the Administration
"404. Grants to defray costs of voter registration
"405. Grants to increase voter registration activities
"406. Grants to modernize voter registration
"407. Grants for voter registration by mail
"408. Technical assistance and fraud prevention
"409. Applications for grants
"410. Regulations
"411. Authorization of Appropriations

"§ 401. DEFINITIONS

"As used in this chapter—

"(1) 'Administration' means the Voter Registration Administration;

"(2) 'State' means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States; and

"(3) 'grant' means grant, contract, or other appropriate financial arrangement.

"§ 402. ESTABLISHMENT OF VOTER REGISTRATION ADMINISTRATION

"(a) There is established within the Bureau of the Census, Department of Commerce, the Voter Registration Administration, hereafter referred to in this chapter as 'Administration.'

"(b) The Administration shall consist of an Administrator and two Associate Administrators, who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator and Associate Administrators shall serve for terms of four years each, and may continue in office until a successor is qualified. An individual appointed to fill a vacancy shall serve the remainder of the term to which his predecessor was appointed. The Associate Administrators shall not be members of the same political party.

"(c) Except as otherwise provided, the Director of the Bureau of the Census, until such time as the members of the Administration are appointed, is authorized to exercise the duties and powers of the Administration created and established by this chapter.

"§ 403. Functions of the Administration

"(a) The Administration shall—

"(1) make grants, in accord with the provisions of this chapter, upon the request of State and local officials, to States and political subdivisions thereof to carry out programs of voter registration;

"(2) collect, analyze, and arrange for the publication and sale by the Government Printing Office of information concerning elections in the United States;

"(3) obtain such facilities and supplies, and appoint and fix the pay of such officers and employees, as may be necessary to carry out the purpose of this chapter;

"(4) provide technical assistance, upon their request, to officials of States and political subdivisions thereof concerning voter registration;

"(5) prepare and submit to the President and the Congress on March 31 following each biennial general Federal election a report on the activities of the Administration and on voter registration procedures in the States and political subdivisions thereof, including recommendations for such additional legislation as may be appropriate; and

"(6) take such other actions as it deems necessary and proper to carry out its functions under this chapter.

"(b) The Administration shall not publish or disclose any information which permits the identification of individual voters.

"§ 404. Grants To Defray Costs of Voter Registration Activities

The Administration is authorized to make grants to any State or political subdivision thereof for the purpose of carrying out voter registration activities. A grant made under this section shall not be in excess of 10 cents for each eligible voter in the State or political subdivision receiving the grant.

"§ 405. Grants To Increase Voter Registration

"(a) The Administration is authorized to make grants to any State or political subdivision thereof to establish and carry out programs to increase the number of registered voters. Such a program may include—

"(1) expanded registration hours and locations;

"(2) mobile registration facilities;

"(3) employment of deputy registrars;

"(4) door-to-door canvass procedures;

"(5) absentee registration procedures;

"(6) reregistration programs;

"(7) public information activities; and

"(8) other activities designed to increase voter registration and approved by the Administration.

"(b) A grant made under this subsection shall be equal to 50 percent of the fair and reasonable cost, as determined by the Administration, of establishing and carrying out such a program. A grant made under this section shall not be in excess of 10 cents for each eligible voter in the State or political subdivision receiving the grant.

"§ 406. Grants To Modernize Voter Registration

The Administration is authorized to make grants to any State or political subdivision thereof for planning, evaluating, and designing the use of electronic data processing or other appropriate procedures to modernize voter registration. A grant made under this section shall not be in excess of one-half cent for each eligible voter in the State or subdivision receiving the grant, or $15,000, whichever is greater.

"§ 407. Grants for Voter Registration by Mail

"The Administration is authorized to make grants to any State or political subdivision thereof to carry out a program of voter registration by mail. A grant made under this section shall be equal to the fair and reasonable cost, as determined by the Administration, of establishing and operating a registration-by-mail system. Forms available for registration by mail shall conform to such regulations as the Administration may prescribe, including the use of bilingual forms where appropriate. Such forms shall be widely available for distribution in post offices and other public locations and for distribution by private individuals and organizations.

"§ 408. Technical Assistance and Fraud Prevention

"The Administration is authorized to provide technical assistance, including assistance in developing programs for the prevention and control of fraud, to any State or political subdivision thereof for improving voter registration and voter participation. Such assistance shall be made available at the request of states and political subdivisions thereof, to the extent practicable and consistent with the provisions of this chapter.

"§ 409. Applications for Grants

"Grants authorized by section 404, 405, 406, or 407 of this chapter may be made only upon application to the Administration at such time or times and containing such information as the Administration may prescribe. The Administration shall provide an explanation of the grant programs authorized by this chapter to State or local election officials, and shall offer to prepare, upon request, applications for such grants. No application shall be approved unless it—

"(a) demonstrates, to the satisfaction of the Administration, that the applicant has primary responsibility for registering voters within its jurisdiction;

"(b) sets forth the authority for the grant under this chapter;

"(c) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this chapter, and provides for making available to the Administration, for purposes of audit and examination, books, documents, papers, and records related to any funds received under this chapter; and

"(d) provides for making such reports, in such form and containing such information, as the Administration may reasonably require to carry out its functions under this chapter, for keeping such records, and for affording such access thereto as the Administration may find necessary to assure the correctness and verification of such reports.

"§ 410. Regulations

"The Administration is authorized to issue such rules and regulations as may be necessary or appropriate to carry out the provisions of this chapter.

"§ 411. Authorization of Appropriations

"For the purpose of carrying out the provisions of this chapter, there is authorized to be appropriated the sum of $45,000,000 for the fiscal year ending June 30, 1974, and for each of the two succeeding fiscal years."

(b) The table of chapters of title 13, United States Code, is amended by adding at the end thereof the following:

"II Voter Registration ..... 401".

Sec. 203. Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"(132) Administrator and Associate Administrators (2), Voter Registration Administration, Bureau of the Census."

TABLE I.—VOTER TURNOUT BY STATE IN THE 1972 U.S. PRESIDENTIAL ELECTION

State	Eligible voters [1]	Actual voters [2]	Voter turnout
Alabama	2,274,000	1,006,000	44.2
Alaska	200,000	95,000	47.5
Arizona	1,239,000	623,000	50.3
Arkansas	1,310,000	621,000	47.4
California	13,945,000	7,765,000	55.7
Colorado	1,558,000	949,000	60.9
Connecticut	2,106,000	1,384,000	65.7
Delaware	371,000	236,000	63.6
District of Columbia	518,000	164,000	31.7
Florida	5,105,000	2,576,000	50.5
Georgia	3,104,000	1,172,000	37.8
Hawaii	531,000	270,000	50.8
Idaho	479,000	310,000	64.7
Illinois	7,542,000	4,704,000	62.4
Indiana	3,509,000	2,128,000	60.6
Iowa	1,909,000	1,225,000	64.2
Kansas	1,541,000	916,000	59.4
Kentucky	2,206,000	1,067,000	48.4
Louisiana	2,339,000	1,051,000	44.9
Maine	666,000	417,000	62.6
Maryland	2,688,000	1,354,000	50.4
Massachusetts	3,955,000	2,458,000	62.1
Michigan	5,874,000	3,487,000	59.4
Minnesota	2,560,000	1,738,000	67.9
Mississippi	1,430,000	646,000	46.0
Missouri	3,266,000	1,856,000	56.8
Montana	460,000	318,000	69.1
Nebraska	1,022,000	576,000	56.4
Nevada	348,000	182,000	52.3
New Hampshire	521,000	334,000	64.1
New Jersey	5,025,000	2,992,000	59.5
New Mexico	636,000	386,000	60.7
New York	12,773,000	7,157,000	56.0
North Carolina	3,463,000	1,506,000	43.5
North Dakota	402,000	281,000	69.9
Ohio	7,185,000	4,087,000	56.9
Oklahoma	1,812,000	1,030,000	56.8
Oregon	1,500,000	922,000	61.5
Pennsylvania	8,161,000	4,589,000	56.2
Rhode Island	673,000	416,000	61.8
South Carolina	1,706,000	672,000	39.4
South Dakota	434,000	307,000	70.7
Tennessee	2,713,000	1,201,000	44.3
Texas	7,681,000	3,461,000	45.1
Utah	689,000	478,000	69.4
Vermont	309,000	187,000	60.5
Virginia	3,197,000	1,447,000	45.3
Washington	2,371,000	1,470,000	62.0
West Virginia	1,182,000	762,000	64.5
Wisconsin	2,955,000	1,851,000	62.6
Wyoming	225,000	146,000	64.9
Total	139,642,000	77,684,000	55.6

[1] Source: Bureau of the Census, Current Population Reports, "Projections of the Population of Voting Age for States: November 1972", series P-25, No. 479 (March 1972), table 2.

[2] Source: Certified vote totals in the 1972 election, as published in the New York Times, Dec. 20, 1972, p. 28; Dec. 24 1972, p. 26. Figures rounded to nearest thousand.

TABLE II.—VOTER TURNOUT IN U.S. PRESIDENTIAL ELECTIONS, 1824–1972

[In percent]

Election	Turnout	Election	Turnout
1824	26.9	1900	73.2
1828	57.6	1904	65.2
1832	55.4	1908	65.4
1836	57.8	1912	58.8
1840	80.2	1916	61.6
1844	78.9	1920	49.2
1848	72.7	1924	48.9
1852	69.6	1928	56.9
1856	78.9	1932	56.9
1860	81.2	1936	61.0
1864	73.8	1940	62.5
1868	78.1	1944	55.9
1872	71.3	1948	53.0
1876	81.8	1952	63.3
1880	79.4	1956	60.6
1884	77.5	1960	64.0
1888	79.3	1964	61.8
1892	74.7	1968	60.6
1896	79.3	1972	55.6

TABLE III.—VOTER TURNOUT IN RECENT GENERAL ELECTIONS IN FOREIGN NATIONS

Nation	Election	Turnout (percent)	Comment
Australia	Dec. 2, 1972	97	Compulsory registration and voting.
Canada	Oct. 30, 1972	74	
France	June 2, 1969	77	
West Germany	Nov. 19, 1972	91	
Italy	May 7–8, 1972	93	Compulsory voting.
Netherlands	Nov. 29, 1972	83	Do.
New Zealand	Nov. 25, 1972	90	Compulsory registration.
Great Britain	June 18, 1970	71	
Ireland	June 18, 1969	75	

ADMINISTRATIVE OBSTACLES TO VOTING

(A report of the Election System Project, the League of Women Voters Education Fund.)

PREFACE

The need for election reform through *federal legislation* has been documented and endorsed by several committees of national prominence. Most notable is the report of the President's Commission on Registration and Voting Participation[1] and the reports of the Freedom to Vote Task Force.[2] A forthcoming report of the National Municipal League will focus on the need for *legislatively enacted election reform*. A model state election code also is being developed by the National Municipal League and will be available to state legislatures for their consideration.[3]

In addition to changes in election laws, there is a need for changes in *administrative practices* of local and state election officials. (For the purposes of this study, administrative practices refers to the standards, procedures and structures set up to implement state election laws.) The main purpose of this report then is to document the need for administrative changes and to draw attention to the numerous administrative obstacles which confront all Americans as they seek to implement their right to vote.

The basis for this report is a study undertaken by the League of Women Voters Education Fund (LWVEF) with the assistance of a grant from the Ford Foundation. The administrative practices of election officials in 251 communities were documented through the efforts of over 3,000 League volunteers during the fall election period of 1971.[4]

All types of communities were included in this study; those where problems of registration and voting were likely to be found in the extreme as well as those where the problems were less visible. In general, the information was collected from at least one large city, a suburb, an independent small town, and a rural area in every State. To supplement the League effort, information from some areas of the rural South was collected by local organizations associated with the Voter Education Project. This sample of communities encompassed approximately 40 million people or one-fifth of the total population of the United States.

Data were collected through three methods: (1) recording official registration and voting procedures, (2) interviewing government and election board personnel to determine attitudes and practices, and (3) observing citizen experiences at both registration and polling places. Information also was collected on state administrative practices with regard to elections by some state Leagues of Women Voters.

It should be noted that observations of registration and polling places were made during the period of the 1971 fall elections. This means that administrative behavior was observed in a non-presidential election year in which various types of contests, some considerably more important and appealing than others, were at stake. This factor tends to mute the findings and conclusions drawn from the study. It is reasonable to conclude then that the findings contained in this report might be an understatement of the problems citizens experience when participating in presidential elections.

It is also important to review the findings within the framework of the Constitutionally-guaranteed right to vote of every eligible citizen. This means that although some figures pertaining to a given administrative obstacle to voting may be less than 50%, the finding may nevertheless be highly significant to the extent that it indicates that thousands or hundreds of thousands of citizens are possibly being disenfranchised.

Within this context, then, the study documents the fact that the current system of registration and voting functions inefficiently for citizens throughout the United States. Both supportive evidence and specific recommendations for administrative changes are included in this report.

A LOOK AT THE PRESENT SYSTEM

During the next six months, much public attention will focus on the principal candidates and issues of the November presidential election. It is doubtful, however, that very much concern will be given to the electoral process itself—that system of registration and voting procedures Americans must use in order to express their choice on the candidates.

Most citizens show little interest in the process not because they dismiss its importance but simply because they do not recognize the extent to which the current election system impairs the right of all Americans to engage in self-government. The public generally believes that the system has worked well for them in the past and that it will work well for the 140 milion Americans of voting age in 1972.

Regrettably, the present election system has not worked well. It still bears the mark of forces which originally gave it birth at the turn of the century: fear of the then-widespread corruption and fraud at the polls and a desire to control the voting participation of millions of European immigrants who threatened the political status quo. Although these particular forces have largely ceased to exist, the system remains saddled with many unnecessarily restrictive laws and exclusionary procedures. It has become an administrative maze in which many of the abuses it was designed to prevent can, in fact, be more easily hidden and through which the average citizen must painstakingly grope in order to exercise his fundamental right to the franchise.

Fear of fraud is often advanced in opposition to proposed reforms of the present election system. It could be argued, however, that such abuses are a function of community mores and will exist in some communities no matter what election procedures are established. More noteworthy, it would seem, is the fraud perpetuated on the American people by a system which excludes millions of eligible voters from the electoral process in the name of preventing a few dishonestly-cast votes.

Indeed, the system works poorly for *all* Americans. In the case of minorities, the poor, the uneducated and the aged, who are unable to meet its complicated requirements easily, the system naturally imposes more heavily than it does on the average mainstream American. These groups can be even further excluded from the electoral process by the arbitrary and uneven application of administrative procedures which, while legal, can be manipulated to serve the political advantage or philosophy of those who control them.

Such misuse of administrative practices is not new to the institutional life of our society. What is notable about the established election system is the extent to which, barring misuse of any kind, it denies the rights and infringes on the convenience of hundreds of thousands of Americans regardless of their racial or economic background.

In the presidential election of 1968, 73 million Americans or approximately 60% of the total population of voting age actually voted for a candidate of their choice; 47 million or approximately 40% *did not* cast a ballot. Compared with other democratic countries, this voting rate of American citizens is embarrassingly low. For example, the rate at which voters in Italy have participated in elections in the last 10 years has regularly approached 90%. Canada records a voting rate of approximately 75% to 80%, and in the last 25 years, West German citizens have voted at rates which range between 78% and 87%.

It is the contention of this report that millions of American citizens fail to vote not because they are disinterested but because they are disenfranchised by the present election system. Ironically moreover, many of them lose their right to vote not because they are poor, black, uneducated or uninterested, but because they are part of the mainstream of American society. Moving to a better neighborhood, accepting a company transfer, going to college, getting married, serving their country and exercising other rights, freedoms and obligations to their country too often has had the effect of denying citizens their right to vote.

Undoubtedly, the present election system will continue to disenfranchise millions of Americans of every economic and social background unless improvements are made at both the administrative and legislative levels.

THE POWER OF THE LOCAL OFFICIAL UNDER CURRENT ELECTION LAWS

To what extent can electoral reform occur within the context of existing law? To what degree do current state election laws affect the administrative behavior of election officials?

In a few areas of registration and voting, the law is specific. Residency requirements and closing dates for registration are examples. Although the capacity of administrators and local officials to act independently is considerably limited in these instances, they *can* determine the impact of these laws by the vigor with which they make these requirements known and encourage citizens to meet them.

Most of the laws concerning registration and voting, however, are not specific. In many cases, the law only establishes broad minimum requirements, thereby leaving a great deal of discretion to local officials. For instance, the law may require that a central registration office be located in each city of the state but not specify how clearly that office shall be identified. In fact, 52% of approximately 300 registration places observed in this study were *not* clearly identified. Again, the law may state that registration lists must be available to the public but it often does not stipulate the mechanisms for making the lists available. For instance, there was a financial charge for the registration list in 55% of the communities and authorization for access to the list was required in 38% of the cases.

Local officials may be even more powerful where the law is merely permissive. State statutes frequently allow, but do not require, the following: precinct registration, Saturday and/or evening registration hours, and the authorization of deputy registrars. Data from the community study show that in these areas local officials frequently do not use these statutory powers to reach citizens.

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[1] Report published in 1963.

[2] Two reports issued in 1971 by this commission of the Democratic National Committee; "Report of the Freedom to Vote Task Force of the Democratic National Committee" and "That All May Vote".

[3] Developed under a two year grant from the Ford Foundation, the model state election codes will be published in the spring of 1973.

[4] A modified version of the comprehensive survey on which this report is based was conducted by League volunteers in an additional 600 communities. The purpose of this Mini-Survey was to verify the validity of the comprehensive survey sample.

In 29% of the communities where deputy registrars were allowed, election officials failed to use this method to reach citizens. While only 10 states[5] expressly forbid evening and Saturday registration, 77% of the communities studied had *no* Saturday registration and 75% had *no* evening registration in non-election months.[6] Even during the heat of an election period, i.e. the 30 days prior to the closing of registration, 38% of the communities provided *no additional hours* for registration. The data clearly suggest, then, that local officials have in many cases failed to use the tools allowed but not mandated by law to make registration and voting easier and more accessible for all citizens.

In addition to their influence in areas where the law is stated in broad or permissive terms local officials are able to influence the electoral process in matters where the law is silent. Although the law may neither require, suggest nor forbid it, an election official might provide information to citizens concerning the election, might conduct extensive training programs for all poll workers, and might provide bilingual clerks where needed. While such initiative would remove many obstacles to voting, local officials have seldom acted in these areas: only 11% of the local officials included in this study published a voter information guide; 28% provided no training for poll workers; and in approximately 30% of the registration places where bilingual assistance was needed, local officials failed to provide this service. Election officials clearly have the power to make registration and voting procedures easier for citizens but this study has found that, by and large, they don't use it.

To a large extent, local officials retain their discretionary powers by default. The community study found that the state authority charged with responsibility for administering the state election code most often counted it as one of several other major functions of his or her office. In most states, reports from local officials to the state authority are generally required just after elections and contain little else than the total number of people registered and voting in a given jurisdiction and the results of the latest election. Though many states issue guidelines to local election officials, few state administrative mechanisms have been set up to monitor or enforce compliance with the guidelines. In short, state election administrators have little knowledge or control and exert practically no leadership over local election officials and the manner in which they administer the state election code. It is little wonder then that the local election official can, and often does, become the chief policymaker for all local, state and national elections held within his jurisdiction.

TABLE A.—DISTRIBUTION OF RESEARCH COMMUNITIES ACCORDING TO POPULATION SIZE BY ADDITIONAL TIME AVAILABLE FOR REGISTRATION DURING AN ELECTION MONTH (MONTH PRIOR TO CLOSING OF REGISTRATION)

	Total communities		Additional hours election month			Additional Saturdays[1]			Additional evenings[1]			Additional evening hours[2]		
	Number	Percent	Percent	Yes	No	Percent	Yes	No	Percent	Yes	No	Percent	<10 hrs.	>10 hrs
Population size	N=200	100	100	62	38	100	70	30	100	83	17	100	52	49
Greater than 1,000,000	4	2	100	[3] (1)	(3)	100	(4)		100	(2)	(2)	100	(4)	
500,000 to 1,000,000	13	6	100	62	38	100	63	37	100	89	11	100	57	42
250,000 to 500,000	21	10	100	41	59	100	75	25	100	77	23	100		100
100,000 to 250,000	33	16	100	68	32	100	90	10	100	70	30	100	36	64
50,000 to 100,000	27	13	100	73	27	100	55	45	100	86	14	100	44	57
25,000 to 50,000	42	20	100	66	34	100	75	25	100	90	10	100	56	44
10,000 to 25,000	46	22	100	60	40	100	67	33	100	93	7	100	61	39
Less than 10,000	22	11	100	56	44	100	44	56	100	60	40	100	83	17

[1] Refers only to those places reporting some additional hours of registration during an election month.
[2] Refers only to those places reporting some additional evening hours of registration during an election month.
[3] Refers to actual number rather than percentages.

TABLE B.—DISTRIBUTION OF POLLING PLACES OBSERVED ACCORDING TO TYPE BY USE OF VOTING MACHINES, FREQUENCY OF MACHINE BREAKDOWNS AND DURATION OF BREAKDOWNS

Variable	Polling places observed		Voting machines used			Voting machine breakdowns, at least one reported (percent)	Minutes out of order			
	Number	Percent	Percent	Yes	No		Percent	Less than 30 minutes	30 minutes to 2 hours	More than 2 hours
Type of polling place	N=484	100	100	74	32	12	100	71	24	5
Ethnic white—Under $5,000	37	8	100	70	31	8	100	67	33	
Ethnic white—$5,000–$10,000	60	12	100	67	34	5	100	80		20
Ethnic white—Over $10,000	47	10	100	62	39	6	100	100		
Nonethnic white—Under $5,000	57	12	100	68	33	5	100	83	17	
Nonethnic White—$5,000–$10,000	67	14	100	69	30	16	100	85	15	
Nonethnic White—Over $10,000	70	14	100	71	29	20	100	46	15	8
Spanish speaking—Under $5,000	22	5	100	56	34	18	100	100		
Spanish speaking—$5,000–$10,000	15	3	100	79	21	13	100	50	50	
Spanish speaking—Over $10,000	3	1	100	[4](3)		[4](3)	100	[4](3)		
Black—Under $5,000	51	11	100	82	18	14	100	20	60	20
Black—$5,000–$10,000	43	9	100	87	13	12	100	33	67	
Black—Over $10,000	13	3	100	50	50	23	100	100		

[4] Refers to actual number rather than percentages.

PERCEPTIONS AND ATTITUDES OF LOCAL OFFICIALS AND CITIZEN GROUP REPRESENTATIVES

The perceptions and attitudes of officials and community leaders are important to an examination of election systems for several reasons. First, they are frequently reflected in administrative behavior and in evaluations of that behavior. In many cases, they also indicate the willingness or unwillingness of community leadership to undertake needed administrative and legislative reform. Where opinions are backed by the power of an office or the resources of an organization, they take on added importance. Finally, such attitudinal data often show how different groups perceive community problems and the extent to which they are sensitive to citizen needs.

Perception of registration and voting problems

Long lines, short office hours, inaccessible registration and polling places, and registration periods remote from the date of election are common experiences to many Americans.

Interviews with local officials who hold the authority, responsibility and power to alleviate these problems show that they are generally insensitive to them. For instance, less than one-fourth of election officials held that the following were problems in their communities:

Residency requirements.
Complex registration procedures.
Complex absentee voting procedures.
Inconvenient registration hours.
Distant and inconvenient places of registration.
Complicated voting procedures, i.e. use of voting machines and paper ballots.
Inconvenient hours of polling.
Positioning candidate names on the ballot.
Insuring the proper functioning of voting machines.

On the other hand, most persons representing voting rights groups viewed all of these as serious problems in their communities.

Attitudes toward legislative and administrative reforms

Although the need for legislative action to reform the electoral process has been documented and endorsed by several committees of national prominence (see page 1), the League of Women Voters Education Fund community study shows that local election officials are reluctant to support many legislative changes and to assume the responsibility for administering reforms. For

[5] Includes North Dakota with no statewide registration and New Hampshire and Vermont where a checklist system is used.
[6] For the purposes of this study "evening hours" pertain to the hours after 5:00 p.m.

instance, support by local election officials dipped to less than a majority in regard to the following:

Carrying out door-to-door registration by government officials.

Updating registration lists monthly for public review.

Requiring at least 16 hours of training for election officials.

Extending voting hours from 7 a.m. to 9 p.m.

Conducting elections on a non-work day.

Publishing voter education materials at least 30 days prior to an election.

Placing local election officials under state merit systems.

In short, election officials seem to view the government as a passive participant in the electoral process with no responsibility for reaching out to citizens. They apparently believe that the initiative lies entirely with the citizen. This would seem to suggest at least one reason why 47 million Americans didn't vote in 1968. The issue clearly goes beyond the generally accepted explanation of voter apathy. Viewed from another perspective, the question arises that if the government can find a citizen to tax him or draft him into military service, is it not reasonable to assume that the government can find that same citizen to enroll him as an eligible voter and include him in the active electorate?

TABLE C.—NUMBER AND PERCENT OF ORGANIZATIONAL REPRESENTATIVES BY POSITION WHO AGREE THAT SELECTED REGISTRATION AND ELECTION PRACTICES ARE BASICALLY GOOD IDEAS

[In percent]

Statement	Election officials		Voluntary organization							Range	
	CCoEO	CCiEO	LWV	NZACP	LCP	YG	PCC	CAL	MG	Low	High
N[1]=	158	86	220	120	166	62	206	150	62		
A. Door-to-door registration should be carried out by local government officials in order to get all eligible citizens on the voter registration lists[2]	31	23	50	69	58	82	25	47	60	23	82
B. Voter registration should not be closed sooner than 30 days before any election	76	73	92	88	89	87	87	83	91	73	92
C. Residency requirements for voting in local elections should not exceed 60 days	61	49	74	81	77	84	65	53	73	49	84
D. Each county should require at least 16 hours of instruction for election officials	46	47	64	83	72	85	48	70	85	46	85
E. On election day, polling places should open from at least 7 a.m. to 9 p.m	25	34	77	73	69	92	63	60	94	25	94
F. All elections should be held on a nonwork day	29	20	35	41	33	46	18	18	47	18	47
G. 30 days before each election election, officials should send each registered voter a voter information guide	23	24	62	66	46	65	32	44	75	23	75

[1] N refers to the number of respondents for the 1st statement. All percents computed on actual N's but sample sizes not reported in this table.
[2] Not all data from the original interviews are included in this table.

Note: Positions are identified as follows: CCoEO—Chief county election official, CCiEO—Chief city election official, LWV—League of Women Voters, NAACP—National Association for Advancement of Colored People, LCP—Labor council president, YG—Youth groups, PCC—Chamber of commerce president, CAL—American Legion commander, MG—Nonblack minority groups.

TABLE D.—NUMBER AND PERCENT OF ORGANIZATIONAL REPRESENTATIVES BY POSITION WHO BELIEVE THAT SELECTED REGISTRATION AND ELECTION CONDITIONS EXIST IN THEIR COMMUNITY

[In percent]

Statement	Election officials		Voluntary organization							Range	
	CCoEO	CCiEO	LWV	NAACP	LCP	YG	PCC	CAL	MG	Low	High
N[1]=	158	86	220	122	161	61	203	150	61		
A. Many nonvoters would vote if registration procedures were less complex[2]	11	9	60	57	42	74	22	13	69	9	74
B. Many potential voters become "nonvoters" because absentee voting procedures are too complex	20	16	69	61	41	76	27	16	67	16	76
C. The hours of registration set by the election officials are inconvenient, and many potential voters find it difficult or impossible to register	9	8	59	51	46	64	20	14	70	8	70
D. The polls close so early in the day that many potential voters find it difficult or impossible to get to the polls on time	8	6	39	47	31	54	20	11	64	6	64
E. Places of registration are inconveniently located, and many potential voters find it difficult or impossible to register	9	7	60	53	43	73	22	15	64	7	73
F. Many nonvoters are simply frightened by the complicated procedures of voting	20	12	67	65	48	68	25	17	75	12	75

[1] N refers to the number of respondents for the 1st statement. All percents computed on actual N's but sample sizes not reported in this table.
[2] Not all data from the original interviews are included in this table.

Note: Positions are identified as follows: C.Co.E.O.—Chief county election official, C.Ci.E.O.—Chief city election official, LWV—League of Women Voters, NAACP—National Association for Advancement of Colored People, LCP—Labor council president, YG—Youth groups, PCC—Chamber of Commerce president, CAL—American Legion Commander, MG—Nonblack minority groups.

OBSTACLES TO ORGANIZED CITIZEN INITIATIVE

Since election officials have so often been unwilling to support outreach efforts, citizen groups have for many years attempted to fill this void through a variety of activities such as: conducting voter registration drives, sponsoring get-out-the-vote campaigns, publishing voter education materials, and providing volunteer staff for mobile registration units. These efforts, however, have all too often been frustrated by the inefficiencies and restrictive practices of the system as indicated by interviews with 584 citizen group representatives.

Approximately 50% of the organizations using registration lists found the lists to be inaccurate, and in half those cases the inaccuracy was reported to be greater than 10%. Lists were available to the public in 96% of the communities, but there was a financial charge for the list in 55% of the communities and authorization was required to use the list in 38% of the cases.

Groups were also frustrated when they attempted to have members deputized to register voters. Approximately one-fourth of the organizations seeking to have members deputized were refused the authorization they requested. Of those organizations which succeeded, 31% reported a limit to the number of deputy registrars allowed and 10% reported a limit to the number of forms a deputy registrar could obtain at any one time, an effective way of limiting the number of citizens registered.

These examples once again illustrate an attitude on the part of many election officials which tends to obstruct rather than encourage the efforts of citizen groups to expand the electorate. The instances cited strongly suggest the need for administrative reforms which would place more responsibility for outreach programs with election officials themselves and which would simplify administrative procedures pertaining to outreach efforts by citizens.

SEEKING TO REGISTER AND VOTE: EXPERIENCES OF THE VOTER

Under the system of voter enrollment and participation currently used in the United States, the individual citizen must take the initiative in order to qualify himself as a voter. The preceding discussion has indicated that the law does not require local election officials to take the initiative and that many are unwilling to employ their numerous powers or fully utilize the efforts of citizen volunteers to reach potential voters.

In this context, the experiences of the individual citizen as he seeks to register and vote are extremely important. If the cost in terms of time, energy, inconvenience or personal pride is too high, the individual may choose not to vote. Considering the all too frequent occurrence of complex forms, unhelpful and poorly trained staff, machine breakdowns, and inconveniently located registration and polling places, it is surprising

that so many citizens do vote. That the system functions at all is a tribute to the sheer determination of citizens to overcome these inconveniences and obstacles.

Registration is the first step in the voting process and the most crucial. When people register, they usually vote. In the presidential election of 1968, 89% of those persons who were registered actually voted. Observations of registration places and examination of formally stated registration practices provide some dramatic examples of the problems citizens encounter in trying to register.

The first problem that the citizen is likely to encounter will be finding the registration office. He may well have to travel a considerable distance from his home to a central registration office (except perhaps during the last month of registration for a particular election when he is more likely to find facilities in his neighborhood). In 40% of the communities studied, however, no additional registration places were opened even during these rush months. Since 54% of the registration places were not accessible by convenient public transportation, 24% lacked convenient parking, and 52% were not clearly identified as a registration or elections office, the prospective registrant may well be frustrated before he arrives.

TABLE E.—DISTRIBUTION OF REGISTRATION STAFF BEHAVIOR ACCORDING TO SOCIAL CHARACTERISTICS OF REGISTRANTS

Variables	Total samples observed		Registration staff behavior			Registration staff behavior		
	Number	Percent	Percent	Helpful	Not helpful	Percent	Courteous	Discourteous
Social class [1]	N=209	100	100	48	52	100	62	38
Middle	125	60	100	54	46	100	68	32
Working	53	25	100	42	58	100	58	42
Composite	31	15	100	33	67	100	44	57
Race [1]	N=213	100	100	49	51	100	63	33
White	147	69	100	52	48	100	67	39
Primarily white	46	22	100	52	48	100	61	30
Composite	13	6	100	17	83	100	50	58
Primarily nonwhite	7	3	100	[2] (1)	(6)	100	12	86

[1] These classifications are based upon the judgment of registration observers.

[2] Refers to actual number rather than percentages.

Once he has located the registration office, the prospective registrant may find that it is not open for registration. In 29% of the communities, registration closes more than 30 days prior to an election. Even if he arrives before the registration deadline, the office may be closed since 77% of the communities studied had *no* Saturday registration and 75% of the communities had *no* evening registration during non-election months. While 62% of the communities did have additional registration hours during election month, 30% of these still had no additional Saturday hours and 17% had no additional evening hours.

The persistent citizen who anticipates and copes with the numerous obstacles already mentioned will next find himself confronted with a registration form. If the form is confusing or questions arise concerning his eligibility, he may not find the staff very helpful. Fifty-two percent (52%) of the observers at registration places classified staff as not helpful. Furthermore, in 30% of the places where bilingual staff was needed, it was not found.

There is no way to measure the number of citizens who are discouraged from registering even before they get to the registration office, but observations of 5,750 people attempting to register at approximately 300 registration places showed that 3 out of every 100 qualified people who made the effort and found the registration place still left without being registered.

Casting a ballot at a polling place is the ultimate event in the electoral process for the citizen. Although he has been successfully registered, the potential voter may be frustrated in his attempts to vote. Polling places, though usually located in his precinct, may be poorly marked (as were 38% of the polling places observed) and public transportation and convenient parking may be lacking. Fifty-eight percent (58%) of the places observed lacked convenient public transportation and 11% lacked convenient parking. Since polling places are not opened in the evenings in many states, the potential voter may need to take time from work or rush to the polling place before or after work. If he goes early he may not be able to vote because many polls open later than the hour prescribed by law as happened in 7% of the 484 polls observed. If he goes to the polls following work, he may find that he is refused the right to vote even though he is standing in line at closing time. Such refusals occurred at 19 of the polls observed.

The prospective voter who gets into the polling place will probably confront a poorly trained staff usually selected on the basis of their partisanship. If there are voting machines at his polling place, he may well be delayed in casting a ballot by a machine breakdown since this occurred in one out of every ten places having voting machines. His right to vote may be challenged as were the rights of 419 persons at the observed polls. In the event that he successfully casts a ballot, it must be attributed at least partially to his perseverance.

SUMMARY

In a democratic society, no right is more fundamental than the right of every citizen to vote. Indeed, the vote is the very symbol of democracy. It is the basic unit of our representative form of government; the major vehicle through which the consent of the governed is offered or withheld—the prime means by which the American people can express and effect their will. The right to vote, therefore, necessarily carries with it the right of equal access for every eligible citizen to the formal system of regulations and procedures through which the vote is cast.

In studying the way our current election system is administered, the League of Women Voters Education Fund found that the administrative practices of local election officials and therefore citizens' access to the election system vary greatly from place to place, that many state election officials have not established structures and procedures which would insure uniform interpretation and administration of state election codes throughout each state and that the discretion which most state laws give to local election officials is often exercised in a manner which impedes rather than enhances the citizen's right to vote.

There is an urgent need for administrative reform of our present election system. Citizens must no longer be forced to earn the "privilege" but rather must be insured the *right* to vote. They must demand that the discretion granted to local officials by current state laws be used for the purpose for which it was originally intended; to give election administrators the margin of flexibility they need to assure the access of all citizens to the vote under the varying social, economic and geographic conditions which exist within states.

RECOMMENDATIONS OF THE ELECTION SYSTEMS PROJECT COMMITTEE

An advisory Committee consisting of nationally prominent authorities and experienced practitioners in the fields of voting rights, citizen participation, and elections was convened by the League of Women Voters Education Fund and the National Municipal League to assist them in designing the Election Systems Project. Upon completion of the LWVEF survey, the Committee reviewed its findings and developed the following recommendations regarding elections administration as a practical means of removing unnecessary obstacles to voting. (See p. 3/NML).

Some of the measures recommended may require changes in some state election codes. The purpose of this report, however, has been to identify administrative obstacles and to document the need for eliminating them. It is now up to local and state officials and citizens throughout each state to decide which reforms their own election system requires and to employ whatever means would most effectively achieve them.

Findings: Chief local election officials

The administrative practices of local election officials were found to be diverse throughout the states. Data on their attitudes toward reforms that would extend the franchise as well as their perceptions of the problems citizens might encounter under the present system reflect a tendency to conceive of the vote as a privilege rather than as a right. These findings imply serious discrepancies between the citizen's Constitutional right to the vote and the actual practices which govern its implementation.

Therefore, the Election Systems Project Committee recommends:

That the chief election official of every community comprehensively analyze community conditions and citizen needs by examining the registration rates of every precinct in his jurisdiction and by talking to representatives of various citizen organizations interested and active in issues of registration and voting participation;

That the chief election official of every community go the full limit of his legal powers in order to aggressively extend the right to vote to every eligible citizen. Such a program could include 1) maximum use of out-of-office registration techniques, e.g., use of mobile and other temporary registration units; 2) maximum authorization of qualified deputy registrars on a paid or volunteer basis; 3) the provision of bilingual staff where needed; 4) the publication and widespread dissemination of voter information guides; 5) the expansion of registration and polling place hours; and finally, 6) the use of all these techniques on the basis of voter need as revealed by his precinct analysis and information obtained through his community contacts;

That the chief election official of every community recruit, appoint, and train registration and polling place staff capable of and willing to respond to diverse citizen needs; that he or she further promote the highest standards of professional conduct by provid-

ing at least the federal minimum hourly wage to all registration and polling place staff and by selecting staff based on qualifications above and beyond traditional partisanship.

Findings: Chief State election official

The LWVEF study found that although the Secretary of State or State Attorney General is usually charged with general responsibility for administering the state election code, in fact, it is one of many duties of his or her office and therefore its implementation is, with few exceptions, decentralized to the local level. Where regular reports are made to a central state authority, moreover, the survey revealed that they generally contain no more than facts and figures regarding registration and voting rates and occasionally information on the kind of voting system used (automatic voting machines, paper ballots, etc.). Furthermore, where the state authority issues guidelines to local officials it usually provides no mechanism for monitoring or enforcing them.

The community study also found that, in the event that local officials are confused about how to interpret any part of the state election code, they must take the initiative in seeking state counsel. Except when their intervention is specifically requested, state authorities generally take little action to insure uniform and liberal interpretations of state election laws at the local level. Finally, state authorities generally do not monitor the way local officials use the extensive discretionary powers provided by most state election codes.

Therefore, the election systems project committee recommends:

That each state locate responsibility for the implementation of state election laws in a single state official or office and that the uniform interpretation and administration of the election code throughout the state be the sole responsibility of that official or office;

That the state election official establish and issue to every local election official minimum standards and performance guidelines; that the state official also establish a supervisory structure within which he or she can evaluate the performance of local officials under the guidelines and take corrective action where the standards are not being met;

That the state authority conduct mandatory training sessions for local officials which cover both the technical aspects of efficiently managing an election system as well as the local officials' legal obligations to aggressively extend the franchise and protect the voting rights of all citizens;

That both the guidelines and the training sessions be developed within the philosophical context of the vote as a right rather than a privilege;

That the chief state election official through an established supervisory structure and regular training sessions keep local election officials abreast of the most current legal opinions on voting rights and establish reporting procedures that will assure local officials' compliance with the most recent court decisions.

Findings: Organized citizen initiative in registration and voting

Since election officials have so often been unwilling to support outreach efforts, citizen groups have for many years tried to fill the void by initiating registration and voting services which would meet citizens' needs. The data show, however, that their efforts have often been impeded by the inefficient and restrictive practices of local election officials. Interviews with their representatives also show that citizen organizations recognize problems in the current election system that the officials tend to overlook.

Therefore, the election systems project committee recommends:

That citizen organizations add to their present outreach programs an aggressive effort to scrutinize the policies and actions of local election officials during both election and non-election periods;

That citizen organizations demand not only a role in the selection process of the chief local election official in their communities but also adequate representation of their constituencies on local and state boards of election where they exist. Where they do not exist, an effort should be made to create them.

The role of political parties, mass media and educational institutions

Although the LWVEF study did not specifically examine the current role these institutions play in our election system, based on the overall findings and the experiences of Committee members, the following recommendations are offered:

Political parties, because of their vital role in a democratic society have a responsibility to see that responsive and responsible election officials are appointed and elected. They must use their considerable influence to insure that election officials use their discretionary power to aggressively recruit voters and to allocate available resources in a manner that expands the electorate. Political parties should further support all efforts to provide adequate funding for local election officials.

Mass media should direct its enormous capabilities toward both informing the public of its voting rights and increasing the visibility and therefore the public's awareness of the system and administrators through which that right must be exercised. Such efforts might include a regular newspaper column devoted to registration and voting information, e.g., the requirements of the law, location and office hours of local registration and polling places, announcement of deadlines, etc. Reporters should cover not just the election but also the operation of local election systems on election day. Officials should allow reporters access to the polls at any time during the polling process.

High schools and colleges, through their curricular or extracurricular programs, should provide information on the legal and administrative requirements pertaining to the franchise. By this means, not only can the crucial facts be made known, but a new regard for the vote as an undeniable right rather than a privilege might be fostered within every American citizen.

UNIVERSAL VOTER REGISTRATION

Mr. HUMPHREY. Mr. President, I wish to register my strong support of universal voter registration. On August 5, 1971, I introduced the Federal Voter Registration Act which would have enabled citizens to register to vote in Federal elections at the same time they filed their Federal income tax returns. Since that time several fine voter registration bills have been presented to this body.

I am pleased to cosponsor the legislation introduced by Senator KENNEDY today. It combines many of the best ideas in the previous bills as recommended by the Committee on Post Office and Civil Service following its hearings last year. Under this bill, a citizen may register for Federal elections simply through mailing a post card to the appropriate office. State registration laws would not be eliminated but States would be offered incentives to expand and simplify their registration procedures. We should act quickly and favorably on this legislation.

Mr. President, the voter turnout in the United States has consistently been lower than that of any other Western democracy. In recent elections the gap has widened. Only 54.6 percent of the voting age population cast ballots in the 1970 congressional election. Much of this low participation is directly attributable to the procedures which result in the low rate of voter registration. While 80.2 percent of the registered voters cast ballots in 1970, 38.5 million eligible voters were not registered.

The statistics from this past presidential election provide another example of the deficiencies of our present procedures in encouraging voter participation. The U.S. Department of Commerce reports that only 72 percent of those eligible on the basis of age, 98.5 million persons, were reported as registered to vote. Of those registered, 87 percent reported that they voted. A most discouraging statistic is that the proportion of persons of voting age who were not registered was highest for those 18 to 24 years old. Among persons of this age, 41 percent reported that they were not registered as compared to 28 percent unregistered among the population as a whole.

In many areas registration requirements and procedures prevent young people, working people, minorities, and the poor from registering to vote. The location of registration offices, office hours, biased officials, and residency requirements all serve to discourage participation.

One striking illustration of great concern to me is that registration in some Southern States especially covered under the Voting Rights Act is still low. For example, recent studies have identified counties in which the black registration rate is less than two-thirds the white rate. In Alabama, the registration rate for blacks in an estimated 15 percent of the counties is less than two-thirds the white rate; in Louisiana in 20 percent of the counties; in Mississippi in 15 percent of the counties; in North Carolina in 33 percent of the counties; in South Carolina in 26 percent of the counties.

There are many practices in different parts of the South which limit black registration. The Washington research project recently reported the following obstacles:

First. Hours of registration are customarily limited to normal business hours, making it inconvenient for blacks to register.

Second. Registration is usually only possible at the county courthouse, an inconvenient location for many blacks.

Third. The States and counties rarely take action to publicize the need for registration or assume the burden of assuring that residents are registered.

Fourth. Many blacks, especially in rural areas, are still afraid to register; often this fear is reasonable; seldom is it counteracted.

Fifth. In some jurisdictions public officials have interfered with voter registration drives; in others, private persons have done so.

Sixth. In some jurisdictions a purge of the registration rolls has placed a heavier burden on blacks than on whites or has been carried out in a manner which discriminates against blacks.

This report also found that, in some areas those who overcome these obstacles

may be forced to repeat the registration process every year.

These voter registration laws are of relatively recent origin. Most States passed them after 1900, and the result was decreased voter participation.

But it is not just the obstacles to black registration in southern States which concern us. Nearly every State can be cited as continuing either intended or accidental impediments to full voter participation. Outside the South, many registration procedures were devised as a means of keeping immigrants and minorities out of the political process.

Twelve midwestern States do not require registration in suburban and rural areas, but do require it in larger cities, where black and minority populations tend to be concentrated.

North Dakota is the only State that has no registration law. Actual voter participation in North Dakota since 1951 has been substantially higher than for the Nation as a whole and election fraud has been virtually nonexistent.

These discriminatory rules and regulations cannot be justified. We must encourage, not discourage, citizen participation in government. The right to vote is the basis of our democracy. We will never become the perfect democracy, but universal voter registration will bring us closer.

By Mr. McGEE (for himself, Mr. MANSFIELD, Mr. SCOTT of Pennsylvania, Mr. BELLMON, Mr. BENNETT, Mr. BROOKE, Mr. CASE, Mr. CHURCH, Mr. FONG, Mr. HATHAWAY, Mr. HUGHES, Mr. HUMPHREY, Mr. JAVITS, Mr. MCGOVERN, Mr. METCALF, Mr. MOSS, Mr. MUSKIE, Mr. TAFT, and Mr. PELL):

S.J. Res. 21. A joint resolution to create an Atlantic Union delegation. Referred to the Committee on Foreign Relations.

Mr. McGEE. Mr. President, today 18 of my distinguished colleagues, including the Majority Leader (Mr. MANSFIELD) and the minority leader (Mr. SCOTT), and I are reintroducing a Senate joint resolution calling for a convention of delegates from the United States and the North Atlantic Community to explore the possibility of forming an Atlantic Union.

This same resolution was reported out of the Senate Foreign Relations Committee unanimously during the final days of the 92d Congress and was approved on the floor of the Senate without a dissenting vote. A similar measure was approved by the House Foreign Affairs Committee, but failed reaching the House floor by a single vote in the Rules Committee.

The resolution would create an Atlantic Union delegation from the United States, composed of 18 eminent citizens. Six of the delegates would be appointed by the Speaker of the House, after consultation with the House Committee on Foreign Affairs and the Leadership; six by the President of the Senate, after consultation with the Senate Committee on Foreign Relations and the Leadership; and six by the President of the United States.

The U.S. delegation would be authorized to organize and participate in a convention made up of similar delegations from the North Atlantic parliamentary democracies desiring to join in exploring the feasibility of forming an Atlantic Union. All members of the U.S. delegation would be free from official instructions and free to speak and vote individually at the convention.

It is worth noting, at this point, that during hearings on the resolution in the Senate Foreign Relations Committee last October, neither the State Department nor the Office of Management and Budget offered any objection to the resolution.

I cannot emphasize too strongly the critical need to begin exploring new avenues and approaches to our relationship with the other North Atlantic States. The longer we refrain from the pursuit of this objective, the greater the price we will have to pay in the long run.

It is true that Western European nations are focusing their attention on the strengthening and enlargement of European institutions. However, this process is not one which demands a weakening of our relationship and ties with Europe. This process is a necessary step toward the strengthening of our partnership with Europe.

In recent years, we have come to discover that our social, economic, and political problems are no longer endemic to the nation-state, but supranational in scope. Scientific and technological development is no respecter of national boundaries. Poverty and disease are not confined to national boundaries. Environmental problems associated with air and water pollution can be found in every Western nation.

Further complicating the situation for the United States, as we enter into a new era of uncertain international relationships, has been the erosion of international institutions which have been a key role in what economic, political, and social stability we have had since World War II. The United States continues to be confronted with an international monetary crisis. We have seen the slow deterioration of the NATO alliance, which I might add is a group of sovereign nations banded together to meet the problem of security. Although NATO has been an effective organization against one common problem, a crisis has arisen within the Alliance at a time when a unity of purpose is desperately needed in the future multilateral balanced reduction of forces negotiations with the Warsaw Pact nations. Our international trade position has shifted drastically against our interests.

With the entrance of Great Britain, Ireland, and Denmark into the European Common Market, the economic integration of the Continent has become a virtual reality. Yet, unless the United States initiates a concerted effort into strengthening its economic ties to Western Europe, this Nation could be confronted with an institutional nationalism in the form of the Common Market. The obvious danger inherent in such a potential development is that it could lead to extreme protectionist policies within the Common Market system.

The choice confronting the United States and her NATO allies is whether we will face our social, economic, and political problems individually in a piecemeal fashion as limited by the requirements of the nation-state and even a continental institution such as the European Common Market, or if a common approach is much more practical and feasible. Without supranational institutions to deal with supranational problems, nations cannot expect to continue functioning with any efficiency whatsoever.

Europe is becoming increasingly concerned over the direction of U.S. international policies in future years and with good reason. Fears are beginning to surface and are being eloquently enunciated by many of our European allies. President Georges Pompidou, in an interview with James Reston of the New York Times, which appeared in the December 14, 1972, issues of the Evening Star and Daily News, expressed his desire for high-level consultations to clarify United States-European monetary, trade, and political relations in 1973. In the January 12, 1973, edition of the Washington Post, staff writer Barbara Bright reported that West German Minister of Finance, Helmut Schmidt, proposed a summit meeting of West European and United States leaders. Schmidt noted that:

> We're treating monetary and trade problems much too casually. We need close, day-to-day contact.

Therefore, the time has never been riper for the Congress of the United States to put in motion the machinery necessary to carry out high level, in-depth discussions exploring the question of Atlantic union.

This resolution would have us explore the Federal answer to the challenges which face us and explore it by the Federal Convention approach. It would have us look for solutions in the system of Federal Union which our Founding Fathers adopted—a system which has proved effective in the heart of Europe. Again, I emphasize, the time has come for those of us who live in the North Atlantic Community to begin exploring ways in which we may jointly tackle the burgeoning problems which are rapidly becoming too great for any one nation to deal with alone. We are all aware of the regional problems of defense and economics which now confront us. These will become even greater unless new and more efficient political institutions are developed.

We cannot escape the fact that the North Atlantic countries are interdependent in many ways. The great preponderance of all our international trade is among the North Atlantic nations. Economically, our relationship with Western Europe is one of complex interdependence. Witness, for example, 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.

Yet, in spite of these facts, the Federal answer to our supranational problems,

even as promising and time-tested as it is, has not been explored at all with any other nation to date. It is strange that we have not yet done so when we look at our own experience with the alliance system—that is, the Articles of Confederation—and the great strength found in our own Federal system.

I want to emphasize at this point that the proposed Atlantic Convention is merely exploratory in nature. This resolution does not commit anyone to forming or entering into an Atlantic Union Federation or any type of organization or agreement. It commits us and the other participating nations only to exploring the question of Federal Union. The only requirement is that the delegates of the Convention report the findings of the Convention to their respective nations.

There is another issue which I feel this body should take into consideration when this resolution comes up for a vote. That issue centers around the type of world our youth will be facing as they assume the future leadership role of this Nation. I have had the pleasure of serving on the Advisory Board of Youth for Federal Union, an educational group advocating the Atlantic Union approach to dealing with our supranational problems. Youth, America's bellwether of change, has taken up the cause—an indication of increasing public support.

The formation of Youth for Federal Union is representative of the young people's healthy dissatisfaction with past approaches. By tapping into youth power—the 35 million Americans between 15 and 24—we can turn federated union into a reality. Youth has documented its great ability to organize and promote change.

Like our Nation's youth, supporters of Atlantic Union want to broaden man's horizons. Federal Union is not an end in itself, but a necessary beginning to overcome the problems of national rivalries that have plagued the world for centuries.

I want to take this opportunity to laud Youth for Federal Union in their efforts to acquaint the young people of this country with the Atlantic Union concept. I believe their efforts to be extremely constructive and I am confident they will be very successful.

In closing, I would add that the longer we put off the formation of an Atlantic Federal Union, the higher will be the cost of our inaction. We are already paying a large price for not having had the foresight to take steps in the direction of an Atlantic Federal Union. This resolution is a forward-looking measure aimed at exploring the setting up of better institutions for dealing with the wide range of international problems I have discussed in my remarks today. It provides the only effective way of dealing with multinational problems of defense, economics, pollution, and many other problems.

At this point, I ask unanimous consent that Mr. Reston's article appearing in the December 14, 1972 edition of The Evening Star and Daily News, and Barbara Bright's article in the January 12, 1973, edition of the Washington Post, be printed in the RECORD.

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

[From the Evening Star and Daily News, Dec. 14, 1972]

POMPIDOU ASKS U.S.-EUROPEAN TALKS

(By James Reston)

PARIS.—President Pompidou of France is now in favor of consultations "at the highest level" to clarify U.S.-European monetary, trade and political relations in 1973.

In a private interview at the Elysee Palace, the French president said world politics will be entering a new and difficult phase in 1973, but that the main thing is to get a better political understanding—he emphasized "political"—of the objectives of the United States, the expanded Common Market of Europe, and Japan

His main point seemed to be that all the major nations in 1973 find themselves in a new situation, as they did at the end of World War II.

TIME FOR REAPPRAISAL

The time has come, he said, for a thoughtful reappraisal, not only of money and trade questions which tend to divide nations, but for a little more reflection on the things that unite them.

He said France is pleased to see President Nixon restore better relations with China, and he agreed that President de Gaulle's conversations with Nixon in 1969 had perhaps helped bring about this reconciliation, but this was less significant for France and Europe than Washington's new and improved relations with the Soviet Union.

QUESTION OF MEANING

France also welcomes this, but asks what it means, he said. Europe naturally welcomed new talks between Washington and Moscow on the limitation of strategic weapons and the mutual force reductions, and will participate in the European Security Conference in 1973, but he said there are some fundamental questions about all this.

The Western European nations cannot help asking themselves, he said, whether the United States and the Soviet Union would be tempted to reach agreements between themselves to minimize the influence of Europe, and organize a peace that might be in their own interests, leaving Europe in a secondary position.

Washington and Moscow deny categorically, Pompidou said, that they have any such intention. He said he mentioned it only to illustrate the need for much more consultation between the major powers to avoid unnecessary and even dangerous misunderstandings in the coming year.

It is also essential, Pompidou said, that the major monetary and trading nations of the world begin to think about their common political objectives before they start quarreling about money and commerce.

Pompidou was frank and even blunt about this. He is concerned whether the United States would in fact help it through its difficulties of bringing Britain and other nations into the new expanded European economic community, or whether, worried about the increasing competition of the Common Market, Washington might put barriers in the way of the economic integration of the continent.

[From the Washington Post, Jan. 1, 1973]

GERMAN PROPOSES ATLANTIC SUMMIT

(By Barbara Bright)

Helmut Schmidt, West Germany's minister of finance, proposed yesterday that an Atlantic summit meeting of West European and U.S. leaders be convened after the French elections in March.

He also proposed, in a speech prepared for delivery last night at Newberry College in Newberry, S.C., that an American-European "royal commission" of distinguished and knowledgeable citizens be established to analyze the priorities of economic, monetary and security policies common to the United States and Western Europe.

"The time is ripe," Schmidt said, "for a thorough-going joint analysis and decision" on the interdependence of American and European political, defense, economic and monetary matters.

Schmidt's call for a summit meeting of West European leaders and President Nixon echoed a similar proposal made in December by French President Georges Pompidou.

There had been reports that President Nixon is planning a trip to Europe this spring, but the White House said Wednesday that no plans have been made for such a trip.

Reached by telephone yesterday in South Carolina, Schmidt said he felt it particularly necessary that a standing European-American commission study common economic and trade problems.

"We're treating monetary and trade problems much too casually," he said. "We need close, day-to-day contact."

In recent weeks, West German Chancellor Willy Brandt, Europe's elder statesman Jean Monnet and John J. McCloy, former U.S. high commissioner for Germany, have also called for such a European-American commission. One such group—the Committee of Nine of the North Atlantic Assembly, composed of nine European and American statesmen and parliamentarians—already exists.

Schmidt was invited to Newberry College to receive an honorary doctorate of laws degree.

By Mr. MOSS:

S.J. Res. 22. A joint resolution to authorize the President of the United States to proclaim the full week before Christmas each year as "National Postal Workers Week." Referred to the Committee on the Judiciary.

NATIONAL POSTAL WORKERS WEEK

Mr. MOSS. Mr. President, I have long felt that we should give greater recognition to our postal workers for the herculean job they do in carrying the mail—and particularly for the great efforts they make to deliver on time the increased load of letters, cards and packages which are sent every year for Christmas.

I am therefore today introducing a resolution to authorize the President of the United States to proclaim the full week before Christmas each week as "National Postal Workers Week." I ask that the full text of the resolution, which makes a case for its passage, be carried in the CONGRESSIONAL RECORD following these remarks.

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

S.J. RES. 22

Whereas the United States Postal Service is one of our greatest national resources, serving Americans everywhere on a daily basis; providing a lifeline of communications for the Nation's businesses, families, friends, organized groups and all levels of government; bringing word from the larger cities to our most remote hamlets, and from the hamlets back to the cities; acting as an indispensable handmaiden to our press and publications; disseminating culture, education, religious thinking, scientific advancements, and information on almost all causes for human concern to all of our people;

Whereas this vast responsibility is met

daily by nearly 700,000 dedicated men and women of the Postal Service who carry on a tradition of the mail must go through which stretches back to the founding of our Nation;

Whereas this responsibility is especially arduous and demanding during the Christmas season;

Whereas the fulfillment of this responsibility efficiently and with good spirit has long been known, but given little public recognition, even though it is one of the finest performance of any group of public servants anywhere; and

Whereas such public recognition would give all postal workers greater pride in their work, and the incentive to do even better, and would furthermore, provide a way for the American people to say thank you to postal workers throughout the Nation: Therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the full week before Christmas each year be proclaimed as "National Postal Workers Week."

By Mr. KENNEDY (for himself, Mr. STEVENSON, Mr. RIBICOFF, Mr. MCINTYRE, Mr. PELL, Mr. JAVITS, Mr. HATHAWAY, Mr. AIKEN, Mr. BROOKE, Mr. MUSKIE, Mr. WILLIAMS, Mr. CASE, Mr. STAFFORD, Mr. COTTON, Mr. WEICKER, Mr. SYMINGTON, Mr. MCGOVERN, Mr. CLARK, Mr. BURDICK, Mr. MONDALE, Mr. NELSON, Mr. BAYH, Mr. PROXMIRE, Mr. ABOUREZK, Mr. PASTORE, Mr. HUMPHREY, Mr. HUGHES, Mr. HART, Mr. MOSS, and Mr. PERCY):

S.J. Res. 23. A joint resolution to authorize the emergency importation of oil into the United States. Referred to the Committee on Finance.

Mr. KENNEDY. Mr. President, I am introducing today with the distinguished Senator from Illinois (Mr. STEVENSON) and 28 other cosponsors legislation to suspend home heating oil import restrictions.

These suspensions will apply in all States east of the Rockies, petroleum districts I–IV .

The suspensions apply through April 1, 1974, for home heating oil import restrictions and for 90 days following enactment for all crude oil import restrictions.

An identical joint resolution also is being introduced in the House of Representatives by Congressman JAMES BURKE, Democrat of Massachusetts, and Congressman DAN ROSTENKOWSKI, Democrat of Illinois.

Although I was pleased to see that the pressure on the administration finally has brought action, I am extremely disturbed that we had to wait until the middle of January for such action.

I hope, as do all citizens, that this action will prove sufficient to meet the Nation's needs in the next several months.

Unfortunately, the short period of suspension of the import restriction may prove a major obstacle in easing the current shortage of home heating oil. European refineries traditionally have been reluctant to agree to short-term contracts.

We are in a crisis, a man-made crisis, produced by the administration and the oil companies.

And the situation does not solely affect the Midwest. Traditionally, it has been New England, which consumes 55 percent of the Nation's No. 2 fuel for heating their homes, which has suffered.

This year, we were not the first to feel this shortage. But, the threat of home heaters running out of oil now faces New England residents. A return of cold weather could well mean thousands of New England homes going without heat.

And I do not exaggerate. There are some 2,800 independent fuel dealers in New England. Approximately 300 of them have been told by their suppliers that they will be rationed until the end of the winter. Others have unexpectedly been told they have exceeded last year's monthly level and will be cut back—some as high as 30 to 45 percent of what they had expected.

In the case of Texaco's customers, this came on 24 hours notice. And each one of these local fuel companies supply several thousand homes and schools and factories with No. 2 fuel oil.

I have received numerous telegrams and telephone calls from these fuel oil companies. Tuesday, I met with representatives of these companies, officers of the New England Fuel Institute in Boston. They informed me that the situation is growing ever more critical.

The current crisis was created by the administration's past refusals to open the import valve to permit an adequate supply of home heating oil and crude oil to come into the United States.

Many of us warned the administration in the past that its policy of permitting a few small drops of imports into the country would not prevent the oil shortage we are now experiencing.

The President has had the power with a stroke of the pen to open that valve. All he had to do is sign a proclamation suspending import restrictions.

In telegrams and letters to the administration's oil policymakers and in congressional testimony, I called for that action over the past several years.

Yet the President refused. In September, he refused when there was a shortfall of some 10 million barrels in home heating stocks below the 1971 level. In December, he refused when there was a deficit of some 35 million barrels in home heating oil stocks over a year ago.

Each time, the Office of Emergency Preparedness announced that there would be no shortage. And each failure has meant that fewer and fewer sources of No. 2 oil are to be found anywhere in the world.

The end result is that now we see schools closing their doors in the Midwest. We see small businesses closing up shop. We see homeowners told they cannot be supplied with the fuel they need to heat their homes.

And until yesterday, the most that we heard from the executive branch is that if the warm weather holds up, the crisis will be averted.

For all of the technical powers and scientific competence of this Nation, it is absurd to see the Nation watching the weatherman every evening to determine whether or not we are going to run out of fuel to heat our homes, our hospitals, and our schools.

Yet this administration apparently was gambling, just as it did earlier this year, that the weather will stay warm.

For there has been no factor that could not have been foreseen that would justify permitting oil supplies to run so short that a run of cold weather could produce a national crisis.

The two factors cited recently by the Office of Emergency Preparedness to excuse the current crisis have been known about for over 2 years in one case and 18 months in the other. The Clean Air Act was passed in 1970. Its impact on the appetite of utilities for No. 2 fuel oil was clear over a year ago. Similiarly, if there was any effect from the price freeze on reducing the domestic refinery yield of No. 2 fuel oil, it should have been known more than a year ago. Statistics from the Bureau of Mines also do not substantiate the OEP argument that the price freeze was a major factor.

In any case, there was no excuse 7 months ago, for the administration's failure to take into account these factors before deciding to keep tight restrictions on oil imports.

Nor is this a problem that is coming to the surface for the first time. The oil import quota system is an archaic, regressive, inequitable system whose practical effect has been to keep oil company profits flowing while consumers support those profits by paying high prices and enduring periodic shortages.

In February 1970, the President's Cabinet Task Force on Oil Import Controls issued a study which challenged the national security basis for the system, finding instead that its main impact was to artificially maintain high oil prices.

The study found that the oil import quota system was costing the Nation's consumers $5 billion a year; a sum they expected to rise to nearly $8½ billion by 1980.

That is the system that is still being maintained today. It is a system that has produced the current crisis and it is a system that should be ended.

At the very least, it should be suspended to permit an adequate supply of oil now.

For that reason, the joint resolution which we are introducing today suspends home heating oil import restrictions through April 1, 1974, and crude oil restrictions for the next 90 days.

Mr. President, I ask unanimous consent that the joint resolution be printed immediately following my statement along with statements submitted by Senator STEVENSON.

There being no objection, the joint resolution and statement were ordered to be printed in the RECORD, as follows:

S.J. RES. 23

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds that—

(1) the level of supplies of some heating oil has not been adequate to meet the needs of homes across the nation,

(2) the major cause of the inadequate supply of such oil is the limitation on imports of petroleum and petroleum products established by Presidential Proclamation 3279, as amended, and

(3) a suspension of the provisions of that Proclamation and the provisions of section 232(b) of the Trade Expansion Act of 1962 with respect to petroleum and petroleum products will permit home heating oil to be imported, or produced in adequate quantities by domestic refineries, and thereby relieve the critical shortage of such oil.

SEC. 2. Beginning on the date of enactment of this Resolution, the provisions of Presidential Proclamation No. 3279, as amended, and of section 232(b) of the Trade Expansion Act of 1962 shall not apply to the importation of crude oil or number 2 fuel oil (home heating oil) until the ninety-first day after the date of enactment of this resolution (in the case of crude oil) or April 1, 1974 (in the case of number 2 fuel oil).

STATEMENT BY SENATOR STEVENSON

Mr. President, I join Senator Kennedy today in introducing a Joint Resolution to authorize the emergency importation of oil into the United States.

This year due to a wet and abnormally cold autumn and early winter, the fuel shortage was felt in the Midwest. As the winter wears on, the problems in the Midwest are continuing and intensifying, and from the Midwest that crisis has spread East, West, and even South.

Schools have been closed in many areas, including Denver and Topeka. Many other schools have been or are on the brink of closing, including those in Rockford, Stockton, Wilmette, and Highland Park, Illinois. Factories have been closed in Iowa, Missouri, and other Midwestern states, and I can point to temporary plant closings in Quincy, Effingham, and other Illinois communities.

The corn and soybean crop throughout the Midwest has been late in harvesting and has had an abnormally high moisture content due to the very wet autumn. Farmers and grain elevator operations need fuel to run their grain drying operations. That fuel has been scarce and sometimes non-existent.

The heating supplies of thousands of homes have been threatened. Hospitals and other public buildings have been subject to the threat of a fuel cutoff. And bus companies in Minneapolis, Peoria, and other communities have either already curtailed service or are expected to do so soon.

The immediate reasons for these shortages are many, and these reasons have interacted in a vicious circle. The heavy demand for natural gas for grain drying purposes, as well as early and extreme cold-spells that racked the Midwest, caused natural gas distributors to cut back their service to those customers that were on "interruptible" natural gas service. Under this service, certain customers contract with suppliers to receive natural gas only to a certain point of general natural gas availability. When this point is reached, the customers agree to turn to alternative sources of fuel, such as propane or heating oil.

Such interruptions began occurring in the Midwest early and frequently, especially for those farmers and grain elevator drying operations on interruptible service, but the consumers on this interruptible service quickly began to find that both propane and heating oil were in short supply. The shortages of propane and heating oil, moreover, were affecting regular customers as well as interruptible gas consumers.

The propane shortage to a large degree has been artificial. The Office of Emergency Preparedness has continually stated that there is available propane in the Southwest and elsewhere, but that it is a "transportation shortage"—primarily a rail tank car shortage—which has been causing delays in getting the propane to the Midwest.

That there is a genuine shortage of no. 2 heating oil, however, cannot be denied. In September, the stocks of no. 2 fuel oil were 10 million barrels below the 1971 level, and as of a week ago those stocks were 35 million barrels below the January 1972 level.

In spite of this shortage situation, until yesterday there was little change in the mandatory oil import quota program. On December 18, the Administration announced that the quotas, at least for the first few months of 1973, would be the same as they were in 1972.

In the intervening year, however, the demand for no. 2 oil and other forms of refined crude has increased enormously. Many industries turned from low grade coal to no. 2 oil because of new air emission standards in their community. Similarly, new auto emissions standards have caused an estimated 7% increase in the demand for gasoline. There is also the simple fact that more autos and people increase the demand for gasoline. Faced with this increasing demand for gasoline, and given the much higher profitability of refining gasoline than refining no. 2 oil, oil companies somewhat naturally have been refining somewhat more gasoline and somewhat less no. 2 heating oil. Hence, the real shortage we now face throughout the country.

It would be wrong to blame environmental standards for this crisis, or to be unduly harsh with the oil companies. As the *Washington Post* noted in an excellent editorial last Sunday, "the present level of demand was predictable." Apparently, it was predictable to everyone but those in the Executive Branch. The reserves of fuel oil nationally began to drop significantly last March. By mid-autumn, the stocks were down 13% from last year, while at the same time consumption was 13% higher than last year. Yet in the late summer and early autumn, the Office of Emergency Preparedness was telling Senator McIntyre's Subcommittee that it expected all to be well; it did not foresee a shortage this winter.

And as the shortage continued and developed, the Executive Branch has done virtually nothing. In September and December, minor adjustments were made to increase East Coast terminal imports, but the effects were predictably minimal. I have already mentioned the December 18 action setting imports for this year at the same level as last year. And then there was "the curious step" taken Monday, January 8, of increasing the quota of refined fuel oil that can enter the continental United States from but one refinery, owned by Amerada Hess, in the Virgin Islands. Glossing over but not minimizing the gross favoritism this showed for one company, there are also the factors to be considered that the total amount of oil coming through this refinery is infinitesimally small in comparison to the need, and that much of it would be committed to Hess' customers.

Each of these "actions" was accompanied by a press release heralding the Administration's new action that will end the fuel shortage. But anyone who could read figures was not fooled. All the actions put together had no impact at all on the Midwest, and nationally they had less effect than the proverbial finger in the dike.

On November 10, I wrote Secretary Morton and Director Lincoln to ask for a modification of the Oil Import Regulation in order to allow independent operators in Districts II through IV a quota. This was not to be a part of the present quota, but part of an increased overall quota. I believed this would be fair to the independent oil companies and safeguard against a fuel shortage. My letter received a mere acknowledgement.

On December 21, I wrote the President citing the reasons for the fuel shortage, and called for a temporary end to the oil import quota system. Again, my letter met with a mere acknowledgement. Other Senators in the Midwest and elsewhere wrote the President calling for this same action. Last week the members of the Senate Midwestern Democratic Caucus, myself included, sent a joint letter to the President to the same effect. Many Governors had asked the President to take the same action, including the newly-inaugurated Governor of my own State of Illinois, Daniel Walker.

Finally, after published reports that Senator Kennedy and I would introduce legislation to list the oil import quotas, the President acted. His action will provide much relief, but not enough for this winter or the next.

Independent terminal operators, in Districts II through IV (Illinois is in District II) still will have no crude oil quotas. In addition, the action is inadequate in regard to no. 2 home heating oil. Industry projections show that the fuel supply next year will be much improved—and could well be worse—unless it is a very warm winter. We cannot afford to take that risk. We cannot afford another long period of inaction or ineffective action.

Senator Kennedy and I are therefore introducing legislation today which imposes a complete 90-day suspension of the quotas for the importation of crude oil and a suspension until April 1, 1974, of the quota of no. 2 oil. The one-year plus suspension on no. 2 oil can give the oil industry a chance to store adequate reserves for next winter in order to avert another fuel shortage. This further suspension would also give the President and the Congress more time to resolve the long-range problems associated with the mandatory oil import quota program.

In the long run, the entire mandatory oil import quota program needs to be revised in the context of a broader program to deal with the energy crisis. Secretary of the Interior Morton has already called for major changes in the quota program, if not its end. It is hoped the subject will be discussed in the President's upcoming energy message.

There are other avenues we can be pursuing in the longer run. As to the natural gas shortage, we can continue to pursue and in fact accelerate our research into and developmet of the process of coal gasification. I have long been an advocate of increased funding for coal gasification.

We can also act in this Congress to begin to end the rail car shortage, so that we can bring propane more quickly to the areas of the country that need propane.

But what can be done immediately is to take further action in regard to the oil import quota program. This Resolution provides the vehicle for such action.

Suspending the quotas will not be a panacea. It cannot be expected to solve the energy crisis, and it may not have full effect until somewhat later in the winter, given the time it takes to contract for the oil and the time for transport. There may be quick relief, however, if oil can be obtained from Canada.

The mandatory oil import program is established pursuant to Section 232(b) of the Trade Expansion Act of 1962. That section sets "national security" as the criteria for establishing any quota program, and thus national security was and is the reason given for establishing and continuing oil import quotas.

This rationale was seriously challenged for the Administration's own Cabinet Task Force on Oil Import Control three years ago. The importation of oil from Canada does not threaten our national security. On the contrary, a program established for our national security has caused a national emergency.

The Midwest needs help. The East Coast and New England need help. We can only

hope that this whole country will not need help again next year or in the years to come. Let us act quickly.

Mr. RIBICOFF. Mr. President, I am pleased to join with the distinguished Senators from Massachusetts (Mr. KENNEDY) and Illinois (Mr. STEVENSON) in calling for the immediate suspension of the import quota limitations on No. 2 home heating oil and crude oil.

Last week I received a letter from a fuel oil distributor in Connecticut which sums up the reason for this action:

We have been notified by our supplier of #2 home heating oil that effective January 1, 1973, a quota system will be initiated limiting the supply of fuel available to us, and of course, to our customers. This quota will be based on our record of purchases during the 1971–72 heating season, making no allowance for the fact that the past winter was one of the mildest on record. Under the present formula, the projected allocation of product available to us during the coming month will approximate 75% of the fuel required by us to serve our customers adequately. If severe winter conditions should prevail, as during the 1969–70 heating year, the percentage of product available, in relation to our requirements, would be substantially less.

Unless Congress acts quickly, many New Englanders will run out of fuel to heat their homes before the winter ends.

In order to solve this recurring problem, I introduced last week with the cosponsorship of the entire New England senatorial delegation the New England States Fuel Oil Act. That bill would allow unlimited imports of No. 2 home heating oil year round into a special fuel district comprised of the six New England States and would remove the present tariff on imported oil thereby providing consumers with adequate supplies of heating oil at reasonable prices.

I am hopeful that Congress will act quickly on my proposal. Until then emergency actions are needed. The legislation we introduce today accomplishes this by suspending the crude oil import quota program for the remainder of this winter and the heating oil program through April 1974.

I ask unanimous consent that several articles be inserted in the RECORD.

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

POTTER'S OIL SERVICE, INC.,
North Windham, Conn., January 9, 1973.

HON. ABRAHAM RIBICOFF,
U.S. Senator, Old Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: We have been notified by our supplier of #2 home heating oil that effective January 1, 1973, a quota system will be initiated limiting the supply of fuel available to us, and of course, to our customers. This quota will be based on our record of purchases during the 1971–72 heating season, making no allowance for the fact that the past winter was one of the mildest on record. Under the present formula, the projected allocation of product available to us during the coming month will approximate 75% of the fuel required by us to serve our customers adequately. If severe winter conditions should prevail, as during the 1969–70 heating year, the percentage of product available, in relation to our requirements, would be substantially less.

We request your assistance in alleviating the situation by lifting import quotas, encouraging the development of new sources of fuel, and investigating any other means of solution that may be feasible.

Yours truly,

BARON F. BRAY.

Hon. A. RIBICOFF,
Capitol Hill, D.C.:

Kenyon Oil Company, Inc. of Thompson, Connecticut, has been curtailed by 30 percent of its normal heating oil (2 fuel oil) requirements by its principal supplier, Texaco (Curran and Burton). Our company supplies 1500 household, business and municipal accounts, representing more than 6000 individuals in the States of Connecticut and nearby Massachusetts.

We were notified of the reduction of supply on Monday, January 15, 1973. We immediately contacted every known source of supply in the New England area and have been unable to find number 2 fuel oil at any price as of this writing.

We are applying this week for an immediate import quota of number 2 fuel oil, hopefully, to help solve this problem. We estimate our company will be out of fuel oil by January 27. The inability of our company to deliver our customer normal requirements, would result in a disaster for 1500 household, business, and municipal accounts. We beg you to contact the members of the OIAB to lend weight to our plea. Our only other thought was to ask you to contact the military to determine if they could make available any number 2 fuel oil to alleviate this problem.

Our customers and we are in a desperate situation and need your help.

Respectfully submitted.

FRANCIS K. LAPORGE,
President.

V. SAVIN FUEL CO.
East Hartford, Conn.

Senator ABRAHAM RIBICOFF,
Senate Office Building,
Washington, D.C.:

DEAR ABE. By 1–25–73 I will be unable to continue service of heating oil to some 3000 homeowners in the greater Hartford area due to a severe cutback of number 2 oil by my major supplier. It is imperative that you take immediate action to allow additional imports to relieve this situation.

Sincerely,

DAVID SAVIN,
President.

[From the Hartford (Conn.) Times, Jan. 12, 1973]

FUEL OIL FAMINE BEGINS TO HURT STATE CONSUMERS

(By Noah Gurock)

A substantial shortage of home heating oil is beginning to pinch Connecticut consumers, with independent oil dealers hardest hit as supplies tighten.

The independents—those who do not contract with a major supplier but shop around for the best price—report that they are unable to purchase oil in necessary quantities. Some say they cannot get any oil at all.

Other dealers, who have contracts with a distributor, are feeling the pinch also, with some of the suppliers rationing available fuel to customers.

"We are taking on no additional business," said Walter Brown, who is in charge of Shell Oil's distribution center in Stamford. "We are allocating fuel we do have to existing customers based on last year's purchases."

Independents, both large and small, are being told by Shell that there is no oil available.

A spokesman for Texaco in New York said his company is "allocating" oil to its existing regular customers, but would not say how much Texaco is cutting back. He, too, confirmed that independent companies are not being served.

The same is being reported at other companies.

Dealers who contract with Gulf, Esso and Tenneco-Laurel told The Times today that they are being limited to the amount they have contracted for and that in many cases even this amount is being rationed. Rationing is reported by some dealers to be between 20 and 30 per cent of contracted amounts.

"In normal times," said one executive at Savin Fuel, an Esso dealer, "if your business increases, they give you more. Now they are saying, not another drop."

All described the situation as "bad" or "tight" and one which is going to get worse if the cold weather keeps up.

Meanwhile, U.S. Sen. Abraham Ribicoff (D-Conn.), acting to ease the shortage, has proposed legislation that would remove all restrictions on the import of oil into New England.

Ribicoff said the action would remove a threat of a serious home fuel shortage during a severe winter and would save the consumers in New England about $90 million in costs.

At least one home heating oil industry spokesman has already warned that New England faces a certain shortage this winter—unless the government relaxes its import quotas.

John Buckley, vice president of Northeast Petroleum Industries Inc. in Boston, said yesterday homeowners could be without the fuel by the first of next month unless the quotas are eased.

Importation of home heating oil is now restricted to 45,000 barrels a day for the East Coast, and it must come from the Western Hemisphere. President Nixon lifted that geographical restriction temporarily, however, late last year through April 30.

Nevertheless, Ribicoff said, New England could use up to 90,000 barrels a day of the Number 2 oil and could benefit by importation of oil from Mideastern countries.

[From the Hartford (Conn.) Courant, Jan. 4, 1973]

STATE WARNED OF FUEL CRISIS

(By Joel Lang)

Connecticut is on the brink of a critical heating fuel shortage, the president of the Connecticut Petroleum Association warned Saturday.

Raymond L. Langfield said only warmer than normal weather or immediate action by the President to raise oil import quotas can keep the already serious supply situation from graduating "into a full-blown consumer supply crisis before the end of January."

Right now, he said, the state should relax its air pollution standards and homeowners should take emergency measures to conserve heat.

Strict new air pollution laws require industries to burn low-sulphur fuel, the same type that has always been used in home oil burners. This year there is just not enough low-sulphur fuel to go around, Langfield said.

To use less fuel, he said, homeowners should draw their drapes, weatherstrip their windows, turn their thermostats down five to eight degrees at night, close off unused rooms and fix leaky hot water faucets.

The real solution to the energy crisis would be for the federal government to raise oil import quotas, he said.

Some smaller oil dealers in Connecticut are being forced out of business because wholesalers don't have enough oil to supply them and their bigger customers at the same time, Langfield noted.

"They're (the small dealers) scraping the bottom of the barrel," he said.

Langfield, whose organization represents independent oil dealers throughout the state, said Tuesday a critical fuel shortage

would occur only if the winter became abnormally severe.

That was Tuesday.

Thursday Langfield and independent dealers began getting notices from wholesalers that the amount of oil they could purchase was being reduced. A substantial cold snap with subfreezing temperatures continued to guzzle away fuel supplies.

The Providence Gas Co., in Rhode Island announced Saturday it has told its commercial and industrial customers to stop using gas for production and to reduce heating by 25 per cent.

The order means between 20 and 30 large plants which rely heavily on gas for energy will be forced to close, and 2,000 to 3,000 workers will be idled. The order goes into effect Monday. A gas company spokesman said he hopes it can be lifted by Wednesday or Thursday.

The Connecticut Natural Gas Co., reported earlier this week it has an ample supply of gas because of a new liquid storage tank in Rocky Hill.

Gas and oil shortages have already shut down schools and factories in other parts of the country, particularly the Midwest.

Langfield said the oil shortage has been aggravated by new pollution standards for electrical power plants and less efficient automobile engines.

Electrical plants now burn low-sulphur oil to turn their turbines instead of high-sulphur fuels or coal. The result is a heavily increased demand for the high-grade oil of the kind that is used to heat homes.

Also Langfield said the use of electric power for heating is relatively inefficient because of the energy lost transmitting the power from the plant to the home. It takes four times as much oil for an electric plant to generate enough energy to produce the same heat as an oil burner in a home basement, he said.

Langfield also said automobiles produced since 1970 get much poorer gas mileage than earlier models because of the addition of anti-pollution devices. The result is that crude oil that might be processed into heating oil is being made into gasoline, he said.

In the long run, Langfield said, more efficient ways must be found to produce energy and care must be taken not to use energy unnecessarily.

But how warm Connecticut stays in the next few weeks depends a great deal on the weather, he said.

DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES CONSTRUCTION ACT EXTENSION

Mr. TAFT. Mr. President, I am again pleased to be a cosponsor of legislation to extend the Developmental Disabilities Services and Facilities Construction Amendments of 1970. The Developmental Disabilities Act (DDA) is an expansion of the mental retardation legislation of the past decade. This act was intended to serve people who are substantially handicapped.

The substantially handicapped differ from other handicapped because of the severity and multiplicity of their disability. They are not going to grow out of their condition; it will continue their lives long.

Yet where there have been adequate habilitative and supportive programs and services for them, they have clearly showed that they can live productive, useful, purposeful lives in their communities. They need not and should not be written off by society or filed away in the back wards of some institution.

The DDA addressed the problem of serving this group by providing formula grants to States to permit them to plan for and implement services.

This was landmark legislation since it provided for involvement of the consumers of the services or their representatives to work hand in hand with heads of State governments responsible for delivery of human services. By sitting down together on State DDA planning and advisory councils, concerned citizens have been able to plan for services to people cutting across departmental lines, traditional patterns and bureaucratic redtape.

This act has enabled States to experiment in microcosm with the allied services concept of the President. It encourages State and local, voluntary and public agencies to develop new approaches linking up diagnosis, referral, treatment, followup and follow-along. It makes possible the building of new statewide service systems to serve an up-to-now undeserved group.

In Ohio we have put together just such an innovative system with DDA funds mingled with other State funds—a protective service—case management system. This system will not only insure that the developmentally disabled get the services they need but it will assist us in turning around our residential institutional system and permit our developmentally disabled to live in our communities and join the mainstream of life.

Protective services is a new type of program which will require protective service workers with new skills and new types of training. DDA moneys are being channeled to our two Ohio University Affiliate facilities to provide this training—Columbus and Cincinnati.

As this program has gotten underway, gaps in our service program for the developmentally disabled have become glaringly apparent. Some DDA moneys are being used to fill these gaps. DDA moneys are also being used to help other agencies, both public and private, extend or improve ongoing services so they can better serve the developmentally disabled. The act has helped Ohio provide a better life for its substantially handicapped citizens.

I enthusiastically endorse this legislation.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 12

At the request of Mr. WILLIAMS, the Senator from Rhode Island (Mr. PELL) was added as a cosponsor of S. 12, the Urban Parkland Heritage Act.

S. 28

At the request of Mr. Moss, the Senator from Utah (Mr. BENNETT), the Senator from South Dakota (Mr. McGOVERN), the Senator from Arizona (Mr. GOLDWATER), the Senators from Wyoming (Mr. HANSEN and Mr. McGEE), the Senators from Oregon (Mr. HATFIELD and Mr. PACKWOOD), and the Senators from Nevada (Mr. BIBLE and Mr. CANNON), were added as cosponsors to S. 28, to clarify the relationship of interests of the United States and of the States in the use of the waters of certain streams.

S. 30

At the request of Mr. Moss, the Senator from Colorado (Mr. DOMINICK) was added as a cosponsor of S. 30, to amend the Wild and Scenic Rivers Act by designating a segment of the Colorado River in the State of Utah as a component of the national wild and scenic rivers system.

S. 37

At the request of Mr. METCALF, the Senator from Montana (Mr. MANSFIELD) was added as a cosponsor of S. 37, to amend the Budget and Accounting Act.

S. 176

At the request of Mr. THURMOND, the Senator from Arizona (Mr. FANNIN), and the Senator from Florida (Mr. GURNEY) were added as cosponsors of S. 176, the World War I Pension Act of 1973.

S. 260

At the request of Mr. CHILES, the name of the Senator from Kentucky (Mr. HUDDLESTON) was added as a cosponsor of S. 260, to provide that meetings of Government agencies and of congressional committees shall be open to the public.

S. 263

At the request of Mr. Moss, the Senators from Nevada (Mr. BIBLE and Mr. CANNON), the Senator from North Dakota (Mr. BURDICK), and the Senator from Colorado (Mr. DOMINICK) were added as cosponsors of S. 263, to establish mining and mineral research centers, to promote a more adequate national program of mining and minerals research, to supplement the act of December 31, 1970, and for other purposes.

S. 268

Mr. ROBERT C. BYRD. Mr. President, in behalf of Senator JACKSON of Washington I ask unanimous consent that at the next printing of the bill, S. 268, to establish a national land use policy, to authorize the Secretary of the Interior to make grants to assist the States to develop and implement State land use programs, to coordinate Federal programs and policies which have a land use impact, to coordinate planning and management of Federal lands and planning and management of adjacent non-Federal lands, and to establish an Office of Land Use Policy Administration in the Department of the Interior, the names of the Senator from Wyoming (Mr. McGEE), the Senator from New York (Mr. JAVITS), and the Senator from Arizona (Mr. GOLDWATER) be added as cosponsors.

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

S. 335

At the request of Mr. CHURCH, the Senator from North Dakota (Mr. BURDICK) and the Senator from West Virginia (Mr. RANDOLPH) were added as cosponsors of S. 335, to promote development and expansion of community schools throughout the United States.

S. 394

At the request of Mr. HUMPHREY, the Senator from West Virginia (Mr. BYRD), the Senator from Idaho (Mr. CHURCH),

the Senator from Florida (Mr. GURNEY), the Senator from Indiana (Mr. HARTKE), the Senator from Georgia (Mr. TALMADGE), and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 394, to amend the Rural Electrification Act of 1936, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such act be fully obligated in said year, and for other purposes.

At the request of Mr. ROBERT C. BYRD, for Mr. HUMPHREY, the name of the Senator from Montana (Mr. MANSFIELD) and the Senator from North Carolina (Mr. ERVIN) were added as cosponsors of S. 394, to amend the Rural Electrification Act, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such act be fully obligated in said year, and for other purposes.

SENATE CONCURRENT RESOLUTION 5—SUBMISSION OF A CONCURRENT RESOLUTION RELATING TO SENATE COMMITTEES

(Referred to the Committee on Rules and Administration.)

SENATE COMMITTEE JURISDICTIONS, FUNCTIONS, AND STAFF RESOURCES

Mr. HUMPHREY. Mr. President, I submit a Senate concurrent resolution that directs the Joint Committee on Congressional Operations to conduct or commission a study of Senate committee jurisdictions, functions, and staff resources. By September 1, 1974, a report with recommendations will be filed.

Mr. President, I believe that there is great need for this study. The various jurisdictions of the Senate committees have not been examined in depth since the 1946 Legislative Reorganization Act. Yet, there have been many changes since the late 1940's. New programs have been added to governmental responsibility; new challenges have been forced upon our governing institutions.

And, all the while there has been little change in the manner in which Congress examines, reviews, and authorizes legislation.

This has meant that jurisdictions over important policy areas now are split among a host of congressional committees. The budget, for example, is examined by over 31 committees and subcommittees. Public welfare programs such as public assistance, food stamps, and public housing, are scrutinized by the House Ways and Means Committee, the Health, Education, and Welfare Appropriations Subcommittees, the Agriculture Committees, the Senate Finance Committee, the House Housing Subcommittee, and the Senate Urban Affairs Subcommittee.

There are other examples of fragmented jurisdictions. Environmental policy is formulated in the Interior Committee, in the Agriculture Committee, and in Public Works. Urban affairs policy is considered by the Finance Committee, the Urban Affairs Subcommittee of Banking and Currency Committee, the Public Works Committee, and the Appropriation Committee. Trade policy is considered by the Agriculture Committee, the Finance Committee, the Foreign Relations Committee, and the Joint Economic Committee.

Functional committee jurisdiction is simply not present.

Clarity of purpose—and resulting control over program expenditures and program policy—is almost impossible to achieve.

The effort I am proposing today would examine the possibility of functionally organizing the committee structure of the Senate to avoid the overlap and fragmentation that now characterizes the legislative process.

It is my judgment that the study should examine the effect of committee jurisdiction on Congress as a policy initiating institution, and what must be done if Congress is to reassert a strong role in policy initiation. Such a study would mean an analysis of committee organization, and the application of new technology and data processing to improving the way committees do their jobs.

It would mean answering such questions as how Congress can best equip itself to monitor efficiently the programs it creates, how Congress can make the best use of technology, information, and the utilization of personnel to perform its constitutional oversight functions, and how we can best organize ourselves to make Congress truly a coequal branch of the Federal Government.

Mr. President, I would hope that the Senate would give prompt consideration to this resolution. I ask unanimous consent that the resolution be printed at this point in the RECORD.

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

S. CON. RES. 5

Whereas there is a demonstrated need for the Senate of the United States, as one house of the United States Congress, to assert its policymaking and oversight functions; and

Whereas the Committee structure of the United States Senate is so organized as to frustrate the examination, the analysis, and the oversight of governmental policy; and

Whereas, because of the fragmentation of committee jurisdiction and responsibility in the United States Senate, there has been a decrease in clarity of policy purpose and of Congressional control over governmental program operations and expenditures; Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that the Joint Committee on Congressional Operations immediately begin or commission an in-depth analysis of the Committee jurisdictions of the United States Senate, taking into account the need to reduce fragmentation of policy and program oversight, the necessity for aligning Committee jurisdiction on the functional purposes of governmental programs, the potential application of new technologies for Committees of the United States Senate, and the requirement that staff personnel and resources be effectively and efficiently allocated among Committees of Congress of the United States. The Joint Committee on Congressional Operations shall make periodic reports to the United States Senate and present final recommendations to the Senate by September 1, 1974; also be it

Resolved, That Expenses of the Joint Committee on Congressional Operations under this concurrent resolution shall be paid from the contingency fund of the Senate upon vouchers approved by the Chairman of the Joint Committee on Congressional Operations.

SENATE RESOLUTION 21—ORIGINAL RESOLUTION REPORTED AUTHORIZING ADDITIONAL EXPENDITURES BY THE COMMITTEE ON PUBLIC WORKS

Referred to the Committee on Rules and Administration.

Mr. RANDOLPH, from the Committee on Public Works, reported the following original resolution:

S. RES. 21

Resolved, That, in holding hearings, reporting such hearings, and making investigations as authorized by sections 134(a) and 136 of the Legislative Reorganization Act of 1946, as amended, in accordance with its jurisdiction under rule XXV of the Standing Rules of the Senate, the Committee on Public Works, or any subcommittee thereof, is authorized from March 1, 1973, through February 28, 1974, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable basis the services of personnel of any such department or agency.

SEC. 2. The expenses of the committee under this resolution shall not exceed $665,000, of which amount not to exceed $9,000 shall be available for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202 (i) of the Legislative Reorganization Act of 1946, as amended).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 1974.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

SENATE RESOLUTION 22—SUBMISSION OF A RESOLUTION PROPOSING COMMITTEE SESSION RULES CHANGE

(Referred to the Committee on Rules and Administration.)

ANTISECRECY IN SENATE COMMITTEE SESSIONS RULES CHANGE

Mr. HUMPHREY. Mr. President, I submit a resolution to amend the rules of the Senate to require that both hearings and mark-up sessions of Senate Committees be open to the public.

I offer this resolution on behalf of myself and Senator ROTH, and Senators HART and PERCY, and the following additional cosponsors: Senators ABOUREZK, BIDEN, BROCK, CLARK, COOK, CRANSTON, GURNEY, HASKELL, HATHAWAY, HUGHES, MONDALE, PACKWOOD, STAFFORD, and TUNNEY.

Our resolution would require, with national security and personal rights exemptions permitted if ordered by majority vote, that all meetings of Senate committees and subcommittees be open to the public.

As Common Cause and others have

pointed out, congressional committees do the public business. To the extent they do it in secrecy, the accountability between elected officials and their constituents is clouded.

I believe this is one of the major reform efforts which should be made early in this Congress. An antisecrecy rule could be adopted as a rules change within each committee, but I have concluded that the adoption of a uniform rule by the Senate as a whole would be the best approach.

The main target of our proposal, of course, is the so-called executive or mark-up session of the subcommittee and committee. In the Senate nearly all such sessions—which are at the crucial stage of the legislative process—are closed to the public. While there may have been convincing reasons for development of closed sessions in earlier years, I believe it is time to recognize that the public has a right to share in the development of legislative policy at every stage.

The benefits of an open-sessions policy can be summarized as follows:

First. Senators, as committee members, will be fully accountable to their constituents at the crucial stage of the legislative process, both as to their leadership within committee and their votes.

Second. An open-sessions procedure will increase public respect for the legislative process and for the Congress as a whole.

Third. The elimination of secrecy will strengthen legislation by making expert points of view available in the crucial moments when a bill is written in final form.

Fourth. Open sessions will increase the influence of the informed public and of public interest groups in open competition with the executive branch and the special interests who now have special access to markup sessions in many cases.

Fifth. Open committee and subcommittee sessions will provide insurance against hidden provisions or poorly drafted ones in legislation reported to the Senate.

Sixth. "Full access to committee sessions will improve the reporting and understanding of legislation by the news media."

Mr. President, I am encouraged by the action, on January 11, of the Senate Democratic caucus. It approved a resolution calling for open hearings and open markup sessions of Senate committees.

The resolution approved in the caucus by the Democratic majority reads:

1. "That the Senate Committees and the Senate should conduct their proceedings in open session in the absence of overriding reasons to the contrary;

2. "That whenever the doors of the Senate or of a Senate Committee are closed, a public explanation of the reasons therefore should be forthcoming, respectively, from the Joint Leadership or the Chairmen of the Committee;"

A third paragraph in the original resolution had exempted markup sessions in committees from the antisecrecy rule, but the Senator from Minnesota moved to strike this section and my motion was approved by the caucus. The paragraph I moved to strike read:

3. "That this resolution is not to be construed as militating against conducting routine procedural business or the marking-up of legislation in Executive Session."

This very firm action by the Caucus, especially the rejection of the specific exemption for mark-up sessions, gives strong impetus to our efforts to secure immediate hearings on the Humphrey-Roth-Hart-Percy antisecrecy rules change resolution and passage early in the session.

Enactment of the rule is still necessary, in my opinion, to provide a uniform, Senate-wide antisecrecy procedure and to specify clearly what exceptions are to be permitted to accommodate national security and personal rights exemptions.

Mr. President, I observe that Senator MANSFIELD'S initiatives toward more open, accountable and responsive decisions within the caucus are unparalleled in the last two decades of the Congress.

In just a few short years, Senator MANSFIELD has guided the Democratic Caucus to support full information on Steering Committee decisions, full and free majority decision on committee assignments and committee chairmanships, guarantees that Senate conferees will accurately reflect the will of the Senate, and elimination of unnecessary secrecy in committee hearings and markup sessions. I doubt that the country fully realizes the importance of these changes and I want to compliment all my Democratic colleagues on their actions.

Mr. President, this proposal, reinforced by the resolution of the Democratic Conference, deserves immediate consideration. I have discussed this matter with the distinguished Senator from Nevada (Mr. CANNON) who is chairman of the Committee on Rules and Administration. On the basis of that discussion I believe our prospects for hearings to be scheduled in the near future are good.

Mr. President, I ask consent that the text of the resolution be printed in the RECORD.

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

S. RES. 22

Resolved, that the Standing Rules of The Senate are amended by adding at the end thereof the following new rule:

"RULE — OPEN MEETINGS OF COMMITTEES AND SUBCOMMITTEES

"All meetings of all Standing, Joint, Special and Select Committees and their subcommittees shall be open to the public, except when the subject matter of the meeting involves the national security, and then only when a motion to meet in executive session shall be adopted by majority vote of the members of such committee who are present at the meeting; and except meetings of any committee or subcommittee in which testimony or evidence presented or considered may tend to defame, degrade or incriminate any person, in which case such testimony or evidence shall be received and considered in executive session, and then only when a motion to meet in executive session shall be adopted by majority vote of the members of such committee who are present at the meeting."

Mr. ROTH. Mr. President, the resolution that the distinguished junior Senator from Minnesota and I, together with the distinguished senior Senators from Illinois and Michigan, are offering today is a simple one, but one which could effect an important reform in the way in which the Senate conducts its business. We are very pleased to have as original cosponsors of this legislation Senators ABOUREZK, BIDEN, BROCK, CLARK, COOK, CRANSTON, GURNEY, HASKELL, HATHAWAY, HUGHES, MONDALE, PACKWOOD, STAFFORD, and TUNNEY.

We seek to add to the rules that govern this body a new rule which would require that all committee meetings—hearings as well as drafting and markup session—be open to the public with only two exceptions. These exceptions—the only ones which we believe are necessary—are that business which involves the national security or which could infringe upon personal privacy by tending to defame the character of an individual may be closed when the members of the committee agree to a closed session by majority vote.

This reform is long overdue. It has unfortunately become almost an established rule of thumb that committee business—except hearings—be held in executive session. Closed committee doors hide from the public a vital part of the legislative process. They also permit abuses contrary to the spirit of democratic government.

Bills may be substantially modified outside the purview of the media and the public. Legislators may assume positions for which they are not accountable to the electorate. While committee business is closed to the public, special interest groups may be able to keep informed on and influence decisions through friends on the committee staff. Finally, secrecy permits the release of selective and biased reports of the committee business through "leaks," which cannot be corroborated for accuracy.

This resolution will close the door on such practices and open the door to the public. And, by making Senators more accountable to the electorate, it should help bridge a growing gap between one of the major challenges to the vitality of our form of government.

Of course, the practice of closed door sessions in the Senate is only one part of the problem that is creating this gap—the problem of excessive secrecy at all levels of government. I hope that one of the major accomplishments of the 93d Congress will be the enactment of legislation to deal with this problem. The place to start is right here in the Senate. Open doors will increase the public's confidence in the Senate and our procedures. And when we open our meetings to the media and the electorate, we will be in a better position to insist upon more open procedures from the rest of the Federal Government as well.

TOXIC SUBSTANCES CONTROL ACT OF 1973—AMENDENT

AMENDMENT NO. 1

(Ordered to be printed and referred to the Committee on Commerce.)

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished senior Senator from Washington (Mr. MAGNUSON), I submit an amendment intended to be proposed by him to the bill (S. 426), the Toxic Substances Control Act of 1973.

Mr. President, I ask unanimous consent that a statement prepared by him in connection with the amendment together with the amendment itself be printed at this point in the RECORD.

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

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

STATEMENT BY SENATOR MAGNUSON

Mr. President, the amendment I submit today to S. 426, the Toxic Substances Control Act, is designed to further protect the consuming public from the dangers that may arise from the very chemical substances regulated by that legislation and by other contaminants as well.

The amendment would establish within the Food and Drug Administration a program for the surveillance of dangerous materials in food. In doing so, FDA would specify by regulation all dangerous materials and the intensive screening procedures that would be followed in order to avoid unreasonable threats to human health. In the event that insufficient knowledge exists to gauge the public health threat, the regulations would specify how that knowledge would be gained.

A dangerous material is defined by the amendment to mean "any material which there is reason to believe might reach toxic levels in significant quantities of food so as to threaten human health". Thus, the amendment would establish a formal procedure whereby the Food and Drug Administration would be required to spell out the procedures it will use to monitor this nation's food supply for contaminants and how scientific gaps as to toxicity and detection methodology, for example, would be filled.

While the Food, Drug and Cosmetic Act contains the mandate to protect against adulterated foods, nothing in that Act gives specific direction as to how surveillance procedures are to be developed or to how research into toxic effects is to proceed. This amendment would give that direction by specifying that level of surveillance which is "required to provide reasonable assurance" that unreasonable threats are not presented.

The ability of the Food and Drug Administration and other agencies of the Federal Government to adequately protect consumers from dangerous materials in foods has been seriously questioned in the recent past. As an example, the presence of mercury in fish and fishery products was controlled by the Food and Drug Administration only after private scientists discovered its presence. Thus, FDA's routine surveillance procedures were incapable of detecting the mercury crisis. Moreover, at hearings of the Subcommittee on the Environment, the Food and Drug Administration indicated that most foods could become contaminated with mercury and other heavy metals under the stress of certain environmental conditions indicating that the mercury crisis may not be restricted to fish. In addition, the recent discoveries of polychlorinated biphenols (PCBs) in poultry products, and botulism in canned foods are indicative of the need to step up our surveillance procedures. In the case of botulism in canned soup, the death of a man prompted the intensive search.

The presence of pesticides in food has also been a subject of concern to consumers. In his book entitled "The Chemical Feast", James S. Turner commented on the extent of FDA enforcement of pesticide tolerances.

"Once set, tolerances are not properly enforced by the FDA. Its stated method for enforcement is to collect samples of products for evaluation of pesticide residues. In 1963, the FDA reported that it expected to inspect 25,000 shipments of produce entering interstate commerce. This figure was admitted to be less than 1% of the total shipments. In 1967, the Agency reported that it had actually conducted only 49,044 inspections between July 1, 1963 and June 30, 1966—significantly fewer than even the modest projection. This record of inspections, covering approximately 0.7% of the total number of shipments, is hardly as reassuring as the FDA's glowing reports sound. With over a 99% chance of going undetected, there is little incentive provided by this program to apply pesticides sparingly."

By requiring the Food and Drug Administration to specify its surveillance procedures by regulation, an opportunity will be presented for concerned scientists and consumers to initiate a higher level of surveillance by petitioning FDA, to offer their comments during the administrative review of the regulations, and to seek review of those regulations in court when they are promulgated. Thus, private citizens will be able to involve themselves in the regulatory process and provide an incentive for EPA to develop proper procedures for surveillance and toxicity research.

For example, Dr. John Wood of the University of Illinois was responsible for the scientific work which first demonstrated conclusively that the innocuous forms of mercury could be converted to the deadly methylmercury by aquatic bacteria. His discovery was made in 1967 and generally fell upon deaf ears even though the discovery was publicized. Dr. Wood testified at hearings on the Subcommittee on the Environment that if this provision had been in effect at that time he would have taken advantage of the provision and petitioned FDA to increase its surveillance based on his scientific work. If he had been successful, the mercury crisis might well have been detected years before it ultimately came to light.

The current responsibility for the surveillance of dangerous materials in food lies not only with the Food and Drug Administration, but with the Department of Agriculture, the Department of Commerce, and a variety of State and local agencies. In promulgating its regulations, the Food and Drug Administration would be expected to consider the efforts made by others in order to avoid duplication. Thus, the responsibility of FDA with respect to the inspection of poultry products, for example, would be to supplement the efforts of the Department of Agriculture to the extent necessary to provide reasonable assurances that dangerous materials in poultry do not constitute an unreasonable threat to human health.

S. 426

AMENDMENTS NO. 1

Strike out the short title at the beginning of the bill and insert in lieu thereof the following:

"TITLE I—TOXIC SUBSTANCES CONTROL

"SEC. 101. This title may be cited as the 'Toxic Substances Control Act of 1973'."

Renumber sections 2 through 26 as sections 102 through 126, respectively.

Strike out the term "this Act" wherever it appears and insert in lieu thereof "this title".

At the end of the bill add a new title as follows:

TITLE II—SURVEILLANCE FOR DANGEROUS MATERIALS

SEC. 201. This title may be cited as the "Federal Food Inspection Act of 1973".

SEC. 202. Chapter IV of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end thereof a new section as follows:

"SURVEILLANCE FOR DANGEROUS MATERIALS

"SEC. 410. (a) In order to protect consumers from the dangers of dangerous materials which may be found in food, the Secretary shall initiate and carry out an intensive screening system for the detection of such materials in food.

"(b) As used in this section—

"(1) The term 'dangerous material' means any material which there is reason to believe might reach toxic levels in significant quantities of food so as to threaten human health.

"(2) The term 'intensive screening' means that level of surveillance required to provide reasonable assurance that the presence of dangerous materials in food does not constitute an unreasonable threat to human health. Such surveillance shall consist of sampling and analysis of those foods which there is reason to believe contain dangerous materials in such quantities as to threaten or significantly contribute to the threat to human health. In the case of those dangerous materials for which additional research is necessary to reasonably specify such levels of surveillance, such term also means that level of research which is required to gain reasonably sufficient knowledge to gauge the threat to human health arising from the presence of such dangerous materials in food and any other information necessary to ascertain such levels. To the extent practicable, such research shall utilize data on human exposure which relates to consumption patterns and the accumulative effect on human metabolism.

"(c) Not more than one hundred and eighty days after the date of enactment of this section, the Secretary shall propose regulations specifying all dangerous materials and the intensive screening procedures that he will follow in carrying out this section. The Secretary may modify or amend such regulations at any time after they become final either on his own initiative or on the petition of any interested person. Those adversely affected by any proposed regulation, any proposed modification or amendment, or the denial of any petition for any such modification or amendment may file objections thereto with the Secretary showing reasonable grounds therefor and request a hearing thereon. The Secretary shall afford an opportunity for a hearing on such objections. All hearings conducted pursuant to this section shall consist of the oral and written presentation of data, views, or arguments pursuant to section 553 of title 5 of the United States Code.

"(d) If the Secretary finds that there is a threat to the public health that requires an immediate increase in the level of intensive screening for any hazardous material in food, he may increase the level of such research or testing to such extent he determines necessary without regard to any requirement under this section for previous notice or opportunity for a hearing; but the Secretary shall comply with such requirements as soon as practicable after initiating such increase in the level of intensive screening for the dangerous material in question.

"(e) Analyses performed under this section to determine the presence and amount of dangerous materials in food shall be performed using the best available technology.

"(f) The results of any analyses of research performed under this section shall be available to the public upon request to the Secretary."

NOTICE OF HEARINGS ON BOXCAR SHORTAGE

Mr. HUDDLESTON. Mr. President, the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices, of the Committee on Agriculture and Forestry, will hold a hearing Thursday, January 25, on the boxcar shortage, which is slowing down the movement of recently harvested grain. The hearing will be in room 324, Russell Office Building, beginning at 10 a.m. Public witnesses will be limited to a 10-minute oral presentation, with the privilege of filing longer statements. Anyone wishing to testify should contact the committee clerk as soon as possible.

NOTICE OF HEARING ON CERTAIN NOMINATIONS

Mr. EASTLAND. Mr. President, on behalf of the Committee on the Judiciary, I desire to give notice that a public hearing has been scheduled for Thursday, January 25, 1973, at 10:30 a.m. in room 2228, New Senate Office Building, on the following nominations:

Robert G. Dixon, Jr., of Maryland, to be an Assistant Attorney General, vice Roger C. Cramton;

James D. McKevitt, of Colorado, to be an Assistant Attorney General, vice Dallas S. Townsend; and

J. Stanley Pottinger, of California, to be an Assistant Attorney General, vice David L. Norman.

Any persons desiring to offer testimony in regard to these nominations shall, not later than 48 hours prior to such hearing, file in writing with the committee a request to be heard and a statement of their proposed testimony.

NOTICE OF HEARINGS ON PENSION LEGISLATION

Mr. WILLIAMS. Mr. President, I wish to announce that the Subcommittee on Labor will hold hearings on the "Retirement Income Security for Employees Act of 1973" (S. 4), on January 31 and February 1, 1973, at 9:30 a.m., in room 4232 New Senate Office Building. Persons who are interested in testifying at this hearing, or who wish to submit written statements with respect to some, should notify Mr. Mario T. Noto, special counsel, Subcommittee on Labor, room 4230 New Senate Office Building—telephone 225-3656—within 5 days of this announcement.

NOTICE OF HEARINGS ON SECURITY OF OIL AND GAS IMPORTS

Mr. JACKSON. Mr. President, for the information of Members of the Senate, the Senate Interior Committee will continue hearings on the security of oil and gas imports on Monday, January 22, 1973 at 10 a.m. in room 3110 of the Dirksen (New) Senate Office Building.

Witnesses to be heard at that time will be as follows:

At 10 a.m., Department of Defense: Barry J. Shillito, Assistant Secretary of Defense, Installations and Logistics; and Adm. Elmo R. Zumwalt, U.S. Navy, Chief of Navy Operations.

At 2 p.m., State Department: Willis Armstrong, Assistant Secretary of State, Economic Affairs.

ANNOUNCEMENT OF HEARINGS BY DISTRICT COMMITTEE ON NOMINATION OF WALTER E. WASHINGTON TO BE COMMISSIONER-MAYOR OF THE DISTRICT OF COLUMBIA

Mr. MATHIAS. Mr. President, on behalf of the chairman, Senator EAGLETON, and myself, I wish to announce that on Wednesday, January 24, 1973, at 9:30 a.m., in room 6226, New Senate Office Building, the Committee on the District of Columbia will hold a public hearing on the nomination of Walter E. Washington to be Commissioner-Mayor of the District of Columbia.

Persons wishing to testify at this hearing should contact Robert Harris, Staff Director of the District Committee, by the close of business on Monday, January 22, 1973.

ADDITIONAL STATEMENTS

CONGRESS: SERVANT OR EQUALS? A CONSTITUTIONAL QUESTION

Mr. CHURCH. Mr. President, finally, national attention is beginning to focus on Congress—on whether we will move to recapture our constitutional role as a coequal branch of government, or whether we will allow ourselves to submit still further to Presidential domination.

This is a struggle which I welcome, as one who has repeatedly warned of the approaching constitutional crisis between Congress and an ever-more-powerful Executive. Perhaps the most cogent analysis of the problem comes from the National Committee for an Effective Congress.

In the long years of its existence, the NCEC has worked for the goal which its name implies—an effective Congress. Its work has been carried out on a nonpartisan basis. The committee has supported Senators and Congressmen of both political parties. In the elections just over, for example, the NCEC supported four Republicans—Senators BROOKE, CASE, PEARSON, and PERCY—as well as nine Democrats—Senators HUDDLESTON, HATHAWAY, HASKELL, BIDEN, CLARK, ABOUREZK, PELL, METCALF, and MONDALE.

The NCEC's analysis of the problem—and a suggested program to come to grips with it—is spelled out in a letter of January 8 to Members of the House and Senate.

It is a comprehensive document, one which I urge Senators to read. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the document is ordered to be printed in the RECORD, as follows:

NATIONAL COMMITTEE FOR AN EFFECTIVE CONGRESS,
Washington, D.C., January 8, 1972.

DEAR MEMBER OF CONGRESS: It is with the greatest urgency that we write this letter to all members of the Senate and the House of Representatives, of both parties, with whom the NCEC has worked in the past.

The President's shocking resort to all-out bombing in Vietnam has finally forced the question of who in our government has the authority to make war. It has also focused attention on other developments which, in combination, constitute a grave assault on our entire system of government.

We are witnessing a dangerous trend toward an authoritarian Executive regime which, if continued, could destroy effective governmental checks and balances. It is obvious that Congressional compliance in past years has emboldened President Nixon in his thrust toward Constitutional-system busting. A Constitutional crisis is not threatened—it is here.

Patterns with wide-ranging implications are unfolding on four fronts:

(1) *War-making and military operations continue in various parts of the world without reference to the Congress.* Although dictary are powers specifically reserved to the legislative branch, this Administration proceeds alone and in secret, as if the illegal precedent of previous Administrations justified an even more blatant disregard for the Constitution.

The recent assertion by Congress of its prime responsibilities in this crucial area has been met with disdain by the executive. Following a Congressional proscription on funds for para-military ventures in Laos, for example, the Administration defiantly proceeded to spend money for precisely that purpose. In a further display of his contempt for Congress, the President declared when signing P.L. 92-156, the Military Procurement Appropriation, that he would not be bound by Title VI of that law calling for termination of the Vietnam War. It is important to note that the terms of the October 26 Kissinger-Le Duc Tho agreement fell well within the provisions of Title VI, the so-called Mansfield Amendment.

While the President has arrogated the power to make war, Congress remains the sole source of funds for waging war. Now, after assuring the country that "peace is at hand," that disarmament is progressing and armed conflict with China and Russia is improbable, the Administration seeks even larger military appropriations. For the 93rd Congress to appropriate increased monies without first reestablishing its war and military powers would show a reckless disregard for all recent experience and constitute another abdication of both Constitutional and moral responsibility.

(2) *The President's planned restructuring of the executive branch, down-grading the Cabinet and sequestering power inside the White House, would dramatically diminish Congressional controls on the Federal administration.* A plan aimed in the same direction was rejected by Congress last year. Under the President's present reorganization, those vital areas where Congress has always shared policy-making with the executive branch would be placed beyond Congressional reach. Key officials in most cases would no longer be subject to confirmation, nor would they be accessible for consultation or questioning or their performance subject to legislative oversight. While Cabinet officers would retain their limousines, authentic policy-making power would be put in the hands of the President's personal staff, sheltered by "executive immunity."

All this is being done in the name of greater efficiency. In fact, the design reproduces that of the Nixon foreign policy apparatus, where the untouchable Dr. Kissinger commands a personal foreign ministry while the accountable Secretary of State is a ceremonial figure, able to share very little with Congress except frustration. Similar atrophy awaits departments with jurisdiction over natural resources, urban matters, transportation, commerce, health, education and welfare. Broad domestic and eco-

nomic policy will be directed by a small group of managers, under the dual command of John Ehrlichman and George Schultz who will operate behind the shield of "Special Presidential Assistant." The chain of command will flow through an inner network of assistant secretaries and bureau chiefs picked from the inner circle of White House loyalists. Cabinet officers will have nothing to do with their selection nor exercise any real authority over them. Thus, instead of the accountable "open government" Mr. Nixon promised the American people, the cabinet system will fade and control will be concentrated in an authoritarian President.

(3) *The withholding and impounding of Congressionally appropriated funds represents a studied attempt by the Nixon Administration to kill by attrition what it failed to stop legislatively.* Funds for education, environmental programs, agricultural relief, transportation, housing, to cite just a few examples, have been frozen. At the same time, funds for the Vietnam War and for military procurement flow freely. The executive has arbitrarily ignored the decisions of Congress.

A most glaring example is that of the water pollution control program passed late in 1972. The President lost two rounds on Capitol Hill, first when Congress voted the funds and again when it overrode his veto. His response then was to ignore the Congressional dictum and to mousetrap the money. Faced by continuing usurpation on the part of the Administration, Congress may be driven to use similar pressure tactics, holding back funds that the President seeks, or refusing to vote further borrowing authority to the Treasury. This is the ultimate fiscal weapon, only reluctantly employed. Against a President who wants to kill off the major social programs developed over the past 40 years, however, Congress can play its trump card.

(4) *The Administration is engaged in a heightened campaign to curb information and the communications media and to stifle individual dissent.* The issue is fundamental. As James Madison said, "Public opinion sets bounds to every government and is the real sovereign in every free one." There is no surer or subtler way to coerce a Congressman than to manage the information available to his constituents and control the political climate. The President commands full and immediate access to information and can tell as little or as much as he likes, while the individual member of Congress must largely rely on the uninhibited, informed reporting of a free press.

The Administration has recently stepped up its attack on those publications which look too closely into its closets; it browbeats the offending media, prosecutes reporters, threatens broadcasters who must renew licenses.

Moreover, the flow of official information is more and more restricted and managed. The Public Broadcasting System's public affairs coverage is to be drastically reduced and, at the same time, subjected to greater political influence. The growing mass of communiques provide less and less enlightment. Under the system envisaged, high policy-makers will sit behind the closed doors of executive privilege, just as inaccessible to the press as to the Congress. The President himself has studiously avoided confronting the press, speaking, when he does, from "the top of the mountain" with no question, no dialogue, no discussion allowed.

Along with the intimidation of the media and the restricting of news sources, there is increased invasion of individual citizens' lives with political harassment and trials, wire tapping, electronic surveillance, computerized dossiers, all arrayed against personal privacy and the exercise of civil liberties.

More ominous are recent court decisions limiting the protection of confidential news sources. This shows the Nixon philosophy penetrating the judiciary, historically the champion of the First Amendment. Only Congress is left to wage battle with the Nixon Administration to protect the freedoms of speech, press and information. In this vital area the Congress has as great a stake as in the confrontation over war-making, government spending, and the accountability of the federal establishment.

THE SLIPPAGE OF POWER

The executive's simultaneous advance on four fronts suggests that Mr. Nixon and his technocrats of power are not unmindful of grand designing. But like any expansionist drive, it follows the lines of least resistance, invading Congressional domain and moving into vacuums wherever Congress has failed to exercise its prerogatives. The process started long ago when Congress ceded its shared role in foreign affairs by accepting such devices as the "executive agreement" and acquiescing on any issue where the flag of "national security" was hoisted. This situation deteriorated with Congress' acceptance of expanding executive privilege and other assumed powers which now penetrate all phases of governmental operations.

There have been attempts to explain what motivates legislators to first seek the responsibility of office and then spend much of their official lives trying to escape these responsibilities. Congress' lemming-like behavior reached a new high last October when the House voted to surrender to the President all discretion over spending and budget cuts. It was a shocking display by a body which has spent so much time proclaiming its power over fiscal matters and fighting with the Senate to protect its supremacy. Although the measure was finally rejected, the incident revealed how deeply Congress is infected with a feeling of incapacity, and how strong is the urge to pass the burden of difficult decision to the President. Members feel relieved of personal responsibility, losing themselves in the mass of 435 Representatives and 100 Senators. If there are no funds for schools, housing, transportation, the President can be blamed, and if funds are forthcoming, the Member can always point to a speech, a last minute vote, or his name on an early bill cosponsoring the project. It is a riskless game that frustrates Constitutional intent.

We recognize the need for strong leadership, effective internal organization, and committee specialization in a legislative body. But ultimately the legislator must be held individually responsible and accountable. He cannot fade into the structure.

The reluctance of Members to vote their conscience and to accept personal responsibility has weakened the Congressional system and left a homogenized and docile body. We have seen how so grave an issue as the Vietnam War was obscured and papered over. Votes were taken on isolated, peripheral issues, while a confrontation on the overall policy was avoided. Members have repeatedly approved authorizations and appropriations for Vietnam, claiming they were voting not for the war but for "support of our troops."

No more evasive sophistry can be found than the declaration of a powerful House chairman that a vote for a supplemental military appropriations bill "does not involve a test as to one's basic views as to the war in Vietnam. The question here is that the soldiers are entitled to our support as long as they are there, regardless of our views otherwise." It is upon such tissue of rationalization that Congress has sustained the longest war in our history, underwritten an expeditionary force of over half a million men and spent billions of dollars, without ever approving the underlying policy.

If Congress is passive, failing to exercise its Constitutional prerogatives, refusing to deal with basic issues and making up false ones, it will fall far short of what its responsibility demands, and far short of what the public expects judging from the last election. In such a situation decisions are made by the Executive and his bureaucrats, without public accountability, constitutional restraint, and Congressional deliberation. We have come to this point.

MANDATE TO CONGRESS

The results of the 1972 election show that Congress has the strength, if it has the will, to recover its own influence and reverse the President's rush toward "pharaohistic government." The Congressional potential was greatly reinforced by the unprecedented independence shown by the voters. This was the meaning of the ticket splitting, voter selectivity, absence of coattails, obliterating of party and regional patterns.

If this election has a single message, it is that the American people voted against monolithic government. The voters decisively affirmed the system of checks and balances, exhibiting an intuitive desire to assure restraints on executive power. The mandate to Congress is at least equal to the President's.

This is illustrated by the outcome of the Senate races. Candidates who conducted shoe-string campaigns, who walked their districts and listened, defeated candidates who saturated the media with expensive prepackaged campaigns. Of the 17 Senate candidates backed by the NCEC, 13 won. The four Republicans—Senators Brooke, Case, Pearson, and Percy—piled up huge majorities, running ahead of the President and far in front of the orthodox party conservatives in their states. Winning Democrats endorsed by the NCEC include incumbents Metcalf, Mondale and Pell, and a total of six challenger candidates who surprised the pundits with the vitality and momentum of their campaigns—Abourezk, Biden, Clark, Haskell, Hathaway and Huddleston. In the House, the arithmetic is not so dramatic but the same evidence of public discernment prevailed.

AN ACTION PROGRAM

Congress has the tools to implement its mandate and restore constitutional balance:

(1) *The power of the purse* is the traditional and clearly the most formidable weapon. It can and should be effectively utilized not only to pursue positive goals and to assure that the letter and spirit of Congressional actions are carried out, but also to prevent or restrain executive actions deemed harmful by Congress.

The Vietnam War is the most striking example of how Congress' powers of restraint can be exercised. It remains the over-riding national issue, distorting and obscuring all others. It is now the immediate responsibility of Congress to end our involvement in Southeast Asia. Congress can do so by cutting off funds for Vietnam and future military ventures, by rescinding money obigated for war purposes, by further limiting the Treasury's borrowing authority, and by reducing or suspending other funds requested by the executive branch until Congress' injunctions are heeded. By reasserting its Constitutional controls over government spending and over the use of the armed forces, Congress can begin to challenge the self-generating machinery of war and the military determinism which has so engulfed this period of our national life. These same methods are available to Congress in the fight over impounded funds and to otherwise induce the President to implement positive programs enacted by Congress.

(2) *Congress must begin to restructure its own machinery if it is to effectively exercise its responsibility over taxing and spending in the future.* Members must have knowledge and understanding of the national budg-

et and be able to communicate this to their own constituencies. A beginning was made with the creation last year of a Joint Committee * to review the operation of the budget and recommend means of Congressional control. However, in its deliberations Congress must face certain questions:

(a) The False Bottom Budget—Since the Second World War, the executive has prided itself on hiding from Congress and the people funds for covert intelligence programs of the CIA and other agencies, secret military operations and military assistance programs, and overseas and domestic political activities. The budget has become less an explanation than a diversionary tactic. It is time that Congress demanded a full and intelligible public accounting so that it might judge programs and make future decisions undistorted by executive secrecy. More than one Congressman has thought he was voting for social welfare when he was in fact providing funds for a CIA program.

(b) Responsible spending—Congress now approaches the national budget on a piecemeal basis. To make possible rational evaluation of the executive budget, Congress must develop its own basic budget predicated on its assessment of national priorities and the needs of the people. A Congressional Budget Office, or its equivalent, staffed by experts and provided with modern computer equipment, should be established to assist in the preparation of such an annual legislative budget and to provide Congress expert evaluation of the President's budget in its entirety.

In addition, Congressional reluctance to adequately staff and equip existing committees is nowhere so evident as in this key area. This must be remedied. Such ill-considered economy has crippled legislators' ability to make informed decisions on complex questions requiring detailed technical knowledge. For example, to handle more than $250 billion of Federal expenditures, the staff of the Senate Appropriations Committee numbers 37, and the House 29, including clerical personnel. Meanwhile, the President's Office of Management and Budget numbers 700, supported by battalions of departmental budget officers and banks of computers. It is neither necessary nor possible to match the executive branch staff in numbers, but it is essential that Congress be able to make its own evaluation and develop alternatives.

(c) Just as it should require an end to subterfuge by the Executive, Congress in turn must lift the veil of secrecy which has surrounded its own actions and open the appropriations process to press and public view.

(3) *The Senate's power to confirm or deny Presidential appointments*, with rare exceptions, has come to be treated more as a rubber stamp for executive decisions than as a vital Constitutional responsibility. Greater attention must be given this function, both as a means to check unwarranted executive actions and as a forum for the clear expression of the will of Congress. Confirmation proceedings should include an examination of how the nominee views his or her prospective job, its powers and duties, and, in particular, if and how he intends to fulfill the statutory intent of Congress in administering programs and expanding funds approved by Congress. In addition, Congress will have to decide what important offices, not now covered, should be subject to Senate confirmation. The NCEC recommends that the Director of the OMB, in particular, should be subject to such review.

In the case of foreign policy, military and national security positions, the Senate should require a clear demonstration that Presidential nominees fully recognize and understand all provisions of international law, United Nations directives, and matters relating to aggressive war and war crimes which may affect or govern any of their activities. Further the NCEC recommends that Congress now begin to consider the development of a code of personal responsibility and legal standards of accountability for executive officials acting in the above areas.

(4) *The Congressional oversight and investigatory powers should be vigorously employed* to determine if and how legislative intent is being carried out in the administration of programs and the expenditure of funds approved by the Congress, and to expose incidents of malfeasance. To this end, Congress can and should make greater use of the professional investigators, auditing expertise and technical capabilities of the Government Accounting Office. Above all, Congress must remove a roadblock, increasingly employed by the Executive, by legislation clearly spelling out the proper limits to "executive privilege."

(5) *Congress should appoint a Joint Committee of the House and Senate to undertake a full review of emergency war powers* which Congress itself has conferred by law onto the President—over 275 statutes in the last generation, ranging from controls over peanut acreage to the confiscation of national transportation systems. Many are outdated or potentially dangerous. We have seen, for example, how unpopular, controversial or covert operations have been shrouded from public view under the guise of "national security" or "national emergency." More important, these laws, coupled with the discretionary powers granted the President in numerous other statutes, amount to virtually unlimited power in the hands of an Executive who chooses to abuse them.

(6) Lastly, *Congress must address itself to its own reform.* While the Senate and House may take different approaches to the seniority question, anti-secrecy measures and streamlining of rules, both must take affirmative action to make the process more flexible, more open, more democratic, more responsible. This will greatly help restore public confidence in Congress' ability to cope with its staggering responsibilities.

All of the suggestions we offer deal with the posture and functioning of Congress as a whole. They are not issues of party or personality—Democratic legislators versus a Republican Administration—but go to the heart of the American system. The problems are institutional, and the actions should be bipartisan.

Congress has a mandate from the people, and has the tools to deal with the present crisis. The only question is whether Congress has the necessary will. A failure to act with determination at this time will cause irreparable damage to our Constitutional democracy. Not by revolution, not by usurpation, but by acquiescence. This must not happen.

Sincerely,

SIDNEY H. SCHEUER,
Chairman.
RUSSELL D. HEMENWAY,
National Director.

*Joint Committee to Review the Operation of the Budget Ceiling and to Recommend Procedures for Insuring Congressional Control over Budgetary Outlay and Receipt Totals.

ZWEIFEL MINING CLAIMS, CUSTER NATIONAL FOREST

Mr. MANSFIELD. Mr. President, in the past year Montanans have observed with considerable alarm the extensive mining claim activities of Mr. Merle Zweifel, an operator originating in the State of Oklahoma. There has never been any clear explanation of the intent of his extensive operations. Claims have been generally limited to Federal lands, and in recent months field personnel of the Bureau of Land Management and the U.S. Forest Service have been keeping a close eye on his activities.

I have just received a detailed report from the forest supervisor of Custer National Forest, in Montana, giving me a report on his contacts with Mr. Zweifel. Also, Yellowstone County officials have taken action to halt this activity.

Mr. President, I ask unanimous consent that news articles and correspondence I have received from the U.S. Forest Service be printed in the RECORD.

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

U.S. DEPARTMENT OF AGRICULTURE,
CUSTER NATIONAL FOREST,
Billings, Mont., January 15, 1973.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: This replies to your December 7, 1972, letter to Chief McGuire about Mr. Merle Zweifel's mining claims on the Custer National Forest in Eastern Montana.

Mr. Zweifel, to date, has recorded the location of nine hundred seventy-two 160-acre association placer claims on the Ashland Division of the Custer National Forest. However, he has made no surface disturbance and no attempt to contact the Custer to request permission to drive bulldozers on his mining claims to perfect a location.

Attached is Mining Engineer Burleson's most recent reply to Mr. Zweifel. The Custer National Forest does not recognize Mr. Zweifel's claims, and will not allow him to do work on the National Forest except by special use permit with bonding to insure.

On January 3, Yellowstone County Attorney Harold Hanser secured a temporary injunction to prevent further filing of placer mining claims by Mr. Zweifel (Billings Gazette article attached). It is planned that the County Attorneys of Custer, Fallon, Musselshell, Powder River, and Rosebud counties will also seek similar injunctions.

Here again it would appear that this situation demonstrates the need to revise or replace the General Mining Laws of 1872. You are probably aware of the position taken by the Regional Forester of the Northern Region, Forest Service, through Senate Sub-Committee testimony here in Billings and other statements, some of which the Majority Leader of the Senate has read into the Congressional Record. We honestly believe new Legislation is needed in the field of minerals to better provide for environmental protection in connection with proper mining activities.

We share with you in your concern of destruction caused by dozer activity on the Custer National Forest, and we do not intend to idly permit such to happen here.

Sincerely,

D. C. MACINTYRE,
Forest Supervisor.

CUSTER NATIONAL FOREST,
Billings, Mont., December 14, 1972.

Mr. MERLE I. ZWEIFEL,
Shawnee, Okla.

DEAR MR. ZWEIFEL: The Custer National Forest recognizes the rights and privileges of all qualified persons to enter the Ashland Division for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof. I should further like to quote from 43 Code of Federal Regulations dated January 1972,

Part 3830—Location of Mining Claims, Subpart 3831—Rights to Mineral Lands, 3831.1 Manner of initiating rights under locations:

"Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim, posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc. As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials."

In my opinion, you have not complied with the requirements of the General Mining Law of 1872 as amended, nor have you complied with the Montana State Mining Law as enumerated above in 3831.1.

From the statements in your letter of November 8, (paragraph 2, page 1 and paragraph 3, page 2) it appears that you have not made a valid discovery. If this is so, then you have acquired no rights to the mining claims that you have recorded in the Powder River County Courthouse.

Concerning the exploration work, which you mention several times in your letter, if you will refer to your copy of the Minerals Resource Management Guidelines of the Northern Region of the Forest Service, on page 4 you will note that a special use permit with the posting of a suitable performance bond to insure compliance with the terms of the permit is required for all work, other than handtools, on a mining claim where the discovery of a valuable mineral deposit cannot be demonstrated.

With this preponderance of evidence, that you have not complied with the State laws nor made a discovery of a valuable mineral deposit as required by Federal law, we cannot recognize your claim as encumbrances to Forest lands.

Should you decide to do exploration work, I would suggest that you submit suitable plans for this work to meet Federal and State mining laws and the Northern Region of the Forest Service guidelines.

Sincerely,

JOHN B. BURLESON,
East Zone Mining Engineer.

COURT HALTS SPECULATING BY ZWEIFEL—YELLOWSTONE COUNTY ACTS; OTHERS LIKELY

(By Richard H. Geissler)

Merle I. Zweifel, high-flying prospector and jet-age mineral speculator, was grounded Tuesday in Yellowstone County.

The Shawnee, Okla., operator was halted in Billings by District Court Judge Robert H. Wilson's issuing a temporary injunction preventing further filing of placer mining claims.

And by Wednesday five more southeastern Montana counties hope to halt Zweifel in their respective jurisdictions by filing identical court actions.

Zweifel and company, operating under the motto, "We fly further and stake faster," emblazoned with a soaring jet, has laid claim to thousands of acres of land in Montana, Wyoming and Nevada.

While state and federal authorities in Wyoming and Nevada moved against Zweifel early last year, Tuesday's action was the first move to halt Zweifel in Montana.

Yellowstone County Atty. Harold F. Hanser has been the moving force in Montana to take action against Zweifel. Meeting with county attorneys from Powder River, Custer, Rosebud, Musselshell and Fallon counties in December, Hanser was selected to compile the case and file the action.

With the acceptance of Hanser's complaint and injunction request by the court in Billings, copies of the action were mailed Tuesday night to the five other counties for their own filings.

Federal authorities in Montana—especially the U.S. attorney's office in Billings—had been asked to join or take independent action against Zweifel.

Even though the U.S. attorney's office for the District of Wyoming filed actions last fall against Zweifel, his wife and almost 200 of the "co-locators" (persons who subscribed to Zweifel's prospecting service), the Montana office did not take immediate action.

U.S. Atty. Otis L. Packwood was not available to comment late Tuesday when the county's action was taken.

A spokesman from his office said ". . . we have asked some federal agencies to look into his (Zweifel's) activities, though. But, I cannot say what future actions this office will take . . . you will have to ask Mr. Packwood."

The basic complaint included in all of the actions filed against Zweifel and his company is the validity of legitimate claims.

Under 19th Century mining and exploration laws, a person can file placer claims when certain recoverable minerals are discovered. This does not include coal and oil.

All of the allegations claim Zweifel had failed to actually discover applicable minerals, have assays completed, physically stake boundaries, build monuments and make improvements.

The charges claim he thereby made false and fraudulent claims.

Zweifel lost by default in Wyoming in October when he failed to defend himself against the state's first court action seeking to bar him from filing claims and voiding claims he had already filed.

A permanent injunction was issued against Zweifel in Wyoming because of that action unless "he filed in complete compliance with the law (staking, etc.) . . ."

Wyoming's Atty. Gen. Clarence A. Brimmer said his office was forced to file a second action Dec. 22 to further block Zweifel's filing of claims by enjoining all of the state's clerk and recorders from accepting any of Zweifel's filings.

"He (Zweifel) has continued to inundate clerk and recorders with claims that he purports to have staked out . . . particularly in the Powder River area, Sheridan and Campbell counties," said Brimmer.

Hanser said Tuesday he hoped to avoid having to go through two separate actions like Wyoming by getting a two-way injunction—both against Zweifel and against the Yellowstone clerk and recorder.

As a result, Hanser said, Merrill Klundt, clerk and recorder in Billings, was served with an order Tuesday evening barring him from further accepting any of Zweifel's claims.

Hanser said Zweifel has already filed two claims in Yellowstone County and, "I think he has already claimed almost 20,000 acres in Montana."

Hanser said he took the action against Zweifel in the public interest and to save every individual land owner as well as the state and federal governments the expense of fighting individual "clouded title" cases prompted by Zweifel's claims.

Zweifel has lost a double battle in Nevada where civil action has blocked his operations there and officials then proceeded to file criminal charges.

In Nevada, as in Montana, it is a felony to file false documents with the clerk and recorder. Since Zweifel's claims were ruled false there, he was open to criminal prosecution.

He lost his battle and was convicted and sentenced to six years in prison. According to a Nevada law official, Zweifel flew "into town with his private jet, posted a $50,000 bond in cash and took off . . . it is now pending appeal."

Hanser conceded that a similar law in Montana could cause criminal charges to be filed against Zweifel if his claims were determined to be false.

"I think it would only be speculation now to discuss whether this office would press for criminal charges against Mr. Zweifel," said Hanser.

Zweifel has blamed his defeat in Nevada—and forecast trouble in Montana—on the power of the Peabody Coal Co. and Kennecott Copper.

Several hundred acres on which Zweifel has laid claim also are part of the large coal fields now being opened.

While Zweifel claims his only interest is in recoverable minerals other than coal and oil, he wants the right to "separate minerals intermingled with the coal deposits."

Yet Zweifel's literature aimed at soliciting prospective clients for his locator service talks at lengths of the future of coal in the West and how valuable those lands will become.

Included in the court filing by Hanser were statements from numerous federal and private authorities who claim they could find no physical evidence that Zweifel had complied with requirements to file a claim and some questioned even the existence of economically minable minerals.

FARM PRICE SUPPORTS

Mr. YOUNG. Mr. President, farm price support legislation has always been the victim of considerable press criticism. Much of this I believe is due to a misunderstanding of how the programs operate and why they are necessary. One of the best editorials written on this subject, entitled "Let's Not Be in a Hurry," was published in the Minot Daily News, of Minot, N. Dak., on January 15, 1973. This is one of North Dakota's largest and best daily newspapers.

I ask unanimous consent that the editorial be printed in the RECORD.

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

LET'S NOT BE IN A HURRY

Everybody concerned should think twice before climbing on the bandwagon for ending the present system of supply management for wheat in the United States.

Just because the price of wheat has risen in recent months under pressure of abnormally strong demand from abroad, there are those quick to envision arrival of an era when all federal wheat controls will be dropped. It is imagined that the consumer of bread and other wheat products would benefit from unlimited production.

Thinking along this line is pointed up by the fact that present federal wheat legislation expires this year. Some pressure will be brought to free wheat from federal controls and let production, storage and marketing subsidies go out the window.

In the Great Plains region, where the lion's share of the nation's bread-basket lies, there is concern about what will happen. That concern is voiced wherever wheat growers meet. There was concern when the National Association of Wheat Growers met in Seattle recently.

If we read correctly what Eugene Moos of Edwall, Wash., president of the NAWG, was trying to say in Seattle, he feels it would be a mistake to chuck the present program just because flour and bread prices are due to rise in the next several months. Moos is a grower of western white wheat, but it is

evident he understands the aims and benefits of the present federal program.

It will be time to consider whether the wheat production industry has outgrown the need for present controls, Moos suggests, whenever and if demand for U.S. wheat abroad becomes great enough and steady enough to be something to count on.

It is sometimes forgotten that our present wheat program has in it a built-in structure which has kept U.S. domestic supplies of wheat stabilized from year to year, against the effects of domestic drouth. This stabilizing effect against vagaries of weather in our own country tends to benefit the domestic consumer as much as anyone. Over a period of many years in which this system has operated, it has been possible for the consumer to buy flour or bread at dependably constant prices. In fact the so-called farm subsidy has proved to be a subsidy for the retail shopper, whether the shopper realizes it or not. Bread in this country has been cheaper, and more dependable in price, than in most countries.

What happened in 1972 was an abnormal foreign demand for U.S. wheat brought about by unfavorable wheat-growing weather in Russia, China and Australia. If those countries had achieved the kind of stability in domestic wheat production which has long existed in the U.S., they would not have come running to obtain wheat from our storage bins. If these countries had worked out a system to achieve the old goal of "an ever-normal granary" for domestic purposes, regardless of vagaries in their weather, there would have been no price-boosting drain on U.S. supplies.

Over the years, it has been proved, the U.S. system can protect our consumers from price fluctuations caused by good or poor weather conditions at home. But it does not at this moment give them such protection from drouths or winter-kill in Russia or China, as this year's price surge shows.

It is quite possible that Russia and China may have poor wheat crops again this year, and that they will be entering our market again to buy large quantities. If that happens, the price of flour in the United States, and the prices of wheat products at retail, will remain higher than our consumers would wish to have them. But drouths do not persist forever even in Russia and China. One may be sure that when these countries recover from their present shortages, the demand from abroad will be less.

It would be a shame for U.S. growers and consumers alike to be deprived of a well developed production stabilization program now, on the basis of an upset caused by temporary conditions abroad.

We are of the opinion that if Congress should be so unwise as to throw out the present supply management system for wheat this year, the U.S. consumer soon would find himself paying through the nose at the domestic bread counter. Oh, he might get cheap bread for a couple of years in a row, but he would wind up discovering that a lot of American wheat producers had gone out of business. About that time there might be another crop failure in Russia. Then the world would be back in the old starvation groove, with alternating shortages and gluts in the market which really would affect everybody.

WELFARE REFORM—A DESERTED CHILD

Mr. RIBICOFF. Mr. President, welfare reform, a child deserted by its administration parents, came to an abrupt halt at the close of the last session of Congress. It was the victim of political posturing and misunderstanding on all sides. There is enough blame to go around, but there is no point in dwelling on that theme. Instead, we should concern ourselves with the continuing welfare mess. The fact that the 92nd Congress has ended does not change the fact that the United States is still burdened with a welfare system that is inadequate and inefficient. The need for reform has grown rather than diminished.

James Welsh, of the Washington Star-News, described the history of welfare reform for the January 7, 1973, New York Times Magazine. It perceptively analyzes the political process involved in the 3-year struggle for reform. I ask unanimous consent that it be printed in the RECORD.

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

WELFARE REFORM: BORN, AUGUST 8, 1969; DIED, OCTOBER 4, 1972

(By James Welsh)

WASHINGTON.—When welfare reform died quietly in the U.S. Senate last Oct. 4, there was little overt mourning.

This was spooky in a sense, for here was legislation born in a high fever of excitement, hailed as the most important social measure since the New Deal, declared by President Nixon and acknowledged by the Congressional Democratic leadership to be the nation's number-one domestic priority. Then again, the end wasn't unexpected. For months before it died, welfare reform, in the shape of the President's Family Assistance Plan, was decidedly a terminal case.

As a political project, welfare reform lasted through the four years of President Nixon's first term before its final demise. Senator Abraham Ribicoff, who spent endless time as honest broker between the Administration and his liberal colleagues trying to work out a compromise, said recently, "At times I felt like Ahab chasing the white whale. This is the most long-running, most arduous single political issue I have ever been connected with in a long political life, and the most disappointing."

The story of that struggle, recounted here, is instructive at very least because welfare goes on even if the reform effort is now in limbo. It lives—populated by 11 million people in the aid-to-families-with-dependent-children (AFDC) category. It is inequitable as ever, susceptible to social explosion. Change will come to it, one way or another, and the shape of that change could very likely disappoint both the liberals and the conservatives who helped engineer the defeat of the Family Assistance Plan.

Perhaps more important, though, the life and death of welfare reform between 1968 and 1972 amounts to a case study of the modern American political process as it tried—and failed—to come to terms with a complex social problem that was increasingly polarizing the American public.

When the Nixon team arrived in Washington four years ago, welfare was a system ripe for overhaul. Two successive Democratic Administrations had done next to nothing about it, and the reason was fairly obvious. Welfare defied tinkering; only radical change could turn it around. Specifically, something had to be done about the central inequity of welfare. It goes only to "dependent" families, while millions of the poor, those in "intact" families, with husband present and working at marginal wages, are ineligible for cash assistance and frequently wind up worse off than people on relief.

Most analyses of this dilemma led directly to the conclusion that the working poor had to be brought into the system, that their wages must be supplemented with public funds. What this meant was a version of the guaranteed-income concept, the negative income tax. In the late Johnson years this kind of thinking had become respectable, but no Democratic President could hope to sell it. Nixon, on the other hand, the man of conservative credentials, enjoyed ideological leeway on the issue.

There was no single "architect" of the Family Assistance Plan, though Harvard's Daniel Patrick Moynihan frequently gets the credit. But Moynihan's role was more that of White House supersalesman, quickly grasping the work in progress, irrepressibly firing off memos to Nixon, telling him in effect that an enlightened welfare-poverty program was the President's best bet for winning over the liberal intellectuals. (When that later failed to happen, it was Moynihan, more than Nixon, who felt betrayed.)

Early 1969 was a time of task forces, of position papers, of computers whirring with social and economic data. Lines of communication were wide open between the Cabinet and White House, and with such top former Democratic Administration staffers as Alice Rivlin, by that time at the Brookings Institution, and Worth Bateman, who had gone to the Urban Institute.

Nixon heard out all sides; then in July he went off on a trip to Rumania, taking the option papers with him. When he returned, his choice was clear, "The whole exercise," recalls Richard Nathan, who in 1969 was assistant budget director and closely involved with formulating the plan, "was a model of Presidential decision-making." But Nathan also looks back: "The problems of welfare were far tougher, and would get tougher still, than we realized at the time."

On Aug. 8, 1969, the President went on national television to announce his plan for ending the "colossal failure" of welfare. "I propose that we abolish the present welfare system and adopt in its place a new family assistance system. Initially, this new system would cost more than welfare. But unlike welfare, it is designed to correct the condition it deals with and thus to lessen the long-range burden." In that one sentence can be seen both the hope and some of the internal contradictions that were to accompany the proposal on its long legislative journey.

The Nixon plan did indeed incorporate the breakaway idea of the negative income tax that could boost incomes of the poorest families, including the working poor, and perhaps build in work incentives all along the line. It also came wrapped in orthodox conservative "workfare" terms. The working poor, of course, would be expected to go on working, and all able-bodied welfare adults, including mothers of school-age children, would be required to get jobs.

For the first time, a minimum income floor would apply nationally—$1,600 a year for a nonworking family of four, paid by the Federal Government. That same $1,600 figure was also used to compute income supplements for the working poor. A family with earnings up to $720 annually would receive a full $1,600 supplement. Any income above $720 would be subject to a "marginal tax rate" of 50 percent: For every two dollars earned above $720, one dollar would be subtracted from the $1,600 Federal supplement. The cutoff income figure—the point at which the supplement disappeared—would be $3,920.

This part of the plan, the Federal part, would effectively buy out the welfare programs of nine Southern states, those then paying a dependent family of four less than $1,600 a year. But there were states—New York, New Jersey, Connecticut among them—paying such a family up to $4,000 a year. The plan's second-tier formula required these states to add funds so that no dependent family lost money. These state payments also would decline as earnings rose,

so that for a Northern family, the total marginal tax rate on earnings might go to 67 percent or more. All together, the proposed legislation would cover some 7 million people already on welfare—nearly all women and chidren—and begin subsidizing another 10.8 million men, women, and children, the families of the working poor.

Such was the Family Assistance Plan. It was the product of the kind of economic analysis never before applied to welfare legislation. Within the cost limits—a White House imposed ceiling of $4-billion—the economists and computers had done their work well, perhaps too well. For FAP rode on the strength of some highly visible numbers. And it was to fail in part because of the vulnerability of those numbers.

Consider that $1,600 family income floor. It was twice what a Mississippi family was asked to live on, but in the North, where benefits were higher, it would not result in any increase to a welfare family, and it would soon be derided as abysmally low. Why couldn't it go higher? Because of the working-poor coverage. Adding just $400, bringing the minimum income to a still-low $2,000, and keeping the marginal tax rate on earnings at 50 per cent would extend the outer boundary of working-poor coverage another $800 to $4,720, bring in millions more recipients and add billions to the cost.

Or consider those 10.8 million people in the working-poor category. A tenant farmer, say, might manage to earn $2,720 a year, and his family would qualify for a $600 cash supplement. Put in those individual terms, the idea was beguiling, as well as revolutionary. But it wasn't long before conservative rhetoric had all those 10.8 million people "going on welfare," and FAP "adding millions more to the welfare rolls."

The legislation would have gone nowhere but for Wilbur Mills, who as Chairman of the House Ways and Means Committee, is easily, the most powerful and most effective man in Congress. For the most part a conservative, Mills for months remained coldly suspicious of FAP. In the first week of February, 1970, Mills was bothered by back trouble and went off for a week to Antigun, his first vacation ever outside the country. Characteristically, he took an armload of paperwork along. And at some point under the hot Caribbean sun, he decided FAP might be the best feasible welfare alternative. When he returned he told H.E.W. Under Secretary Jack Veneman: "I've got an open mind on this. Let's go to work."

That they did. John Byrnes, the able ranking Republican on Mills' Ways and Means Committee, became a convert. In early March, Mills and Byrnes pushed the bill through committee. A month later, they marched the legislation onto the House floor. Debate was spirited, with much of the opposition coming from Mills' fellow Southerners, and it carried obvious racial overtones. But at a critical juncture, Mills took the floor to make a salient point: Yes, a disproportionate number of welfare recipients are black, but most of the working poor are white, and live in the South. Curiously, it was an argument that disappeared from subsequent debate. But it helped carry the day on April 16, 1970, when the House passed the Nixon welfare-reform legislation by a vote of 243 to 155.

On the surface, all looked good. If the supposedly narrow-minded House had come through, wasn't the country coming together behind FAP? Wouldn't the more liberal-minded Senate quickly pass the bill? The more sophisticated Washington hands, men such as Moynihan and Veneman, knew better. It was no time at all for euphoria. The nation's welfare-conscious interest groups were in the process of splitting sharply from what, in the main, was the centrist approach of FAP. In the Senate, moreover, there would be no vote until action was completed by the Finance Committee.

A peculiar body, the Senate Finance Committee. It had no Mills, no prodigious student of complex economic issues. Its membership was dominated by small-state conservatives, reflecting decisions of years before when Senate leaders Lyndon Johnson and Everett Dirksen very carefully picked the men who would rule on such matters as taxes and the oil-depletion allowance. Its chairman was Louisiana's Russell Long, a populist of sorts, never afraid to spend money, but a gut conservative on the subject of welfare and people who accepted welfare. His cynicism toward the problem and toward FAP was soon to be revealed in one wry comment: "For all the defects of the present system, the mind of man is always capable of devising something worse."

A far more towering figure was the senior Senator from Delaware, and the committee's ranking Republican, John Williams. A tall, raspy-voiced, courteous countryman, Williams was a Senator of unassailable reputation, the man who had helped root out the Bobby Baker scandal. He had the mind of an auditor, plus the guile and killer instinct of a hunting animal. He was due to retire at the end of 1970, and he felt neglected by the White House; for that and more philosophical reasons, he had quietly decided that his last great contribution in Washington would be to shoot down the Family Assistance Plan.

By the summer of 1970, the Finance Committee public hearings were going full blast. Elliot Richardson had replaced Robert Finch as H.E.W. Secretary and was proving a far abler advocate of the welfare-reform bill. But neither he nor Veneman nor anyone else was a match for Senator Williams.

The Delaware Republican demanded an endless array of figures from H.E.W. They appeared strange at the time, including not only current welfare payments and proposed FAP payments but food stamp and public housing and Medicaid benefits for families of varying incomes in places as far apart as Wilmington, Chicago and Phoenix. Day after day, Richardson had to go over these tables of figures, and at one point Williams shook his head: "I'll admit I'm confused by this whole problem."

But he was confused like a fox. Williams was taking very clever aim at the Administration's boast that it had structured definite work incentives into its plan, and he was able to demonstrate what Nathan refers to as the "welfare trap," a trap that deepens every time a new social program is added for the poor. For if a Northern welfare mother were to go to work, and if, as her earnings rose, her FAP payment went down two-thirds and her food stamps and housing subsidy declined, and Medicaid at some point disappeared, and Social Security and taxes took some more from her pay, her net gain from going to work would be negligible. In some cases she might have to make $7,000 a year before she would be clearly better off than she would be not working at all.

Doggedly, Richardson argued that not all people on welfare enjoyed multiple benefits, the FAP at least go. rid of welfare's worst "disincentives." It did no good. The committee conservatives demanded more work incentives. Richardson could not comply, and Williams knew it. The only way to raise work incentives within FAP was to lower the tax rate on earnings, permitting the working poor to keep more of their subsidies as earnings rose. But as with raising the $1,600 minimum, this would greatly expand the working poor coverage and bust the $4 billion cost limit. The hearings, caught in that kind of mathematical taffy pull, went downhill from there.

By now, it was nearly two years since the Nixon team had arrived in Washington with certain perceptions of the welfare problem. Great changes had come since then:

The nation's AFDC caseloads were climbing out of sight. From a 1969 rise of 1 million people, they were on their way to a 1970 increase of 2.3 million. The flat economy was but a marginal cause of this phenomenon. Welfare observers saw as more significant a decided change in social values, with many of the new urban welfare class, cheered on by a new breed of social worker, deciding they would no longer perform society's grubbier jobs. It was an ominous sign, at least to many Congressmen, and it did FAP's chances no good.

General hostility to welfare was also a rising tide, with great racial overtones. Moreover, it ran through the working and middle classes in all parts of the country. Mitchell Ginsberg, former New York City Human Resources Administrator and an indefatigable lobbyist for the FAP approach, tells of speaking to a group of Western state legislators in Utah in mid-1970: "One man came up to me afterward and said, 'Mr. Ginsberg, you explained the plan very well, and I know you're trying to help the poor, but what we mean by welfare reform is taking people off the rolls, not adding more.' I found that kind of reaction everywhere."

Still another tide had yet to crest. All across the liberal spectrum ran great expectations of what might be done for the poor. The President's plan in a sense whetted liberal appetites for a thoroughly generous income-maintenance system. Even those liberals willing to go along with the Nixon plan constantly gave the impression it was a bare beginning, that the $1,600 minimum, once passed, could go galloping upward. It was an assumption that further scared conservatives.

Among the forces playing on the liberals was the dread of what blacks might think. Conspicuous on the scene by the spring and summer of 1970 was George Wiley, the college professor turned chief of the largely black National Welfare Rights Organization. Dashiki-clad, physically commanding, Wiley was a master of diverse Mau-Mau tactics, and his arsenal of weapons included selected groups of welfare mothers who could be deployed to shout down or cry down or stare down any opposition. Wiley and his welfare mothers literally broke up a number of Washington meetings of liberal groups—Common Cause, labor, the churches—that were trying to get together in a unified, positive stance. Privately, the liberals would denounce Wiley and the N.W.R.O. demand of a $5,500 (later raised to $6,500) guaranteed annual income. In public, they tiptoed around him.

Later assessments of Wiley's impact vary widely. To Veneman, it was minimal, "If he had been in favor of FAP, it would have lost votes," he scoffs. But Brooking's Mrs. Rivlin remembers Wiley as making liberal accommodation to the complex reform bill all but impossible. "I count him as one of the archvillians in the welfare-reform story," she says.

When the Nixon first term began, unemployment was so low as to comprise a manpower shortage. By mid-1970, it was going up steadily, undercutting the assumptions of FAP planners that welfare adults could be put to work in available jobs.

Preliminary research on various income-maintenance formulas indicated that, yes, the working poor would go on working, but that *some* families would use cash supplements from the Government to search out more attractive jobs than pulling stumps or carrying bedpans. It was a finding that reinforced the fears of cheap-labor employers. The research also led to the conclusion that work incentives tended to diminish once the marginal tax rate on higher earnings passed the 50 per cent mark. Senate Williams must have smiled.

One of the more remarkable things about FAP was that its distribution of more than $1-billion in actual cash to welfare and working-poor families would go disproportionately to the South. But those families were hardly aware of the plan. Nobody organized them. Nobody spoke for them. Some of the more vociferous Northern supporters of Southern civil rights chose to ignore FAP's great pocketbook potential for liberating the Southern poor. Southern farmers, businessmen and local politicians did not ignore it. They were scared to death by it.

"I can't get anybody to iron my shirts" Senator Long shouted at Richardson one day. As the Senate Finance Committee hearings on FAP stretched into the fall of 1970, it had become clear that with few exceptions, the Southern reaction to the legislation turned only on the question of who was going to iron the shirts.

In this atmosphere President Nixon was working hard behind the scenes for his bill. But his welfare rhetoric, turned to that year's Congressional elections, was of the get-the-bums-to-work variety. That did not sit well with liberals. Neither did H.E.W.'s constant whittling down of the plan's details in an attempt to woo a few Finance Committee Republicans away from the awesome influence of Williams. Soon it became apparent that with both liberal and conservative members rebelling, the Senate Finance Committee would not approve FAP.

One chance remained—to get the plan attached on the Senate floor to other legislation coming out of the committee. But such was Long's delaying skill that this chance was not to come until late December, when only a few days were left in the session. By this time the White House was relying on Ribicoff, a Democrat, to manage the floor debate. Ribicoff performed ably, but the odds were against him, with Williams easily blocking, parrying, stalling and playing to every conservative fear.

On Dec. 28, 1970, a frustrated Senate agreed to jettison the welfare-reform plan. That night Moynihan and Ginsberg went out and got drunk.

In retrospect, there is wide agreement that FAP's best chance passed with the end of that 91st Congress, and that to this day, if one person were to be singled out as responsible for killing welfare reform, it would be John Williams. It can also be argued that in the critical 1969–70 period, the posturing of liberals, as well as the skillfulness of conservatives, led to the derailment of the Family Assistance Plan.

The year 1971 was essentially a doldrum time for FAP, though marked by three important developments.

First, President Nixon made clear he was not giving up on reforming the "monstrous, consuming outrage" of welfare. He outlined "six great goals" for the nation, tops among them passage of the Family Assistance Plan.

Second, Mills was once again to prove the strong reed on Capitol Hill, driving the plan through to House passage as part of a massive Social Security bill, H.R. 1. This time around, sensing the House would demand a tougher product, Mills had put his own stamp on the plan. The new FAP proposed to absorb, or "cash out," the rapidly expanding food-stamp program. Instead of $1,600 a year plus food stamps, the four-member-family income floor would be $2,400 a year, with no food stamps. Every bit of FAP's administration would go Federal, and work provisions would be made more restrictive. It would cost $5.5-billion.

And third, in August, 1971, Nixon announced his wage-price freeze and new economic proposals. This had a devastating effect on FAP. For Senator Long, had given the White House a firm promise on early FAP action. Now he could put H.R. 1 aside for Nixon's emergency tax legislation. And as the months went by, pessimism deepened among welfare-reform advocates. Recalls Veneman: "I knew if the issue went well into a Presidential election year, our chances were slim."

When the Finance Committee did resume its closed-door work sessions last January, an episode occurred that once again would set the welfare-reform effort on a new course. Ribicoff, it was obvious by that time, was the pivot for any chance FAP had of passing the Senate; the liberals depended on him, and to the Administration he was, as one H.E.W. staffer put it, "the only horse we had," Earlier, with 22 Senate co-sponsors and backed by a number of big-state Governors, the Connecticut Democrat had introduced a more generous FAP alternative, calling for a $5,000 annual family income floor, rising over a five-year period to the poverty line of $4,000. It was a bargaining position more than anything else. But there, in committee work session, sat Nebraska's Senator Carl Curtis, a strutting right-winger and devotee of the Williams method, brandishing a set of figures he had obtained from H.E.W. They proved, said Curtis, that Ribicoff's $3,000 to $4,000 FAP alternative eventually would put more than 70 million Americans "on welfare."

Ribicoff was furious. Convinced H.E.W. was going behind his back, he publicly assailed Nixon, and announced he was withdrawing his support from key parts of FAP. Ginsberg and other FAP lobbyists were appalled. So was the White House. Nixon called Ribicoff personally. He dispatched Richardson and John Ehrlichman, his chief domestic adviser, to talk to the Senator. He called Moynihan at Harvard, who flew down the same day to add more persuasion.

This flurry of activity had the effect of reassuring Ribicoff. More important, it had shaken all sides into the sobering conclusion that it was high time to bargain seriously. From the White House to Richardson, from at least some of the liberals to Ribicoff, the word was passed: See what you can get. Optimism rose as the H.E.W. team and Ribicoff's staff, working through March and April, proceeded to cut a deal.

The compromise they worked out called for a $2,600 income minimum, annual cost-of-living increases, and a 60 per cent tax on earnings. Welfare benefits in high-paying states would be maintained, the rights of recipients better protected. It would add coverage to several million more of the working poor, add to costs by close to $2-billion. Ribicoff and his allies thought they had done most of the compromising. But it was a bill that might work, and Richardson had high hopes of selling it to the President. By early May Richardson was calling the White House, asking for an appointment with Nixon. He talked to Ehrlichman, who kept stalling. Richardson waited. Then he waited some more.

It was a peculiar time, May of 1972. For one thing, the President was almost wholly occupied with the war and summitry. He had recently returned from China. He was to go to Moscow later that month. Meanwhile, on domestic matters, the White House was no longer a place of mixed views and open access. Moynihan was gone. Nathan was at H.E.W. The Cabinet was suspect, the vigilant Ehrlichman commenting at one point that he was afraid some of them had "gone native."

By May of 1972, while Richardson cooled his heels, the welfare caseload was in the process of leveling off, in part because desperate state governments were learning how to crack down. But public hostility to welfare had not leveled off. It has grown to gale force—most politicians facing election in 1972 knew that.

But there, in May, a pivotal month of a thoroughly bizarre election year, came Senator McGovern, charging through the Democratic primaries with some extraordinary notions of what to do about welfare and poverty.

With Richardson still waiting, Nixon went off to Russia on May 20, not to return until early June. It was during this period that McGovern's $1,000-a-person "demogrant" scheme, outlined months before but largely ignored, came under the most intense national scrutiny. In California, Senator Humphrey was ripping into McGovern's ideas in a series of televised debates. The press, bemused until then by political mechanics, began digging into the issues.

On the evening of May 27, an exasperated television interviewer asked Senator McGovern if he expected the public to accept his $1,000 scheme with no real idea of its cost. "That is exactly right," the Senator replied. Veneman remembers watching the show and thinking: My God, Nixon's got the welfare issue sewed up.

Richardson was not to see the President until June 16. By that time it was clear that, first, McGovern was on his way to the Democratic Presidential nomination and second, Long would keep H.R. 1 until after the Democratic convention. Throughout the H.E.W. hierarchy, the alarm bells were ringing. Said one staffer: "All we heard from the White House in those first weeks of June was how McGovern was vacillating and painting himself in a left-field corner, and that all Nixon had to do was stand pat."

When Nixon did see Richardson, he was confronted with three options: To hold with his own $2,400 plan, which with no liberal support at all had no chance of passing; to go with the Ribicoff $2,600 compromise, which, with White House and liberal backing might pass if it could be maneuvered past the Senate Finance Committee; or to begin dealing with the committee itself, which had come up with its own variation of welfare reform, a plan twice as expensive as FAP but more regressive.

For every argument Richardson offered in favor of going with the Ribicoff compromise, Ehrlichman and his allies had a reply: The President owed Ribicoff, by that time an ally of McGovern, nothing; the President ought not to estrange his "natural friends" on the Finance Committee; with McGovern blundering about on welfare reform, Nixon would be best served by consistent support of his original proposal; even if the President went with Ribicoff, Long probably would filibuster, or some of the liberals would desert Ribicoff. Nixon ended the meeting by saying he'd think it over.

Six days later, on June 22, Nixon told a press conference he would stick with his own $2,400 version of FAP, describing it as "the middle ground." It was a heavy blow. Yet Richardson and Veneman bombarded Ribicoff, Ginsberg and FAP lobbyists with phone calls, telling them the President was assuming but a temporary "tactical" stance, urging them to hold firm.

On June 30, just before recessing, both houses of Congress approved a 20 percent Social Security increase, having lifted this prime election-year goody from H.R. 1 and passing it as separate legislation. With that, Senator Long, having broken promises for a year to take action on H.R. 1, felt completely free to bottle up the rest of the bill, with its welfare reform provisions, for as long as he wanted.

Ginsberg decided, once the Democratic National Convention was settled in early July, that welfare reform was a lost cause. "I knew then," said Ginsberg, "that with McGovern so far out on the subject of welfare, Nixon would rather have the issue than a bill. If a bill had passed, it would have appeared to solve the welfare problem, and that would let McGovern off the hook."

McGovern, of course, had backed off his $1,000-a-person idea, but he never really got himself off the hook. In late August, he did go before the New York Society of Se-

curity Analysts with the better plan he had promised. But it was not a better plan at all, simply a $4,000 annual payment to a dependent family of four. No work requirement. No work incentives. He didn't say what would happen if a family earned $4,001. McGovern did promise further details on what to do about the working poor. But nothing came of it, for the Senator's staff had to cope with the same fearsome numbers that bedeviled everybody else trying to cope with income maintenance. A $4,000 income base, with a 50 percent tax on earnings, would have put some 65 million Americans "on welfare" at a cost of tens of billions of dollars. The McGovern staff wrestled with these estimates, then, wisely filed them away.

The game played itself out. The Senate proceedings on welfare reform in early October were more deathwatch than debate. Richardson struggled on, calling the White House, calling Ribicoff.

"I stopped taking his calls in the last days," said Ribicoff. "It grew embarrassing. I never questioned his intent, his determination. But in the Nixon Administration, it had become apparent the Cabinet doesn't amount to a tinker's damn. They're all supplicant's."

The President held firm. So did Ribicoff. So did Long. Hopelessly deadlocked, the Senate killed welfare reform.

The postmortems centered in part on the President's role. Did he really believe in his own creation? "He was never there in the clutch," said Ribicoff bitterly. "I sensed he did not mean what he said about welfare reform." Mills, less harshly, thought the President wanted the plan "but did not exercise the influence he might have." A fair assessment is that Nixon did believe in FAP, accepting it as a straight piece of technical advice. But he was not a true believer, willing to ignore all other factors, or willing to go all the way with a slightly higher-cost version at the price of letting up on his election-year Democratic opponent.

There were the what-if postmortems. On timing: What if Richardson had been able to see Nixon in early May? On tactics: What if H.E.W. had not so conspicuously thrown in its lot with the liberals? Richardson concedes: "What may have doomed the bill is that the public speculation over our discussions with Ribicoff convinced Long he should use every trick to delay the bill. And with the lack of generalship in the Senate, he was able to get his way."

And yet there are many who believe that whatever was done, welfare reform was doomed. To Ehrlichman, any hope for a bill disappeared last year into an "ideological chasm." To Ginsberg, the legislation "lacked a constituency, and that was fatal. If it had been put to referendum, the public would have murdered it."

The welfare problem now is likely to enter an uneasy, possibly extended holding period. Caseloads are likely to grow, to the dismay of conservatives who opposed FAP on at least fiscal grounds. But to the equal dismay of liberals who opposed FAP on humanitarian grounds, the states probably will continue their tougher stance. And whatever Congress does about welfare will likely be along similar conservative lines. It is difficult to believe that anything approaching FAP could get a serious hearing soon. The economists have had their turn for awhile. And Congress, even the redoubtable Mills, is sick of the subject.

Were the President to propose another welfare-reform plan incorporating an income-maintenance system for the poor, who would believe that this time he really believed in it? Were the liberal Democrats to do so, who would listen to them? Income maintenance probably is dead for years, if for no other reason than that George McGovern made it sound so ludicrous.

The real tragedy of FAP is that it came along at a time when the tough-minded were losing their compassion and when the compassionate lost their sense of toughmindedness. It will take time, and luck, for that gap to begin closing. Until it does, we will have to settle for things as they are.

VIETNAM

Mr. GOLDWATER. Mr. President, there is no secret about my strong feeling against actions and statements by Members of the House and Senate which might in any way interfere with this country's chances of arranging a satisfactory end to the hostilities in Vietnam. I feel very strongly that every Member who suggests that the Congress take over the decisionmaking power in this matter owes it to his country, to his constituents, and to American fighting men, past, and present, to consider carefully how his approach might be interpreted by the enemy negotiators in Paris.

One argument that I hear, Mr. President, is that the administration has previously warned against the kind of loose talk by Members of Congress that might upset its efforts to obtain a cease-fire and the speedy return of American POW's. The claim is that the White House always uses this argument as a device for silencing criticism. And I say such claims make absolutely no sense whatsoever unless you want to assume that the President and Dr. Kissinger and their advisors are seriously seeking a prolongation of the war.

Mr. President, I am plainly sick and tired of hearing demands, especially by the Members of a political party whose leaders got us into this war, that President Nixon end the conflict on their terms. I am sick and tired of all the loose talk about the Congress taking over the conduct of the war and deciding how and when it shall be ended.

Because of this, I believe it is time for those Members of Congress who believe in this approach to put up or shut up. If they want to dictate the terms and the timing for ending the war in Indochina, they should go about it in a legal fashion. By this I mean that if the time has come for Congress to usurp the constitutional powers of the Commander in Chief of the Armed Forces then the time has come for the proponents of this idea to start the machinery for changing the Constitution.

I suggest that rather than attempting to obtain their goal by indirect means such as cutting off funds, I believe the President's critics should confront the issue squarely. If they believe the President of the United States cannot handle the powers entrusted to him by the Constiution; and if they believe that the cumbersome procedures of congressional decisionmaking are to be preferred, then let them try to change the Constitution and settle this prolonged debate once and for all.

Mr. President, I want to make it very clear that I do not favor such a change in our Constitution. I believe giving the Congress responsibility in this area would be nothing short of disaster. However, the way is open for those among us who seem to believe they are endowed with superior judgment and more honorable motives than the executive branch can ever hope to muster.

MONTANA AND THE NATION'S ENERGY CRISIS

Mr. MANSFIELD. Mr. President, the Nation's so-called energy crisis has focused attention on the utilization and development of the vast coal deposits in the upper Missouri region through strip mining. It is quite apparent that the uncontrolled strip mining of these coal deposits is going to proceed unless some action is taken now by all parties concerned.

These fears have been substantiated by reports linked to energy policy sources within the administration. A newsstory in the January 12, 1973, issue of the Washington Evening Star reports that the administration will call for the conversion of a large segment of the Nation's electric power-producing plants from oil-fired to coal-generating units. Apparently the administration feels that the Nation must now rely on the estimated 400 years of known coal reserves as the "only feasible" alternative to oil in the future. These are reserves found in Montana and its neighboring States. I am not convinced that the Nation's energy crisis is truly what the phrase indicates. There may be exceptions. I see no reason to panic. An adequate supply of energy for the future is dependent on a coordinated, well-planned effort, utilizing all possible sources through environmentally sound processes in cooperation with Federal, State, and private interests. Information available indicates that the current situation might be due in part to mismanagement of our oil supplies and overuse of gasoline and too scant attention being given to the conservation of energy. Need I remind my colleagues that it was a similar situation which developed at the beginning of World War II and we now have Appalachia as an example of what can happen without proper planning and thought.

My most immediate interest, of course, is the State of Montana. The situation as it now stands disturbs me greatly. There is far too little information as to what the future will bring. A large utility in Montana in cooperation with outside interests is now in the process of constructing a coal gasification plant in eastern Montana. There are indications that this is only the first of many to be constructed in the Dakota-Montana-Wyoming area. Large coal companies are beginning to develop deposits by strip mining and plan to ship vast amounts of coal to metropolitan areas in the East. Others are pressing for more lease sales on Federal lands.

Paraphrasing two editorials which appeared in the Billings Gazette, a Montana daily newspaper, the purpose of these developments is not to supply the power needs of Montanans. It is to exploit Montana while supplying a stopgap solution to out-of-State concerns. As the Gazette states so strongly, Montana belongs to Montanans—not to the stockholders of large utilities or coal companies.

As a Senator from the State of Montana, I do not want to see the eastern portion of the State permanently scarred and destroyed; nor do I want to see consumers in my State saddled with higher utility bills to finance the corporation's expanded activity. As the situation now stands the only people who will benefit will be the out-of-state interests and I think it is time that we Montanans stand up for Montana. The trend of present thinking in this area is all to controlled by the profit motive.

Mr. President, Appalachia is a much overused term associated with unregulated development of natural resources. Our friends in West Virginia and the surrounding area have suffered tremendously and they are now only beginning to recover. If the voice of experience is of any value, we Montanans have been placed on notice for some time.

I do not pretend to be an expert in mining reclamation or utilities, but I have several thoughts and recommendations which I hope might be useful in reviewing the present situation.

First of all, I believe that we should not panic. There is plenty of time. My most immediate reaction to the current debate over coal development is to support a complete moratorium on all coal development until such time as we can come up with a more reasonable and orderly plan.

What effect will the coal gasification plants have on the water supply in Montana? The north-central power study prepared by the Bureau of Reclamation in cooperation with interested utilities and coal companies suggests that over a 25-year period there will be a sufficient number of coal gasification plants in this area to generate some 50,000 megawatts of electrical power. Should a development of this magnitude ever materialize the water flow diversion would cause an 81-percent reduction in the annual flow of the Yellowstone River. Water use of this magnitude in a semiarid region receiving only 14 inches of annual rainfall will have a tremendous environmental impact. Extreme reduction in river flows and the transfer of water from agricultural to industrial use will drastically alter existing agricultural patterns and rural lifestyles. Water is the most closely guarded treasure we have in our State.

I think the individual landowner is being treated shabbily. Existing law gives the final authority to the holder of the subsurface mineral. During the days of shaft mining this was of little consequence, but strip mining can mean the destruction of a surface which may have provided a livelihood for generations, all to be taken without adequate consideration and compensation.

We must have land reclamation of strip-mined coal areas and consider effects of industrial processes on air and water. Another serious matter, often ignored, is the impact of a vastly expanded population on the human environment and inadequate spacing of industrial plants creates some of the most serious pollution problems.

Again, I wish to stress that I am not convinced that power shortages at the present time are sufficient to permit unregulated development of coal as a major power source. Too little attention is given to preplanning for environmental protection and reclamation. I am greatly concerned about reports that the administration will attempt a reduction in emission standards and encourage strip mining without reclamation requirements in an effort to meet the so-called shortage of accessible fuels. We all have a responsibility to prevent the disaster that I foresee—the U.S. Government, the individual States and the corporate interests.

In my State of Montana I am encouraged by the action being taken within the Montana Legislature. The membership of both the House of Representatives and the Senate indicate a sincere concern. Our new Governor, Tom Judge, has recommended a strong program of control over coal development.

Montana must do several things—first, repeal the eminent domain law which permits large corporations holding subsurface rights to condemn surface ownership. Second, the State must regulate powerplant placement and adopt a severance tax as a means of financing the necessary regulation and enforcement of reclamation laws.

The Federal Government, through its Congress, has taken significant steps in the field of coal mine reclamation. Strong legislation in this area must be given priority in the new 93d Congress. The moratorium on coal mining activity in Montana recommended by the Senate last October is not necessarily binding on the Federal agencies, but it does indicate strong sentiment and places the Federal authorities on notice until such time as the Congress acts. I want to see a strong reclamation bill passed which will provide for the restoration of all surface mine lands to a condition equal to or better than it was at the time the mining was started. In fact, there must be advanced commitments to preplanned reclamation before any mining proceeds. This is not an unreasonable request. This should include the cooperation of scientific authorities who are prepared to offer plans that can be implemented in a manner appropriate to the area. We must have more than roadside reclamation. And there is a requirement for strong Federal enforcement.

In addition to a strong reclamation law, we should permit an outright ban on strip mining in areas which are considered to be fragile and inappropriate for restoration and reclamation. We have such an area in Montana—the Bull Mountains.

Reclamation requirements should apply to all Federal lands and any private development where the coal resource is shipped into interstate commerce. We want a strong uniform policy. Several bills have been introduced and more will be presented on the broad issue and the specifics. Under the leadership of the able chairman of the Senate Interior Committee, Senator HENRY JACKSON and knowledgable colleagues such as Senators FRANK MOSS and LEE METCALF, I am confident that we can give this matter the serious attention it deserves. I think that the energy study now underway within the Interior Committee will give us the perspective on the energy crisis that is necessary.

Coal is not necessarily the only source of power available to our Nation at this time. Recognizing that atomic power generation has been somewhat less successful than anticipated, why has not the Federal Government constructed the large intertie system of Federal and private generating systems along with the installation of additional generating capacity at several of our large Federal projects. This would provide for a more economic use of existing resources.

Why does not the Federal Government and private utilities expand research on improved processes of power generation such as magnetohydrodynamics. The MHD process for generating electricity from coal provides for better utilization of coal, with a limited need for water and reduced air pollution. Unfortunately, a larger portion of the corporate budget is expended to promote increased electric consumption rather than research. It is my hope that the Congress will pursue these matters with vigor.

Lastly, I feel that the private sector—namely the utilities and the coal companies—are approaching this situation with little compassion and regard for the future of this part of our Nation. There must be a full and free discussion of plans for the future. There is a lot of talk about reclamation but little demonstration of their intent. Just exactly what do these grand plans for at site power generators mean? How many plants will there be in the transmission system to large urban centers throughout the Nation? If the project is as large as some predict, reclamation laws will be of little value, the emission of nitrogen oxide and other particulates in the area will make it impossible for anything green to grow. Despite existing pollution control and emission standards, conditions would be far worse than anything experienced in New York City or Los Angeles. The public good and the future well-being of the west must be given prominent consideration in the planning efforts of the utilities.

Montana is one of 50 States. It is deserving of as much attention as any other. The people of the Big Sky Country are willing to do their share. I believe that the consumers of Chicago, Cleveland, New York, and other large metropolitan areas are perfectly willing to give consideration to the people of a State which is making it possible for them to have an adequate electric power supply.

If we cannot have orderly and reasonable development of the vast coal resources in Montana and the West, then there should be no strip mining of coal. I shall not retreat from this position, insofar as Montana is concerned.

Mr. President, I ask unanimous consent that an editorial from the January 14, 1973, Washington Post and a series of letters from my files on the issue of coal development printed in the RECORD.

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

THE ARTIFICIAL SHORTAGE OF FUEL OIL

Schools, factories and churches now stand cold and empty throughout the Middle West, for want of fuel to heat them. It would be excessively charitable to attribute this breakdown of the fuel distribution system to cold weather, or to a shortage of oil. Cold snaps are an accustomed part of winter life in the Midwest and, as for fuel, there is no shortage of the oil supply available to this country and its consumers. The real and critical shortages are the shortage of rational public policy, the shortage of foresight in the federal government, and the manifest shortage of common sense.

The distribution breakdown has two essential causes. To please consumers, the government keeps the interstate prices of natural gas so low that producers are increasingly keeping it out of interstate commerce. To please the oil companies, the government severely limits imports and keeps the price high. Grain is rotting in Iowa for want of natural gas to run the dryers, but there is plenty of gas available in Oklahoma. American oil refineries are currently running substantially below capacity for want of crude oil in this country, but there is plenty of crude oil for sale throughout the world and most of it is cheaper than our domestic production.

Our national stocks of heating oil began to drop significantly last March. The White House and its Office of Emergency Planning knew it. They did nothing about it. Meanwhile the consumption of fuel oil was rising at an accelerating rate. The same officials were aware of this rise. By mid-autumn, when stocks are at their annual peak, the nation had 13 per cent less fuel oil on hand than a year earlier. At the same time consumption by coincidence, was running 13 per cent higher than a year earlier.

Patterns of fuel usage are changing rapidly, and the federal government has been unable to change its regulatory policies fast enough to prevent serious breakdowns in supply. Electric utilities, for example, have been unable to develop nuclear power as soon as they had hoped, and environmental standards have limited their use of coal. As a result the utilities are increasingly using light oil to generate electricity and contributing heavily to the new demand. Local shortages tend to chase each other around through the economy. In the areas that are short on natural gas, some industries have begun to switch over to oil and help to drain distributors' tanks.

The present level of demand was predictable. But even now, with the unfilled demand for fuel oil all too evident, American refineries are still operating about 10 per cent below capacity. Our domestic wells cannot supply them with enough crude oil. Foreign oil is the obvious answer, but the United States stringently limits the importation of foreign oil through a system of rigorous quotas. Abolishing the import quotas is not the whole solution to our future energy requirement, obviously. But of all the steps that the White House could take quickly, ending the quota system would be the most effective.

Instead, the White House took the curious step last Monday of hugely increasing the quota of refined fuel oil that can enter the continental United States from the Virgin Islands. There is only one refinery in the Virgin Islands, and it is owned by Amerada Hess. This example of gross favortism, in a matter of great national concern, will hardly strengthen public confidence in the administration's ability to develop a rational and disinterested energy policy. The proper course, in contrast, would have been to expand imports of crude oil as well as refined fuel oil without any limitation of source.

For the past 17 months the price of fuel oil has been held constant by the controls. With the removal of the controls, there are now two possibilities. Either the federal authorities will increase supplies through imports, or the price will go up. A sharp rise in fuel oil prices would be a substantial addition to the inflation that, the administration hopes, is diminishing.

Even if import quotas were lifted tomorrow, the distress in the Midwest would continue for some time. Cold weather and logistical bottlenecks would make it difficult to move supplies quickly to the parts of the country that need them most. Because the White House was inattentive to its responsibilities over the past spring, summer and fall, citizens throughout a wide part of this country are suffering severe disruption in their businesses and discomfort in their private lives this winter. If the White House does not move quickly to expand oil imports, this distress can only spread.

OCTOBER 20, 1972.

Mr. JOHN J. MCGUIRE,
Chief, U.S. Forest Service, Department of Agriculture, Washington, D.C.

DEAR MR. MCGUIRE: On October 12th, 1972, the Senate considered and agreed to the provisions of Senate Resolution No. 377, indicating the sense of the Senate that an immediate temporary moratorium on Federal coal leasing be enacted within the confines of the State of Montana, and for other purposes.

As a Senator from Montana and as Majority Leader, I wish to take this means of impressing upon you, my firm resolve and that of my colleague, Senator Metcalf, that the executive branch move expeditiously to comply with the intent of Senate Resolution No. 377. It is our intention to closely monitor mineral activities in Montana, to assure that uncontrolled destruction of Montana's land does not take place.

Your close personal attention to this matter would be appreciated.

With best personal wishes, I am,

Sincerely yours,

MIKE MANSFIELD.

U.S. DEPARTMENT OF AGRICULTURE,
Washington, D.C., November 2, 1972.

Hon. MIKE MANSFIELD,
U.S. Senate.

DEAR SENATOR MANSFIELD: This is in reply to your letter of October 20 concerning an immediate temporary moratorium on Federal coal leasing in Montana as provided in Senate Resolution No. 377.

At present there is only one coal lease in existence on National Forest System lands in Montana. It lies within the Beaverhead National Forest. The Custer National Forest has a pending application for a coal prospecting permit. For some time, our Northern Region has refused to act upon new coal prospecting permits and leases on the basis that there are already large areas of Montana subject to Federal, State, and private coal leases. Further, they feel that a prerequisite to further leasing should be a plan for coordinated development consistent with adequate environmental protection and the public interest. The above are primarily public domain lands reserved for National Forests. In these areas, the Secretary of the Interior has the final authority to determine whether coal leasing shall be allowed. We are informed that the Bureau of Land Management's State Director for Montana recently rejected 119 applications for coal prospecting permits in Montana and North Dakota. The basis for the rejections was that there were large areas already under lease, but not in production, and therefore no compelling need exists for further prospecting.

We view Senate Resolution No. 377 as supportive of the determination of the Regional Forester and the Montana State Director not to permit damage to Federal lands in Montana by uncontrolled surface mining for coal.

Sincerely,

JOHN R. MCGUIRE, *Chief.*

OCTOBER 20, 1972.

Mr. BURTON W. SILCOCK,
Director, Bureau of Land Management, Department of the Interior, Washington, D.C.

DEAR MR. SILCOCK: On October 12th, 1972, the Senate considered and agreed to the provisions of Senate Resolution #377, indicating the sense of the Senate that an immediate temporary moratorium on Federal coal leasing be enacted within the confines of the State of Montana, and for other purposes.

As a Senator from Montana and as Majority Leader, I wish to take this means of impressing upon you, my firm resolve and that of my colleague, Senator Metcalf, that the executive branch move expeditiously to comply with the intent of Senate Resolution #377. It is our intention to closely monitor mineral activities in Montana, to assure that uncontrolled destruction of Montana's land does not take place.

Your personal attention to this matter would be appreciated.

With best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., November 10, 1972.

Hon. MIKE MANSFIELD,
U.S. Senate, Washington, D.C.

DEAR SENATOR MANSFIELD: In reply to your letter of October 20, 1972, we wish to assure you that the Bureau of Land Management will exercise its full authority and expertise to prevent any uncontrolled destruction of land in Montana, or elsewhere.

The BLM long ago adopted the goal of striving for a blending of resource uses which provide the maximum benefit to the public. To this end also, the Department of the Interior has initiated the Northern Great Plains Resource Program. This undertaking will marshal the expertise of many Federal agencies, as well as five states, in an effort to assure intelligent management of the valuable resources in this area, with full regard to all environmental and social factors.

The BLM has issued almost no coal leases or permits on public or acquired lands in the last 22 months, and we will continue to proceed cautiously. However, the BLM cannot support any resolution aimed at arbitrarily withdrawing any Federal lands from coal mining. Such a withdrawal would prevent leasing in areas where coal is needed for existing production, thereby forcing a shutdown of operating mines or shifting operations to lands not subject to Federal regulations. In addition, much of this low-sulfur coal is presently consumed in electric-utility markets. We do not wish to jeopardize this supply.

The BLM will continue to issue coal leases where (1) no serious adverse environmental impacts will occur, and where either (2) the coal is needed to maintain an existing mining operation, or (3) the coal is needed as a reserve for production in the short term.

Senate Resolution 377 seems to be based upon the premise that existing surface protection regulations and lease stipulations are not adequate to insure proper reclamation after mining. We feel that existing regulations found at 43 CFR 23, 25 CFR 177, 30 CFR 211.19, and terms within the lease itself, provide the necessary tools for assuring proper reclamation and protection of the other natural resources on Federal lands.

Also, the Bureau of Land Management programs strive for compliance with the spirit as well as the letter of the National Environmental Policy Act of 1969. We have developed extensive procedures for analyzing the environmental impacts of BLM actions and are in the process of preparing programmatic environmental impact statements under the terms of the National Environmental Policy Act.

We are convinced that what we need most in today's quest to improve our quality of

life is a commitment to cooperate in reaching our common goals. Only with such a commitment can we hope to develop the climate in which conflicting views can be reconciled, and to identify the common ground on which issues can be resolved.

Sincerely yours,

BURT SILCOCK, *Director.*

OCTOBER 20, 1972.

Hon. ROGERS C. B. MORTON,
Secretary, Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: On October 12th, 1972, the Senate considered and agreed to the provisions of Senate Resolution No. 377, indicating the sense of the Senate that an immediate temporary moratorium on Federal coal leasing be enacted within the confines of the State of Montana, and for other purposes.

As a Senator from Montana and as Majority Leader, I wish to take this means of impressing upon you, my firm resolve and that of my colleague, Senator Metcalf, that the executive branch move expeditiously to comply with the intent of Senate Resolution No. 377. It is our intention to closely monitor mineral activities in Montana, to assure that uncontrolled destruction of Montana's land does not take place.

Your close personal attention to this matter would be appreciated.

With best personal wishes, I am

Sincerely yours,

MIKE MANSFIELD.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., November 22, 1972.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: Thank you for your letter of October 20, 1972, relative to Senate Resolution 377.

This Department is committed to managing the public land resources in the public interest. This objective prompted the Department to initiate the Northern Great Plains Resource study. This undertaking will marshall the expertise of appropriate Federal agencies, as well as the five states involved, and will establish proper information exchange with the industrial, academic and public sectors to insure that all pertinent factors are taken into account. We are confident that the effort will produce a base of information suitable for use by decision-makers who must manage the region.

Although the Department has issued no coal leases or permits on the public and acquired lands during the last year and a half, it would be unwise to declare a moratorium on all leasing when there is continuing need for coal, and such a constraint would simply shift operation to private lands which are not subject to Federal regulations. This is a particularly pertinent consideration because of the increasing importance of low-sulfur coal in supplying clean energy. In my view, a better alternative is to proceed cautiously on a case-by-case basis, and this is the course we are presently following. Senate Resolution 377, referred to in your letter, apparently is based on the premise that existing regulations for mined land reclamation are inadequate to insure acceptable environmental protection. I believe that the regulations incorporated in 43 CFR 23, 25 CFR 177 and 30 CFR 211.19, when extended by the kinds of stipulations we are now including in our lease terms, provide the necessary tools for doing a proper job on the Federal and Indian lands. These, plus the extensive procedures the Department has developed for analyzing environmental impacts and insuring compliance with the spirit as well as the letter of the National Environmental Policy Act of 1969, should guarantee environmentally acceptable mining, where mining is required to meet real energy needs.

I am convinced that what we need most in today's quest for high quality of living is a commitment by all to cooperate in reaching that goal. Only with such a commitment can we hope to develop a climate in which conflicting views can be reconciled and proper trade-offs made. You can be assured that we will continue developing the information necessary for proper management of the Northern Great Plains.

Yours sincerely,

ROG MORTON,
Secretary of the Interior.

MAY 19, 1972.

To: Mining Supervisors, Branch of Mining Operations. Through: Chief, Branch of Mining Operations.

From: Chief, Conservation Division.

Subject: Guidelines for reclamation requirements under Section 5 of Federal Coal Leases.

You are all aware of the recent study made of our operations by the General Accounting Office at the request of Senator Metcalf. The study found that our supervision and enforcement of Section 5 of the standard coal lease form was lax in some respects.

One recommendation in the report was that we should issue procedural guidelines for the Mining Supervisors to follow in enforcing the reclamation and environmental requirements of this section of the lease terms.

Even though this subject has been discussed regularly in our periodic supervisor conferences and with most of you individually on numerous occasions over past years, no formal guidelines, as such, have ever been issued. Heretofore, we have considered each case on its own merits and have relied on your individual judgments, due to local and regional topographic, climatic and vegetation differences. Much of the reclamation work done was on a voluntary basis by the lessees or, in some cases, in compliance with requirements of a State. A much smaller amount was carried out at the insistence of the Supervisors in discharging their responsibilities.

Most coal leases now in force contain restoration and surface protection clauses similar to Section 5 which essentially reads as follows:

"Protection of the surface, natural resources and improvements. The lessee agrees to take such reasonable steps as may be needed to prevent operations from unnecesarily: (1) causing or contributing to soil erosion or damaging any forage and timber growth thereon; (2) polluting the waters of springs, streams, wells, or reservoirs; (3) damaging crops, including forage, timber, or improvements of a surface owner; or (4) damaging range improvements whether owned by the United States or by its grazing permittees or lessees; and upon any partial or total relinquishment or the cancellation or expiration of this lease, or at any other time prior thereto when required by the lessor and to the extent deemed necessary by the lessor, to fill any sump holes, ditches and other excavations, remove or cover all debris, and, so far as reasonably possible, restore the surface of the leased land to its former condition, including the removal of structures as and if required. The lessor may prescribe the steps to be taken and restoration to be made with respect to lands of the United States and improvements thereon."

The language of Section 5 clearly gives us the authority to require lessees to reclaim or restore land disturbed by either strip or underground mining operations to its former condition, so far as reasonably possible. This includes contouring spoil and waste piles, revegetating the land, sloping the highwall; cleaning up debris, removing surface structures, properly sealing portals, preventing water pollution, and protecting other natural resources. In short, we feel that Section 5 covers all contingencies that may arise in this area of our responsibility, which in some instances you have been complying with by demanding restoration plans from lessees.

Although 43 CFR 23, issued January 18, 1969, is not applicable to some of our older coal leases, to underground mines, or to surface mining where the surface is not owned by the U.S. Government, we have sufficient authority under Section 5 of the lease terms to require all lessees who are operating, or planning to operate, to submit surface protection plans similar to those required by these surface mining regulations. The plans should be in a narrative form supplemented by adequate maps and should cover at least the following points:

1. Topographical maps showing roads, the areas to be mined, mine projections, waste disposal areas, and spoil piles.

2. Steps to be taken to prevent water and air pollution, to prevent land erosion, and to protect other natural resources.

3. How the lands will be reclaimed, including grading, contouring and sloping of spoil piles and highwalls to prevent public hazards, and for aesthetic purposes.

4. Type of revegetation proposed, and how it will be protected until it can become well established.

5. How the property will be abandoned, including the sealing of portals, removing surface structures and cleaning up the area.

6. How waste and spoil dumps will be reclaimed to prevent potential public hazards and degradation of the lands and waters.

Before approving a reclamation plan under Section 5, you should consult with the land management agencies involved (i.e. BLM, Forest Service, DIA or Tribal Officials) on the adequacy of the surface protection proposals. You should also consult with State agencies where necessary.

Among other things, each of you should instruct coal lessees of their obligations under both Section 5 of the coal lease as well as other appropriate regulations. You should also advise lessees of the type and scope of the plan which must be submitted and approved, prior to commencing any earth disturbing operations. It should also be stressed that reclamation work must be performed as concurrently as possible with mining operations. Furthermore, where an approved reclamation plan is plainly out of date, you should require such a plan to be updated according to the guidelines and suggestions mentioned in this memorandum.

Before the abandonment of leases is approved, onsite inspections must be made to determine whether the land is in a suitable condition for abandonment in accordance with the lease terms and regulations. Where operations have been temporarily suspended, portals should be closed by gates or other suitable barricades to prevent entry into underground mines. From time to time, onsite inspections should be made by Survey engineers as well as the lessees, to determine that no pollution, erosion, fires, or other hazards have developed on the property while operations are temporarily suspended.

As to abandonment of portals, the enclosed drawings developed by Moffitt should be used as a guideline.

RUSSELL G. WAYLAND.

U.S. SENATE,
Washington, D.C., December 5, 1972.

Hon. ROGERS C. B. MORTON,
Secretary Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: In testimony before the Senate Interior Committee in May of 1972, the Assistant Secretary for Public Land Management stated that the position of the Department of the Interior at that time was to proceed cautiously on the issuance of further coal leases and permits pending an analysis of quantity and quality of coal al-

ready under lease and the demand and need for additional coal. In June 1972, at a hearing on Federal Leasing policies, the same Assistant Secretary stated that no exploration permits for coal had been approved and no coal sales had been held for 18 months.

In view of these statements and the present posture of the Department indicated by your letter of 16 November 1972 to the undersigned to proceed with leasing and in order for us to make an analysis of the situation, you are requested to provide us with a list of the outstanding coal leases and permits in the area of the land covered by the Northern Great Plains resource study, showing name of the lessee or permittee and the number of acres chargeable to such lessee or permittee, including acreage under option in each state.

Information is also requested as to the number of pending applications for coal prospecting permits and/or leases, in the area of land covered by the Northern Great Plains resource study, including the name of the applicant and the number of acres of land covered by the application.

Very truly yours,

MIKE MANSFIELD,
U.S. Senate.
LEE METCALF,
U.S. Senate.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., December 26, 1972.

Hon. MIKE MANSFIELD,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MANSFIELD: Your letter of December 4, jointly signed by Senators Metcalf and Moss, suggests the need for a full, frank discussion of issues and actions related to development of coal in the Northern Great Plains. I have asked John W. Larson, Assistant Secretary for Program Policy, to arrange for such a meeting with your staffs.

I know this matter is of great importance to you. I will be glad to discuss it in more detail at your convenience and to offer whatever assistance we can in developing the kind of legislation required for better mining in the future.

Yours sincerely,

ROG,
Secretary of the Interior.

U.S. SENATE,
Washington, D.C., December 13, 1972.

Hon. THOMAS JUDGE,
Governor-Elect, State of Montana,
The Capitol, Helena, Mont.

DEAR GOVERNOR JUDGE: The decision handed down in the U.S. District Court of Montana that the Burlington Northern Sarpy Creek line was a spur or branch and therefore classified as industrial has revealed that there is a hiatus in jurisdiction that creates a difficult and serious situation in need of immediate action on the part of both State and Federal legislative bodies. It is apparent there are not sufficient laws or regulations and enforcement to prohibit unnecessary or unwanted development of coal deposits and related support facilities in Eastern Montana, and give either State or Federal agencies adequate regulatory jurisdiction.

The Montana court determined that Interstate Commerce Commission did not have jurisdiction. We believe that clarification of the definition of an industrial line which carries coal intrastate for developing a commodity is needed. Spurs and branches, as well as extensions, should be subject to regulation either by the ICC or, in the event of intrastate spurs, extensions and branches, regulation by the Public Service Commission.

In our estimation, the State of Montana must repeal the existing law giving the owners of subsurface mining rights the power of eminent domain over the surface owners of agricultural or grazing rights. At the Federal level, we must have the strongest of reclamation laws governing surface mining. In addition, we want a law which will modify the authority of Federal agents in leasing subsurface mining rights so that the holder of the surface rights is given equal consideration.

Predictions of huge generating facilities, extensive surface coal mining, dangerous emissions and disregard for other environmental considerations, such as massive water diversion, project a rather bleak future in Eastern Montana. We do not wish to be associated with such a plan, which is in the name of economic development, affords questionable benefits and possible detriment to the residents of Montana.

We recommend to you as strongly as we can that you take the leadership in bringing about the necessary action at the State level, as rapidly as possible. We intend to do so here in the United States Senate.

Very truly yours,

MIKE MANSFIELD,
United States Senator.
LEE METCALF,
United States Senator.

STATE OF MONTANA,
Helena, Mont., January 3, 1973.

Hon. MIKE MANSFIELD,
U.S. Senate, Office of the Majority Leader,
Washington, D.C.

DEAR SENATOR MANSFIELD: In response to your letter of December 13, I am enclosing a copy of my State of the State address delivered on January 2.

As you will note, the prospect of extensive coal development in Montana concerns me very deeply. I have, therefore, proposed a number of steps that must be taken if we are to ensure that the development is undertaken only if it serves the long-range interests of Montana. I believe the following measures are absolutely essential to achieve this goal:

1. The strongest strip mine reclamation law in the nation;

2. A law to strengthen control over our state's water resources;

3. A power plant siting law, which covers gasification and liquification plants as well as railroad spurs, power lines, and aqueducts;

4. A law increasing the taxes on coal to provide a more just return for exploitation of a non-renewable resource;

5. A law providing for the establishment of a Resource Indemnity Fund to ensure something remains in the state after the non-renewable resources are shipped out.

In addition, I am fully aware of the problems associated with the broadness of Montana's eminent domain statutes and the federal laws relating to the leasing of subsurface mining rights.

Both need modification if we are to ensure some protection for the holders of surface rights, even though the exact nature of the modification raises complex questions.

It was with this in mind that I, some time ago, asked my staff to study Montana's eminent domain provisions and develop alternatives. We hope to have this task accomplished in the near future.

I am, of course, pleased to see action along the same lines being taken at the federal level.

However, I should point out that even with the above changes, the burden of protecting Montana from development, which may be deleterious to our way of life, cannot be borne by Montanans alone. We need resources to enforce whatever laws may be passed to accomplish the research essential to provide guidelines for wise resource decisions. With regard to the latter, Former Governor Anderson has repeatedly asked the Nixon Administration for funds to begin this research. As of yet, nothing of substance has been forthcoming, although the need to get moving becomes more critical each day.

The Northern Great Plains Resource Program has been announced, but apparently no additional funds will be available for new research.

The State Coal Task Force has already developed some research programs with the needs of Montana in mind. In the near future grant applications to fund these programs will be submitted to the appropriate federal agencies. Anything you can do to secure approval for the needed funds will certainly be appreciated.

The problems before us are, I believe, large enough that a concerted effort by government at all levels will be necessary if we are to prevent the "bleak future" you spoke of. You have my assurance that my administration is prepared to make that effort by continuing the leadership role I believe has already been initiated.

Sincerely,

THOMAS L. JUDGE, *Governor.*

U.S. RELATIONS WITH SWEDEN

Mr. CHURCH. Mr. President, the White House has recently displayed petty behavior toward Sweden. Members of the administration have engaged in name calling, the most absurd being that Sweden is an "unfriendly country," and have sought retribution by the tactic of postponing the exchange of high diplomats between the two nations as a snub toward the Palme government

Several decades back, Senator William E. Borah of Idaho and senior member of this distinguished legislative body, challenged our Government to debate openly and freely on all policies. He pointed out in his famous aphorism:

A good cause is strengthened by opposition, a weak one justly destroyed by it.

Senator Borah's message has more merit today than ever before.

I ask unanimous consent that a January 12 editorial concerning Nixon's rift with Sweden be printed in the RECORD.

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

BEHIND THE RIFT WITH SWEDEN

The current diplomatic rift between the United States and Sweden is disturbing in itself and even more disturbing in what it portends for the leadership role which Mr. Nixon would have this country take after the war. Mr. Palme, the Swedish Prime Minister, has a long record of vigorous open opposition to American policy in Vietnam. To protest one of his gestures, Mr. Nixon did not replace the American ambassador who retired from Stockholm last summer. In response to Mr. Palme's latest outburst, an extravagant statement placing the Christmas bombing of Hanoi among the century's worst "atrocities," the President responded even more sharply. There is no record that he attempted to explain to the Swedes the purpose of the latest bombing, any more than he has to Americans. But he did tell Sweden not to replace *its* retiring ambassador. "We might as well face it," a State Department official thoroughly caught up in the Nixon spirit told Newsweek. "We are dealing here with an unfriendly country."

This is, of course, nonsense. That an American diplomat could apparently believe it suggests just how far the Nixon administration has gotten out of touch with the rest of the world. For Sweden is anything but an unfriendly country. It is, in the natural scheme of things, a close friend sharing the deepest associations and values with the United States. It is also, obviously, a country

whose leader, along with a substantial portion of its citizenry, happens to disagree with a particular American policy. But the way to cope with a friend's disagreement is, at the least, to get in closer touch, to try to explain, not to react in pique and close off the symbolic channel of communication between nations, the exchange of ambassadors. Passing off political disagreement as an expression of calculated hostility is simply wrong-headed.

Here we introduce a point so obvious as to be almost embarrassing to have to make. It was not Olaf Palme's words that shot almost a score of B–52s out of the skies of North Vietnam during the December raids; it was missiles supplied to Hanoi by the Soviet Union. The two million signatures Mr. Palme is trying to rally for an end-to-the-bombing petitions are not killing South Vietnamese the bullets sent to the Vietcong by the People's Republic of China are. Yet Mr. Nixon keeps his ambassador in Moscow, and Moscow's envoy stays in Washington. As with the Russians, he continues efforts to broaden ties with the Chinese. How can the President countenance this measure of illogic in his policy?

The Swedish attitude—which is, let it be noted, shared in some more or less considerable degree by practically every *friend* the United States has—expresses essentially, we think, the baffiement with which so many people everywhere view the extended and continuing American involvement in Vietnam. The attitude may not arise so much out of compassion for Vietnamese, or hostility to Americans, as out of cold self-interest. Mr. Nixon would like the American stand in Vietnam to be seen by friend and foe as a testament to the United States' devotion to an ally and to its dedication to the principle of national self-determination. But many people in many lands see the American stand as evidence that the United States has lost its balance and undermined its own penchant and capacity for a leading world role. Many foreigners—not all, to be sure—look at the United States and see a nation harshly divided within itself, one whose will and readiness to make good on other international commitments have been put in shadow by its costly and disproportionate involvement in Vietnam. From the viewpoint of their own self-interest, they must necessarily wonder if and how the United States has been changed by the war, and whether it is wise to count on the United States in years ahead.

This is to us the real issue involved in President Nixon's reaction to Olaf Palme. We cannot conceive how it is to the President's or the country's advantage for him to pursue his particular line of response.

WHAT IS AHEAD FOR 1973 IN WORLD AFFAIRS?

Mr. MATHIAS. Mr. President, Ambassador Charles W. Yost, writing in the Washington Post on January 10, 1973, has provided us with some excellent "food for thought" as we plan for the coming year. I highly recommend his enlightened commentary, entitled "What's Ahead for 1973 in World Affairs?" and ask unanimous consent that his article be printed in the RECORD.

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

WHAT IS AHEAD FOR 1973 IN WORLD AFFAIRS?
(By Charles W. Yost)

Man is forever trying to control his future or at least foresee it. He rarely succeeds, most of all because he himself is so unpredictable, and often so foolish. A pessimist has said: "What we learn from experience is that we don't learn from experience." A relative optimist remarked: "Experience is what teaches you to recognize a mistake when you make it a second time."

As we look ahead into 1973 and try to calculate what might be accomplished in international affairs by year's end, we may be most of all impressed by the gap between opportunity and contingency between what seems to lie within our grasp and what might so easily slip through our fingers.

The administration no doubt has a rational "game plan," based on its already considerable achievements. It has begun to establish a pragmatic post-cold war relationship with the Soviet Union, concluding an initial strategic arms limitation agreement, encouraging mutually profitable trade arrangements, starting to create on both sides an interlock of vested interest in continued cooperation. It has moreover at last opened a civilized dialogue with the real government of China.

Having tempered some of our more dangerous confrontations with our adversaries, the administration has indicated its intention of proceeding this year to compose some of our potentially destructive differences with our friends, to negotiate for example far-reaching monetary and trade arrangements with Western Europe and Japan. At the same time the opportunity exists to bring them also into more sensible arrangements with the Communist great powers, through the projected European Security Conference and accommodations by Japan with China and with the Soviet Union.

Further progress toward great power accommodation, which now seems so plausible, could still be aborted by attachment on both sides to an antiquated concept of "national honor" that should be as dead as dueling, by confusion about what "national security" will henceforth mean on this "small spaceship earth," by ambivalence between the urge to brandish national power and the elementary prudence a nuclear age demands. These archaic but still respectable passions could prolong the agony of Vietnam. They could turn Salt II into a frantic race to deploy new weapons systems as "bargaining chips." They could disrupt by trade wars our friendship with Western Europe and Japan. They could delude us and other rich nations into ignoring the needs of the two-thirds who are poor until their sickness infects all of us.

All these dire contingencies are, as the new year opens, not reasons for despair or apathy but for sober reflection and precaution. If leaders are all too human in their passions and all too powerful in their instruments, all the more do they need the strict application of the checks and balances which the American constitution, for example, provides. If nations still conceive that "national honor" prevents them from admitting a mistake and that the "balance of power" must always be "titled" in their favor, all the more do they need healthy and strong international organizations both to curb their egotism and to provide effective alternative means for maintaining peace.

Santayana said that those who don't learn from history are condemned to repeat it. However, humanity cannot risk repeating in the last third of the 20th century its appalling mistakes of the first two-thirds. It must learn to control itself and its leaders, to build institutions strong and flexible enough to meet unforeseen contingencies, to seize and not to squander the unparalleled opportunities that technology and civilization now offer.

One might think, therefore, that the great nations of the world had at last "Got religion," woken up to their real interests, decided once and for all to work for a stable international order instead of international anarchy and great power machismo. If one made such a sanguine prediction, however one would have to turn a blind eye to two persistent factors in human affairs: Unforeseen contingencies as human nature, particularly the very human nature of leaders.

Who would have anticipated in September 1929 that within a month great economic depression would have begun, within a year 100 Nazi deputies would have been elected to the Reichstag, within 10 years a second world war would have broken out. Who can tell today what would be the effect on detente and "balance of power" of the death of Mao or Tito, a new outbreak of fighting in the Middle East, a clash of naval or air power arising from some totally unexpected eruption somewhere in the third world?

We have just seen how the whole structure of detente could be put in jeopardy by an American display of all-too human pique and masochism on Vietnam, and emotional confusion between what seemed the national interest a decade ago during the cold war and what is in fact the national interest in the new climate of the 1970's. Similar displays of human frailty, an asperation and brutality must unhappily be expected from time to time from other leaders also holding appallingly destructive power in their hands.

RETIREMENT OF REAR ADM. R. J. PEARSON, MC, U.S. NAVY

Mr. PASTORE. Mr. President, service in the Senate of the United States has its joys and its sorrows. It has its challenges, and one of the greatest challenges and sorrows is the sorrow of the challenge of change.

Treasured associates take their leave from our daily existence and become a part of the history of the Capitol, with a lasting place in the memory of each of us.

So there is a sense of personal loss with the word that Admiral Pearson is retiring. Dr. Pearson is ending his devoted service as—and so I like to call him—the family physician of the Congress of the United States.

In the some 7 years of his dedication there are those of us who owe him a special affection of appreciation as a skilled doctor and concerned friend who has helped us through critical hours.

I am such a debtor to Dr. Pearson.

If I invest a doctor with unusual qualities deserving admiration, it is because I have seen and shared the commitment of my children to the study and practice of medicine.

My son is a physician; one daughter is the wife of a physician serving in his country's uniform; my other daughter, the graduate of a college of nursing.

I cite this only to indicate my awareness of the deep study and sacrifice made by Admiral Pearson, the medical student, to prepare himself for the point where our lives have been in his care.

We can thank God that He puts the doctor's dream and determination into the hearts of men against the hour of our desperate need.

So we express our gratitude to all the centuries of science, to all the teachers who have transmitted their science and skills to the minds and hearts and hands of great individuals like Dr. Pearson.

It was such a doctor's dream that inspired Rufus Pearson through college and medical school, it was the good citizen's dedication that sought service overseas in World War II, and it was

the comradeship of those war years that called him to the naval hospital service up to the time of his call to the Capitol.

To his many medals of merit we can add only our humble thanks.

May the days of his retirement be filled with the blessings of health and happiness to him and to all his loved ones; and may he be assured that our praise and prayers will cherish forever the Pearson Period in the Capitol of his country and ours.

HOMEPORTING OF 6TH FLEET IN GREECE

Mr. BROCK. Mr. President, columnist James J. Kilpatrick commented in a recent article on the Navy's decision to homeport a part of the 6th Fleet in Greece. I found his views interesting and ask unanimous consent that the article be printed in the RECORD.

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

RAISING THE DOUBLE STANDARD OVER GREECE

(By James J. Kilpatrick)

A House subcommittee filed a bitchy little report two weeks ago, complaining petulantly of the Navy's decision to homeport a part of the Sixth Fleet in Greece. But the thrust of the report wasn't directed at American admirals; it was directed at Greek colonels instead.

The authors of this report agreed that the United States has legitimate military and security interests in Greece, relating both to NATO and to the Middle East. They could not convincingly challenge the Navy's choice of Athens in terms of the city's housing facilities and the like. This was their point:

"The circumstances of that choice indicate that our government is more concerned about obtaining the minor advantages and conveniences of homeporting in Greece (instead of Italy, for example) than about expressing our opposition to the Greek dictatorship through a policy of minimal and cool relations until democracy is restored in that country. The world looks to the United States to stand up for democratic principles and if we shirk that responsibility, we are negating the most important principle on which this country stands."

Members of the subcommittee, headed by Benjamin S. Rosenthal of New York, took a lugubrious view of the present government in Greece. It is not, they believe, "stable." There may be some short-term advantage in the homeporting decision, but "our long-term need is for a stable Greek government which will come through a democratic restoration." The Navy, they insist, should have chosen Naples, Livorno or Taranto instead.

The authors' conclusions, viewed on their merits, have no merit. Whatever else may be said of the government in Greece, like it or not, it is stable. The colonels have been firmly in power for nearly six years. Their opposition is divided, disorganized, and impotent. Restoration of what is euphemistically known as "democratic rule" would invite a return of the chaotic conditions that obtained prior to 1967. If forces of the extreme left wing should gain power, it could well mean a swift end not only to democratic rule, but also to Greek participation in NATO.

By contrast, if "stability" is the desideratum, one may recall that Italy has had 34 governments since World War II.

Never mind the merits. What is baffling to the observer of foreign affairs is the double standard one constantly encounters. Indeed, when it comes to our relations with the rest of the world, we seem to have double standards for double standards.

Surely this is true in the matter of Communist regimes. This past year saw the President of the United States toasting the Communists of China and Russia, and bombing the Communists of North Vietnam. It is equally true of dictatorships. Rosenthal and his colleagues despise the dictatorship in Greece. They never cease to mourn the absence of democracy in Portugal, Rhodesia, and South Africa. But you will not see them standing up for democratic principles in Zambia, Tanzania, and the Sudan.

We see the same double standard in the matter of moral outrage. When U.S. bombs fall on Hanoi, it is barbarism; when Soviet missiles fall on Quang Tri, it is no more than the fortunes of war. The history of the bloody conflict in Vietnam is in part a history of the torture, mutilation and murder imposed by terrorists from the North upon peasants of the South. This part of the history seems to affect congressional liberals not at all.

We ought to weep for the dead of war, whoever they are, however they die. And when it comes to dealing with governments we find distasteful, we ought in charity to give some account to the taste of others.

In some millennium, all nations will be as democratic as the Eighth Congressional District of New York; meanwhile we ought to work with governments as they are. We ought to tolerate Greek colonels, Spanish generals, African despots, and everyone else. After all, they tolerate us—or most nations do—and that in itself is no easy job.

CONGRESS AND INDOCHINA

Mr. CHURCH. Mr. President, I fervently hope that America's active part in the long and tragic Indochina conflict is coming to an end; I also hope that Congress plays a role in finalizing that end by being a party in advising and consenting to the peace agreement. At the same time, I believe that Congress should prohibit by statute the return of any U.S. Armed Forces, whether by land, air, or sea to hostilities in Indochina, unless Congress authorizes explicitly such a role for our military men.

Tom Wicker, the New York Times outstanding columnist, made a similar suggestion in a recent column. He wrote:

There is no handy device, no quick and easy way to restrict Presidential war powers.

However, Wicker went on:

Once the war—or at least overt American participation in it—is over, Congress will not be in the position of attacking the Commander in Chief in wartime. Then, one useful precedent might be the Cooper-Church amendment of 1970.

Barring the use of Federal funds to reintroduce American ground forces into Cambodia, Laos, and Thailand. Mr. Wicker notes:

This strong amendment was passed and accepted by Mr. Nixon only as part of a Cambodian aid package he desperately wanted, and then only *after* the Cambodian invasion that produced it had been concluded. In similar circumstances, there might be a chance for an equally strong prohibition against using appropriated funds for renewing at least the ground war—possibly the air war, too—in Indochina.

I ask unanimous consent that the Wicker column, entitled "Making War, Not Love," be printed in the RECORD.

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

MAKING WAR, NOT LOVE

(By Tom Wicker)

WASHINGTON, January 15.—President Nixon's order for the Christmas carpet-bombing of Hanoi and Haiphong was perhaps the most imperial military decision in American history, although its purpose was diplomatic. It was not taken during a declared war, or in a domestic emergency such as Lincoln had to deal with, or in general consultation with Congress and the United Nations, as was Harry Truman's decision to defend South Korea, or even with the dubious authorization of the Tonkin Gulf Resolution upon which Lyndon Johnson relied. Mr. Nixon's bombing decision apparently was not discussed even with his own Joint Chiefs of Staff.

But it is unlikely that even this horrendous expansion of the so-called "war powers" of the President as Commander in Chief will lead Congress to decisive action to restrict those powers. For the immediate future, Mr. Nixon remains an active Commander in Chief, ordering both military operations and peace negotiations; no Congress is likely to take the risky political step of attacking a President's powers in those circumstances, particularly in view of the new bombing halt.

In the era of nuclear-tipped missiles, moreover, the President must retain the power to act decisively and swiftly in response to threats from abroad. This necessity, plus the President's role as Commander in Chief, makes it most difficult to frame a satisfactory device for restricting his ability to make Presidential war.

The so-called War Powers Act now pending, for example, would require a President who had sent the Marines to the Dominican Republic or the B-52's to Hanoi to report to Congress within thirty days and to ask for its approval. This would give a President thirty days of war-making license not now specified in the Constitution. Worse, it wraps the President in the flag, gives him the initiative as a Commander in Chief who has acted in what he will surely call the national interest, and puts the onus on Congress to declare that he was wrong and ought not to have done it.

Congress will not often be so lion-like—quite the opposite—so the War Powers Act might well become a device for underwriting—not restraining—Presidential acts of war. But Congressional resolutions of policy, another possible device, have almost no teeth; Mr. Nixon, for example, merely shrugs off as not binding on him the Mansfield resolution which declares it national policy that the war in Vietnam should end on a certain date. As for cutting off funds for the war, Mr. Nixon has only to veto any bill that might attempt to do it. After that a two-thirds vote would be required in each house.

The Supreme Court is hardly the answer. If it tried to define Presidential war powers, it would undertake to control the "co-equal" executive branch on the most sensitive questions of national policy. If it actually sought to restrict the Presidency, it might not be able to enforce its decision; or as now constituted, it might even expand the war powers, or confirm Mr. Nixon's view of them. In any case, no Supreme Court is likely to stumble into such a political thicket.

So, as a practical matter, there is no handy device, no quick and easy way to restrict Presidential war powers. But the first necessary step toward that difficult goal surely is an end to the war in Vietnam. While Mr. Nixon is actively functioning as Commander in Chief, while operations proceed, while he can base his actions on the demands of war,

while he can clothe his policy in the "national interest," attacking his powers—even, to some extent, his policies—is too much like aiding the enemy; those who do it are even seen to be the enemy by people who consider their President the righteous leader of a peace-loving but mighty nation.

But once the war—or at least overt American participation in it—is over, Congress will not be in the position of attacking the Commander in Chief in wartime. Then, one useful precedent might be the Cooper-Church amendment of 1970, which prohibits the use of any appropriated funds for committing American "ground combat forces" to Laos, Cambodia or Thailand.

This strong amendment was passed and accepted by Mr. Nixon only as part of a Cambodian aid package he desperately wanted, and then only *after* the Cambodian invasion that produced it had been concluded. In similar circumstances, there might be a chance for an equally strong prohibition against using appropriated funds for renewing at least the ground war—possibly the air war, too—in Indochina.

That would not be the answer to the war powers problem, but it would be a first small step toward what is finally going to be needed—a serious revision in Congress, in the press, in the public they are supposed to serve, of the attitude that in national security affairs, the President knows best.

B'NAI B'RITH—ANOTHER GOOD DEED

Mr. RIBICOFF. Mr. President, I invite attention to a particularly worthwhile activity of the John F. Kennedy Lodge of B'nai B'rith, located in the Washington area. As a sponsor of this lodge, I am proud of the group's annual practice of visiting the geriatric wards of St. Elizabeths Hospital during the Christmas season to distribute gifts and good cheer.

The current president of the lodge, Mace Broide, has informed me that he hopes to enlist other B'nai B'rith lodges in this endeavor next year so that this program can be expanded.

I heartily commend the lodge for this humanitarian effort and wish it well in all of its many endeavors.

I ask unanimous consent that a newspaper account of the most recent hospital visit which appeared in the Washington Star-News, be printed in the RECORD.

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

TWENTY FROM B'NAI B'RITH PLAY SANTA FOR ST. ELIZABETHS PATIENTS

(By Eugene L. Meyer)

"How do you like what they got me into, a nice Jewish boy?" mused Max Paglin, former executive director and general counsel of the Federal Communication Commission, who was yesterday, of all things, a Santa Claus.

At 5-feet-6½ and 125 pounds, he said, "I'll be the littlest Santa Claus."

For the fifth year, Paglin and some 20 fellow members of the John F. Kennedy B'nai B'rith Lodge were at St. Elizabeths, the city's mental hospital, to distribute gifts and good cheer to patients at the William W. Godding Division for women.

They visited four wards, three for geriatric patients, most of them suffering simply from old age, and one open ward for younger patients who come and go at will, many of them to outside jobs. Altogether, Godding has 12 wards with 585 women.

The visitors were led by Dr. Leon Konchegul, clinical director of Godding, and head nurse Nancy Coleman through the dimly lit halls smelling faintly of disinfectant.

In each ward, the patients had Polaroid pictures taken with Santa, which each received along with a gift donated by businessmen.

Other gifts had come from Operation Santa Claus, sponsored by the D.C. Mental Health Association. But the source was irrelevant to the patients.

"Merry Christmas to you," Mavis B. greeted a visitor in a geriatric ward. "How are you? Are you a senator? I like Christmas . . . I don't want to tell my age. It makes me look bad."

Another venerable lady, aged 98, explained, "I've been living here for years . . . All my people are in Baltimore."

The woman, Francis C., said she still owns a house in Northwest Washington, which she visits occasionally. "They say I mustn't live alone. I stay here most of the time. I go home sometimes, and the man next door looks out for me . . ." she said.

Other geriatric patients were less lucid. Some were too senile to respond at all. Paglin greeted one such woman, who was sitting in a wheelchair. "Good morning. How are you? I'm Santa Claus. Here's a present for you. I wish you a Merry Christmas. Bye, bye."

There was no response.

Harold Diamond, an Internal Revenue Service lawyer, carried on a two-way conversation of sorts with another patient named Jessie.

"I have a present for you," he said.

"Why do you have a present for me?" she asked.

"Because it's Christmas," he said.

And she said, "What do you have today? I'm the girl. I'm the girl."

"This one was in better shape last year," Paglin said. "Last year, she carried on a long conversation. This year she's deteriorated." And Diamond, the IRS lawyer, reflected, "You're here two hours, and the rest of the time no one cares about these people.

Head nurse Coleman said that the patients look forward to Santa Claus' visit, now an established tradition at the Godding Division. Sy Messite, who began the program in 1968, says B'nai B'rith hopes to cover all of Godding next year. Mrs. Coleman said that so far the annual event has concentrated on the geriatric wards "because they don't have many relatives or visitors."

"It's a very emotionally wringing experience," Paglin said outside the wards. "You feel like a dish rag that's been wrung out."

Hyman Bookbinder, who is Washington representative of the American Jewish Committee, remarked, "There ought to be a compulsory project making every congressman see this place."

Explanied Dr. Konchegul, "A lot of these ladies should be in nursing homes, but they're awfully expensive. They cannot afford it so they come here."

ADDRESS BY SENATOR WEICKER ON NATION'S SPACE PROGRAM

Mr. GOLDWATER. Mr. President, the distinguished junior Senator from Connecticut (Mr. WEICKER) gave a remarkable speech last week before the Ninth Annual Meeting of the American Institute of Aeronautics and Astronautics on the importance of continuing to look forward in our Nation's space program, of keeping our vision and spirit alive, and not lapsing into a mood of self-satisfaction based on past accomplishments. I know of no more important message that we could place before the American people today.

I ask unanimous consent that this significant statement be printed in the RECORD, and I urge all Senators to read it.

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

SPEECH BY SENATOR LOWELL P. WEICKER, JR. BEFORE THE AMERICAN INSTITUTE OF AERONAUTICS AND ASTRONAUTICS, JANUARY 9, 1973

When the Soviet Union lofted Sputnik into orbit in 1957, Americans reacted with disbelief, admiration and near-paralyzing concern. The United States, so self-assured about its primacy in science, technology and the accomplishment of the impossible, realized in cold shock that the Russians were way ahead of us. It was they who had been the visionaries—the doers. The implications were chilling. Not just in terms of national security but in terms of national spirit. The champ had become fat and flabby.

But that blinking little sphere in space galvanized this nation. It inspired the most intensive national stock-taking in history. We took a new hard look at our national priorities, at our spirit of commitment, at our educational system, at our values. And we reacted. We reacted so vigorously that in ten years, after virtually starting from scratch, we flew our first manned Apollo flight—a 10 orbit mission headed by Capt. Walter Schirra, Jr.

We all agreed that Sputnik had taught us a lesson. Never again would we lapse into such a mood of national self-satisfaction. Yet today, 15 years later, as a dedicated few complete the physical acts ordained by the national commitment of Apollo, the nation is once again out of training and using its energies to master the art of developing "mine-today".

Now America did not become great because each generation lived for itself. We have always believed that a man's reach should exceed his grasp. If we assess our importance in the world community by population we fall short many times over. It is a nation according importance to that which can be achieved by man for man that gives us a strength way beyond our numbers.

The atmosphere of retrenchment, of pulling in horns, of playing it small and safe, seems to be taking over. I am aware of the tremendous pressures for economy; I don't dismiss that problem for a second.

But a country, like a plant or a person, or an institution, must grow or die. In stepping onto the deck of the U.S.S. Ticonderoga after the near-perfect Apollo 17 lunar mission, Captain Eugene Cernan, the mission commander, said just that, and I couldn't agree more.

Yes, I'm concerned over the recently announced White House directed NASA cuts but I'm much more concerned about the leadership of this nation—whether it be presidents, governors, senators, congressmen, state legislators or mayors—playing to our lowest most immediate desires rather than our highest future potential.

Do you know how long it takes to create greatness? Apollo 17 was 15 years in the making and thousands of years in the future will benefit.

Do you know how long it takes to dissipate greatness. Vietnam in 10 years has undone 200 years of building the American image and contributed not one year to the American dream.

I speak of the space program today because that has been my responsibility in the Congress and because the most recent financial cuts affecting the future of this country have been made in that area. But the implications of the cutback and stand-still philosophy go far beyond the space program. I can't accept the image of Uncle Sam perched

on a high bookkeeper's stool, hunched over his ledgers and peering at figures through thick-lensed bifocals, paring and whittling this account and that, while the needs of a nation cry for attention and a people huddle around unchallenged to greater performance.

In spite of how long we know it has taken to make the tremendous advances in medicine, in education, in space, we seem to be unaware of, or indifferent to, the reality of lead time required to accomplish important new landmarks for mankind.

Of all administrations that understand this concept of lead time, certainly it should be a Republican Administration drawing heavily as it does from the business community. And if anyone understands the importance of lead time, and research and development funding, it is the business community, which without such innovation and risk courts deficits and early demise.

When we concentrate only on the immediate, we are failing to plant the seeds of the programs and institutions that should be in place and running for those who come after us. It's human nature to focus on the day's problems but fortunately past American leadership has always left open a spot for solving the unknown and beating the impossible—and with no apparent justification for that moment in time.

It isn't easy to inspire people to assume responsibility for the times ahead but then no one ever said the work of America was easy. Too many politicians have led their people to believe that the job of America is over with, that the job is done. They told them that the job of America is done in housing, they told them that the job of America is done in space, they told them that the job of America is done in educational opportunity. Sorry about that. The truth and the excitement is that the job of America is *never* done.

No matter how narrowly most people respond to their self-interest, history has proved that the American people, fully informed as to the facts and convinced of the need for outreaching of action will respond. It's time that the good not the selfishness of humanity was demagogued. Much of the emphasis of the space program lately has been pointed toward earth's benefits of the program.

Fair enough, in a time of lagging interest, it's proper to remind the public of the tangible benefits that have spun out of the space program.

But let's remember one thing: the space program did not set out to find these specific offshoots. They emerged and were seized on as part of the more difficult, almost impossible effort to get to the moon. And so we can cite such accomplishments as the Communications satellites, and the spatial weather-forecasting satellites, indisputably great boons to mankind. But remember, we came upon them on our way to the stars—not by grubbing around in the ledgerbooks.

To get back specifically to the space program, remember this is the fourth go-around on the space budget. Back in 1972, NASA prepared its budget. It was reviewed by the Office of Management & Budget. It went through authorization hearings and appropriation hearings, and then was reviewed and voted on by the Congress. It is after all this attention, and after substantial cuts ensued, that the new edict to withhold spending comes.

NASA says it will make every effort to "continue the essential elements for a balanced and productive space and aeronautics program within tight fiscal terms." I think it's time NASA stopped having words put in their mouth by some four year political hacks in OMB and told people how politics has traded the American scientific future for a "don't disturb sign" on the national door.

Here are a few of the effects:

Responding to the Presidential mandate, NASA has announced the Space Shuttle project will be slowed down. Originally targeted for March, 1978, it will probably be delayed by at least a year.

In space science, work on the High Energy Astronomy Laboratory (HEAO) project is being suspended for the time being.

NASA will phase out its work on communications satellites. I remind you that it was NASA that developed the communications satellite, now such an integral element in worldwide communications, after other government agency and private industry experts had said it couldn't be done.

NASA will discontinue work on nuclear propulsion and will also curtail work on nuclear power research.

The agency is cancelling work on the Quiet Propulsive Lift Short Takeoff and Landing research aircraft (QUESTOL). This involves a vehicle that would be able to take off and land in a very short space and would introduce quiet engines—a vehicle urgently needed for short hop, inter-city transport. And whether the quiet airplane engine would result from this project, it will one day have to come from some source, and because of the research costs involved, it surely will have to come out of another pocket of Uncle Sam.

Some 20% of the money withheld—some call it impounded—effects supporting research and technology across the board. In making these reductions, NASA was compelled to retain those projects which are expected to pay off in the near term future and to make its reductions among those with longer term expectations.

It will take a little time to see what impact the budget curtailment has on the overall spirit and thrust of the space agency.

Earthlings have derived something of immense value quite beyond the satisfaction of making historic advances in science and walking on the once mysterious moon.

Through the space enterprise, man has been able to see from afar the earth he lives on. He has seen with his own eyes the size and contour of his vulnerable little habitat. He's seen the little blue ball and learned that we are one people, occupants of but one dot in the universe. More than any parliament or potentate, these pictures should induce men the world over to regard each other as brothers on a common planet. How do you reckon a revelation like that in terms of price tags? The New Yorker magazine put it this way:

"The view of earth from space turns out to be the right view of earth for this particular moment in our history, when, for the first time, all life on the planet is in jeopardy. Several astronauts have reported that as they looked at the earth they were able by moving a thumb across the line of vision to blot out the earth entirely. From space, we can most vividly see the things we must keep in mind on the earth's surface: that the earth is frail, that the earth is beautiful, that the earth is one."

The concept of moving and rather than sitting tight was most beautifully taught in the Parable of the Talents. In Matthew 25, it is written:

"For the kingdom of heaven is as a man travelling into a far country, who called his own servants, and delivered unto them his goods.

"And unto one he gave five talents, to another two, and to another, one; to every man according to his several abilities; and straightway took his journey.

"Then he that had received the five talents went and traded with the same, and made *them* other five talents.

"And likewise he that *had* received two, he also gained other two.

"But he that had received one went and digged in the earth, and hid his lord's money.

"After a long time the lord of those servants cometh, and reckoneth with them.

"And so he that had received five talents came and brought other five talents, saying, Lord, thou deliveredst unto me five talents: Behold, I have gained beside them five talents more.

"His lord said unto him, Well done, thou good and faithful servant; thou hast been faithful over a few things, I will make thee ruler over many things: enter thou into the joy of thy lord.

"He also that had received two talents came and said, Lord, thou deliveredst unto me two talents: Behold, I have gained two other talents beside them.

"His lord said unto him, Well done, good and faithful servant; thou hast been faithful over a few things, I will make thee ruler over many things: enter thou into the joy of thy lord.

"When it came the turn of the servant who had received one talent, and buried it, he told the lord, 'And I was afraid, and went and hid thy talent in the earth: Lo, there thou hast that is thine.

"The lord, sorely vexed ordered the servant to give that one talent to one who had ten talents, saying, 'For unto every one that hath shall be given, and he shall have abundance; but from him that hath not shall be taken away even that which he hath.'"

And that is essentially the text of my message today.

This is not the time for timidity of spirit or action. It might gain us comfort in our time, but just as surely it would assure distress for our children in their's.

If leadership has gone soft let the American people say loudly they haven't. That is the Sputnik of our time.

NATIONAL WATER COMMISSION REPORT: A THREAT TO IDAHO

Mr. CHURCH. Mr. President, since its publication late last year, the report of the National Water Commission has caused growing concern in Idaho, for its recommendations directly threaten the growth and development of the State.

Recently, the South Idaho Press in Burley summed up the situation in an editorial:

Idaho water interests on all levels must intervene to oppose the recommendations of the National Water Commission which seeks an end to federal irrigation construction. Not only does the commission recommend withdrawal of Federal participation in irrigation projects, but that new irrigation projects be abandoned as a national policy until the year 2000.

Furthermore, the Commission report appears to move in the direction of recommending transfers of water from Idaho and the Northwest to California and the Southwest. That is intolerable from Idaho's point of view, and a move that I will strongly oppose.

Mr. President, I ask unanimous consent that the editorial from the South Idaho Press be printed in the RECORD.

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

WATER USERS MUST REACT

Idaho water interests on all levels must intervene to oppose the recommendations of the National Water Commission which seeks an end to federal irrigation construction. Not only does the commission recommend withdrawal of federal participation in irrigation project but that new irrigation projects be abandoned as a national policy until the year 2000.

While the 1,122 page report, four years in the making, has been greeted by stunned awe in most quarters, the first reaction in

Idaho was that the bulky report could not be properly reviewed in the 60 to 90 day period stipulated by its authors before Congressional consideration begins. The Idaho Water Resources Board in session in Boise last week issued a plea that the study and consideration period be extended to July, 1973. The commission also asked that public hearings on the report be held over extensive national areas with detailed explanation being provided in all instances. The first such public hearing is scheduled for Spokane, Wash., on Jan. 8.

The report among other more pertinent recommendations urges full charge to water users for water services, realistic interest rates in calculating cost of future projects, elimination of hidden subsidies in all federal water projects, reorganization of federal water management with a review board to judge the value of project proposals, de-authorization of projects authorized more than 10 years ago and not yet constructed, relegation of such agencies as the Bureau of Reclamation and Corps of Army Engineers to management roles of existing projects, and planning roles respectively for each.

The impact of the national study has little or no affect on some states where water use and management does not totally control and precipitate economic activity. To a water state such as Idaho and many other western states, the report could sound the death knell for its future growth. To recommend to Idaho that no more irrigation be developed until the year 2000 would be like telling Texas to cease drilling for oil and abandon all new developments. Whether the Congress will heed the recommendations of the study is pure conjecture at this point. If the recommendations are ever carried out, they could be outright discriminatory in many instances and particularly for Idaho and other irrigation-based states. To tell us not to irrigate more lands is almost like telling us not to breathe any more and just about as ridiculous.

It will be remembered that the National Water Commission originated as a result of the debate on water use. It came out of the 1968 discussions on the proposed water developments in the Colorado River basin projects. Also involved in these debates were the efforts of the Southwest to appropriate Northwest surplus waters and particularly Idaho's affluent Snake with its tremendous replenishment powers. So, it is apparent that Idaho and the West are deeply involved in the findings and recommendations of this voluminous study. And the 1968 moratorium passed by Congress to defer appropriation studies of Snake River waters at the same time are directly related. Can Idaho abandon irrigation expansion and still retain its water resources? This vital and important question is not covered in the NWC report but it must be answered if full effect will ever be given to the findings themselves.

OBSTACLES TO PEACE IN VIETNAM

Mr. MATHIAS. Mr. President, on Sunday, January 7, 1973, the Washington Star-News published an editorial entitled "Vietnam Peace: Is It Now Finally at Hand?" which offers a realistic assessment of the obstacles to peace which still exist in Indochina. I ask unanimous consent that the editorial be printed in the RECORD.

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

VIETNAM PEACE: IS IT NOW FINALLY AT HAND?

Henry Kissinger and North Vietnam's Le Duc Tho will meet secretly tomorrow in Paris, and all the world awaits the outcome of their discussions. It is no exaggeration to say that the fate of nations, of generations yet unborn, hangs in the balance. We—and the North Vietnamese—are at a turning point. There is, must be, a momentum for peace. And yet, as French President Georges Pompidou observed last week, there is no "U.S. desire to make a deal at any price."

Nor do we think the United States will or should make peace at any price. It is desperately important that the North Vietnamese understand this. For if they do not, the war will go on.

The carpet-bombing of Hanoi and Haiphong by B52s we believe to have been a tragic mistake. Should the talks fail—and we have to be prepared for the possibility that they may—then we would oppose the resumption of this sort of warfare. But Hanoi should realize that failure to reach an accord in Paris necessarily will mean the continuation of air and naval strikes south of the 20th parallel, in South Vietnam, Laos and Cambodia.

Nor should the North Vietnamese be misled by the mischievous intervention into the negotiating process of the Democratic caucuses in the House of Representatives and the Senate.

The House Democrats voted 154–75 on Tuesday to cut off all funds for U.S. combat operations in Indochina as soon as American prisoners are returned and arrangements are made for the safe withdrawal of U.S. forces. Senate Democrats voted 36–12 for a similar resolution Thursday. Senate Majority Leader Mike Mansfield has indicated his intention of introducing legislation in the upper house to cut off federal funds for the war if it is not ended by inauguration day, January 20.

In a truly incredible statement, Senate Foreign Relations Committee Chairman J. William Fulbright said the other day that his committee does "not wish to do anything to prejudice" the Kissinger-Tho negotiations but would act "to bring the war to a close" if a settlement is not reached by January 20.

If that statement and the action by the two Democratic caucuses do not "prejudice" the negotiations, it's difficult to see what would. Having read that statement, what would you do if you were a member of the Hanoi politburo perhaps not too familiar with the intricacies of American politics? You would simply spin out the Paris talks until the 20th and wait for Congress to impose an end to the war on your own terms.

So it is important for Hanoi to realize that the resolutions of the Democratic caucuses have no binding effect; that a combination of Republican and Southern Democratic congressmen could still defeat such a rider to any appropriation bill; that if it passed Mr. Nixon could veto it and, even if his veto were overridden, funds have already been appropriated for the fiscal year ending June 30. In short, the only way there can be a speedy and just end to American participation in the Southeast Asian conflict is for both sides to negotiate in good faith and in the spirit of compromise.

In a New Year's speech, South Vietnam's president, Nguyen Van Thieu, said:

"Like Germany and Korea, Vietnam is divided into two regions. The military demarcation line between the two states is also the border between two different social regimes, two ideologies and two different worlds."

Although this in our view is not an inaccurate statement, we wonder if it is one over which it is worth prolonging American participation in the war. For this notion, reflected in Kissinger's December 16 remark that the U.S. wants some "indirect reference" to a commitment by both Vietnams "to live in peace," is one major point which appears to be troubling Hanoi.

The 1954 Geneva accords (which neither the U.S. nor South Vietnam signed) regarded the regimes in both North and South as provisional, with unity to come after national elections. Those elections have never been held and, given the truth of Thieu's statement and the bitter history of the last 19 years, are likely never to be held. The sovereignty of the Saigon regime, like that of Hanoi, rests finally on its ability to maintain itself in power through a combination of political skill and military strength.

Kissinger has made it clear that Saigon has no veto over any settlement which may be reached between Hanoi and Washington, which is as it should be. But the North Vietnamese should understand that, while we are ready to end our own participation in the war, we are not ready to hand them on a diplomatic platter what they have been unable to achieve by force of arms: a Communist regime in South Vietnam.

Neither Hanoi nor Washington has been making euphoric noises recently about the chances of a quick and positive end to tomorrow's talks between Kissinger and Tho. Nobody is talking any more about peace being at hand. And given the skill and duplicity of the North Vietnamese negotiators, perhaps that is as well. Indeed, Pompidou, who has been in touch with both sides throughout the whole business, said the other day that "real, precise difficulties which will be hard to overcome" lie ahead in the talks.

We understand President Nixon's desire to attain a settlement which will bring real peace to the people of Indochina. We understand also the reluctance of the leaders of North Vietnam to sign any document which would sacrifice what they regard as the legitimate aspirations of the Vietnamese people, a cause for which they have fought so hard for more than two decades. And we understand the determination of the people of South Vietnam to maintain their own sovereignty and independence.

Not every problem will yield to reason, and this may be one of those which will not. Successful negotiation of delicate political problems must presume a certain amount of common ground, of agreement on basic issues and fundamental tenets. When this is lacking, it may be the better part of wisdom to grasp the attainable and let tomorrow take care of what is unattainable.

For this reason, we would urge that, if an acceptable and honorable political settlement appears impossible, both parties abandon the search and secure what *is* in their power to achieve: the end, now and forever, of U.S. air and naval attacks against North Vietnam and the withdrawal of the remaining U.S. forces in South Vietnam in return for repatriation of the American prisoners of war.

A simple agreement such as this would not be open to misinterpretation by either side or by the world. It would meet the minimum needs and desires of both the North Vietnamese and the American people.

It would not establish the inviolability of the Demilitarized Zone. It would not compel the withdrawal of North Vietnamese troops from South Vietnamese soil or establish their legality there. It would not address itself to the legitimacy of the regimes in either Saigon or Hanoi. It would neither ensure the survival of the Thieu regime nor guarantee its overthrow. It would dishonor neither the United States nor North Vietnam.

It would say, simply, that the American role in the war was over. It would leave the determination of their own futures to the Vietnamese, Cambodian and Laotian peoples. Each side would be left to place that interpretation it wished on what has transpired these past ten years and more in Indochina. In the end, the historians will decide who was right and who was wrong. They always do.

A TRIBUTE TO FATHER WILLIAM McINNES

Mr. RIBICOFF. Mr. President, last week I had the honor of participating in a testimonial dinner for the outgoing

president of Fairfield University, the Reverend William C. McInnes, S.J. The accolades were many—and well-deserved. His work on behalf of higher education, on behalf of the community, and his key role in many worthy causes were all extolled. But to my mind the most eloquent expression of gratitude, and the truest measure of Father McInnes' character, was provided by the Most Reverned Walter W. Curtis, S.T.D., bishop of Bridgeport.

The bishop provided insights into Father McInnes' many contributions to Fairfield University and all the other worthy causes he championed. Bishop Curtis' tribute was an unusually moving one, presented with both wit and deep feeling.

I should like to share these remarks with as many others as possible, therefore, I ask unanimous consent that the text of Bishop Curtis' speech be printed in the RECORD.

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

ADDRESS HONORING FATHER MCINNES, S.J., BY THE MOST REVEREND WALTER W. CURTIS, S.T.D., BISHOP OF BRIDGEPORT, JANUARY 13, 1973

Eight and a half years ago a man came to this higher education ground of Bridgeport and Fairfield. He was properly Bostonian but might pass for a Bridgeport south-ender. His bag carried the gown of the university teacher and the cassock of the clergyman. Fr. William C. McInnes, S.J. had arrived to be the sixth president of Fairfield University.

Cassock and gown, presumably both fresh from the cleaners, now are folded again, neatly stacked in a bag destined for San Francisco University. The priest and the university president will leave our town and State for the challenge and the beauty of the city of Saint Francis in the west. Richer for the years of his presence, poorer now in his departure, we shall not get Fr. McInnes out of our system quite as casually as purchasing a one way plane ticket to the west coast. Having taken him to our hearts, we do not want him out of our system. Let his influence remain for he was good for us. We gather to salute, as he leaves us, one who was good for us as a gownman, good for us as a townman, good for us as a clergyman.

THE GOWNMAN

As gownman, Fr. McInnes has been good for higher education in the entire state of Connecticut but more especially among ourselves.

Obviously he has been good for Fairfield University. Previous presidents firmly established the university and achieved for it scholastic recognition and accreditation. With a less dynamic new president, Fairfield University might have become small and stodgy, a fixture in our area but one easily disregarded.

Its sixth president saw to it that Fairfield University took a great leap forward in campus structures and in enrollment and established itself as a feature of life in eastern Fairfield County. It is Monday morning quarterbacking, of course, but it seems to me that Fairfield University needed exactly the kind of president that President McInnes turned out to be: forward looking, action oriented with the ability to establish and to attain goals. Since '64, his university's undergraduate enrollment doubled while its graduate students, also probably twice in number, more than doubled the influence of Fairfield University on professions and careers.

Old grads, and Fairfield University is beginning to have them, who may not have visited the campus in several years would be startled by its new appearance, its campus center, Nyselius Library, Bannow Science Center and its dorms almost springing up as quickly as the trees, indicate that things have been happening under the sixth President.

Fr. McInnes has been good as well for the other institutions of higher learning in this higher education ground of our country, through his visibility in the community and the impact he made he helped give to all of higher education a presence and a good press. By attracting to his own campus many groups and by attaching individuals to Fairfield University in one or another of its university organizations, he helped to make all campuses attractive places to be and work with educational institutions a desirable privilege.

Thus it is fitting that this testimonial dinner of farewell be sponsored by the presidents of Bridgeport Engineering Institute, Housatonic Community College, Sacred Heart University and the University of Bridgeport. Fr. McInnes has been good for all these institutions as well as for Fairfield University.

EDUCATIONAL CHALLENGES OF THE SIXTIES

The sixties, of course, were years of challenge to all institutions of higher learning. If cozy lines had ever separated gownmen from the real world of people and problems, the sixties ended that blissful state. Whether as was true in some cases people and problems burst in on the University calm and broke down the walls of separation, or as was true in others, the university itself opened wide its gates to allow free two way traffic between the gown and the town, the reality was that in this decade universities became involved, to use a greatly overused word.

Two major influences were at work in the lives of men and these could not but have their impact on the campus.

HUMAN DIGNITY

First, there was the awareness among minorities and especially among black persons that their human dignity was not as adequately provided for as that of the majority groups. Education helps bring about self-awareness and as men become more conscious of their dignity and their calling, they become involved more directly in those currents of thought and action that directly influence their lives. Our developed technology, our scientific progress, our advancement in social communication combine both to offer men more leisure and to challenge them to attain their inheritance of intellectual and spiritual culture.

Incredible though it may be to some, human self awareness is still a growing thing. Historically, minority groups in many countries have not been treated with properly human dignity. The sixties brought to a head demands that all human beings be allowed to grow in dignity and to be treated according to their full human worth. When expectations of acceptance and of progress became too acute to defer to another generation for the solution of immediate problems, contemporary urban life and its peoples claimed the headlines in communication media and at times saw battlements manned in enforcement of rights and the seeking of privileges. It would be too facile a judgment to attribute the conflicts of the last ten years to one group of people or to one kind of problem only. In fact, it is not only an American issue. Self awareness of individual worth and dignity has brightened the lives of all the world's deprived even though this has resulted in conflict at times with those who act as though underprivilege is a foreordained status for some of us.

The university as a guardian of individual freedom and right, and subject to the intellectual duty to support human relationships built upon justice could not stand only on the fringes of this movement. There may have been only a few small groups who went as far as open activism but the causes for which these few were active often received favorable hearing by the total university students who saw the correctness of many of the complaints and who tolerated even excesses in the awareness that there had been excesses previously from other directions that had never been protested and confident too that excess would not be the permanent condition of the campus.

Fairfield University was among the colleges that opened out arms and channeled wisdom and determination to life beyond the campus boundary lines. It speaks well of the leadership of Fr. McInnes that with only a minimum of mild and occasional campus upset, he could forthrightly help students both to understand the nature of the problems being faced and the need for a reasoned approach to their solution. As its graduates of the last eight years make their way to positions of influence and responsibility, we shall see, I believe, a continued demonstration of the effectiveness of the intelligent leadership given Fairfield University in those days by its president, although at the time some of those graduates themselves may have been of a different mind.

WAR AND PEACE

Viet Nam and the war notably unsettled the lives of students on the campus as of men and women everywhere. Historians are best able to judge the causes and the justice of war and perhaps to note a time when the balance of events made continued war the unworthy alternative. During wartime, partisans lack the impartiality and the facts to make judgment easy. Campuses were divided as also were towns and homes on the issue of getting out or staying in. Some found it easy to make pronouncements of immorality others were not able to do so. Televised coverage of massed rallies for peace and withdrawal from Viet Nam might have given to some the impression that all college students stood alike in their thinking on this difficult matter. University presidents knew that this was not so. For the most part, the campus allowed itself to be an area for open discussion and debate but the university took no official stand.

It is not any easier for a religiously oriented school than for others to make such judgments. Were Fairfield University a school for professedly Pacifists, its president might easily have issued statements commiting the school to the cause of Pacifism. In its historic understanding of war and peace, Catholic teaching has not learned how to make clear judgments on war although it has preferred to opt for peace. The Second Vatican Council held during these very years, could not find agreement upon the judgment that all war is always wrong although it came very close to saying this is the light of the terrible weapons of destruction available to large nations in this century.

In any event, debates upon the justice or the immorality of the Vietnam war occupied the campus of Fairfield University but found no final solution for unanimous agreement. These were not easy days, and since the issue of peace is not yet settled, they may still not be easy days for the President of any institution of higher learning. From his rocking chair, many, many years in the future, Fr. McInnes may look back and wonder how better he might have handled so unhappy a situation as that of war. From this closeup view, I suspect most every college president would say that he saw no other path to follow. As one who himself served in the military forces of the United States and

who suffered in the uncertainties of these last war years, you can be sure that Father McInnes will lead his new university to a re-examination of the problem of world peace and toward building a foundation for lasting harmony among Nations of the world.

All told, Fr. McInnes, as a gownman you have been good for us.

TOWNMAN

Fr. McInnes is a man of letters—in fact 25 of them. To start with there is the ABCD in Bridgeport. Then for almost all the other letters of the alphabet you can find an organization that he belongs to as a member or officer. Thus "E" stands for environment and he is a member of the board of directors of the center for study of environment and man in Hartford; "H" is for hospital and he is a member of the Connecticut Hospital and Educational Facilities Authority in Hartford; "L" is for library—the Pequot Library has him as a member of the executive committee; "M" is for museum and he is a member of the board of directors of the museum of art, science and industry in Bridgeport; "P" is for Peoples Savings Bank of which he is a member of the board of trustees; "S" is for symphony and he is a member of the board of directors of the Bridgeport Symphony; "U" is for United Cerebral Palsy Association in Fairfield County, Inc. where he served as first vice-president.

As the letters are diverse, the interests they represent are equally diverse. They spell out for us the breadth of mind and of heart that San Francisco University is about to acquire.

The gown has always had an impact on the town. Each of the institutions sponsoring this event might be called gown institutions in town situations. Necessarily the administration of such schools becomes involved in town events for educational institutions have much to offer to the civic and political order.

Fr. McInnes has a notable talent for bringing the gown to the town. It is hard to name an area of concern in the social or political arena that has not heard the voice and profited from the ideas of this university president. His was not only the way of words but, to further mangle a cliche, he put his action where his ideas were. Typically it was not enough to discuss the need for development in a community; he was willing to accept a leadership role as the chairman of the board of directors for the Action for Bridgeport Community Development, Inc.

As his membership on the boards of so many organizations indicates, he gave both his name and himself to town interests, cultural, economic, political and ecumenical.

MAN OF IDEAS

Not that Fairfield University's president was merely a man of action. He was a man of many ideas as well. A chronicle of the number of events or meetings at which he has spoken might itself be an adequate subject for a master's dissertation.

At each of these—and I judge this from the many occasions when I have heard Fr. McInnes speak—he had not merely superficial words but challenging ideas to present. By probing the meaning of the event or the task of the group, he would add more depth and more challenge for his listeners. I suspect that the budget of Fairfield University, though I speak here with deference to the trustees of that university who are present, did not have a line item for a speech writer as secretary to the president. If San Francisco University has a little more "give" in its budget, I believe the group here present would support me, Fr. McInnes, in suggesting that your talks, seemingly casually given with the aid of a brief note or outline, be recorded so that your ideas may be presented in more developed and permanent form. I would not belittle you with false flattery as if every statement on every occasion deserved to be preserved for all time. No speaker, no matter how great his staff, ever achieves this. But if quarterbacks are praised for a high completion of forward passes and a batter for even a three out of ten hitting average, your record of successful talks, successful in the challenging idea or penetrating insight presented, warrants this hope that we may look forward to seeing your ideas in print in the years to come.

CLERGYMAN

Fr. McInnes came to us as a Jesuit Priest. One may say of the Jesuits that you either know them or you do not. If you know them, no explanation is needed. If you do not, no explanation is possible. Let me at least try.

In the Roman Catholic Church the Jesuit order, officially entitled the society of Jesus, has an outstanding history. Very many of us look upon the Jesuits as an elite religious group of men. They have had a community sense of dedication and of personal sacrifice which has enabled them to accomplish many things for God's cause that others were not in position to do. Whether brilliant of mind, as many are; whether highly rated professionals, as many also are; the Jesuits as a group have been a credit to our church. As the Bishop of the Diocese of Bridgeport, I have been strengthened by the spiritually strong and intellectually active community of Jesuit Priests and brothers at Fairfield University and preparatory school.

Fr. McInnes is a good Jesuit—and when you have said that, you have said a great deal. His dedication has been single. It has been his cause and not himself that he has forwarded. He had led his brother-Jesuits to a deepening of that good relationship he found present between them and the other clergy of Fairfield County. Beneath the gown of the President, there always was the cassock of the clergyman; the President never forgot that he was a priest. More than once it was the cassock that tempered the gown and often the insight of the gown was passed along by the cassock to the betterment of the lives of others.

Fr. McInnes has been good for the Church in Fairfield County and I refer here not merely to the Roman Catholic Church.

This too is part of our loss.

Fr. McInnes, it is my closing duty in the name of all who are here, and of your countless friends outside this room, to thank you for what you have been to us through these years.

Your university colleagues thank you; as gownman you have been good for us.

Your friends in business, industry and civic service thank you; as townman you have been good for us.

Your friends in all religions thank you; as clergyman you have been good for us.

We all count as a great treasure our friendship with you.

MRS. MATT W. GRAY

Mr. BROCK. Mr. President, I was distressed to learn of the death January 9 of a longtime congressional employee and resident of Tennessee.

Mrs. Matt W. Gray was taken from us after a long illness, but her memory remains fresh and vivid. Dedicated, warm, God-fearing, she was the ideal secretary, the model mother, the faultless wife. I extend my deepest sympathy to her widower, son, and other family and friends, and ask unanimous consent that the following report from the Nashville Tennessean be included at this point.

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

MRS. MATT W. GRAY

Services for Mrs. Matt W. Gray, age 57, 6411 Premier Drive, Nashville, Tennessee, retired secretary to a U.S. Senator and a U.S. Representative were held January 12 at Martin, Tennessee.

James W. Allen, Minister of Brookmeade Church of Christ, officiated. Burial was held at Gardner Cemetery, Martin, Tennessee.

Mrs. Gray died Tuesday, January 9 in Baptist Hospital following an extended illness.

Born in St. Joe, Louisiana she was the former Miss Mattie O'Kelly Walker, daughter of the late J. B. and Mattie O'Kelly Walker. She graduated from high school in Dyersburg, Tennessee.

In 1933 she was married to Joe P. Gray of Martin, Tennessee, a U.S. Army Engineer, who survives, with whom she traveled widely during their married life. They settled in Washington, D.C., in 1946, and Mrs. Gray became secretary for the Arlington, Virginia Church of Christ. In 1958, she was employed as secretary to former U.S. Senator Kenneth B. Keating of New York. In 1959, she became executive secretary to U.S. Representative Richard H. Poff of Virginia. She held this position for six years until her retirement.

She came to Nashville in 1965. She attended Brookmeade Church of Christ, and was a chartered member of Republican Women of Capitol Hill, Washington, D.C.

In addition to her husband, she is survived by a son, Joel P. Gray, Nashville, who is Information Representative for the Governor's Committee on Employment of the Handicapped; two brothers, A. B. Walker, Owensboro, Kentucky and L. D. Walker, Charleston, West Virginia; and a grandaughter, Miss Lisa Gray, Nashville, Tennessee.

THE MULTINATIONAL CORPORATION—A PERCEPTION OF AMERICA

Mr. CHURCH. Mr. President, on Tuesday, January 16, 1973, I delivered an address before the Chicago Council of Foreign Relations entitled "The Multinational Corporation—A Perception of America."

I ask unanimous consent that the text of the address be printed in the RECORD.

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

THE MULTINATIONAL CORPORATION—A PERCEPTION OF AMERICA

In this lecture series you have heard from a number of distinguished Europeans as to how they perceive the United States. You have also heard from William F. Buckley, Jr. as to the way he views the United States. These discussions have covered a broad front. Tonight, I propose to focus on one particular aspect of the American presence abroad which has greatly influenced the way America is perceived.

I refer to the U.S.-owned multinational corporations. These corporations have become increasingly controversial because they are at the center of three great tides of change which are running at the same time but not in the same direction.

INTEGRATION OF THE WORLD ECONOMY

The first great tide is represented by the multinational corporation itself. In the period since World War II, and especially since the late 50's, the magnitude of foreign investment by American-owned corporations has grown in an astonishing manner, outstripped the growth rate of international trade and overall world output. By the end of 1972, according to a Department of Commerce estimate, American corporations will

wind up with nearly $107 billion worth of direct foreign investment on their books and probably double that amount in world sales. As Servan-Schreiber put it in his now famous book, "The American Challenge": "The overseas production of U.S. firms rates next in total magnitude only to the gross national product of the United States and the Soviet Union."

Indeed, the most common definition of the multinational corporation is a reflection of this fact, for, these are firms that not only have production facilities abroad, but consciously view these facilities as parts of a worldwide system for central management and planning purposes. They are invested with unique characteristics: They can expand infinitely, stepping over and building behind the tariff walls of the host nation, assuming and shedding nationalities as they see fit. They are the primary vehicles, for better or worse, for transmitting homogenous cultural tastes and preferences. As one observer in Brazil described it:

People get up in the morning and shave with an American razor blade, brush their teeth with American toothpaste, eat a bowl of American corn flakes, drive to work in an American car to an office cooled by an American air-conditioner and return home at night to their children, who are watching "Batman" on an American television set, drinking an American soft drink.

The wife has seen an American film that afternoon, the son's been to a Boy Scout meeting and the daughter wants a hot dog for dinner. Turn on an American radio and it's Frank Sinatra or the Tijuana Brass.

Previously, razor blades, toothpaste, corn flakes, automobiles, air conditioning, television sets and soft drinks were produced in the United States and exported to countries like Brazil. Now, however, American corporations produce many of these items in the host countries.

The American-owned multinational corporations are, accordingly, a significant unifying factor in the world economy. They are perceived, both at home and abroad, as aggressive, inventive and innovating, and as such, I dare say, they embody truly American characteristics.

NATIONALISM

But precisely because they embody these characteristics, and are at the same time transnational in character, they run counter to, and frequently conflict with, another tide which is running high in the world—the rising tide of nationalism. In the post World War II era, dozens of new nations were born in the developing world; and other older nations are in the process of profound internal change in which nationalism has become a rallying cry. In both the developed and developing world, the well-being of people is the primary responsibility of their respective national governments. The nation-state is the core entity in which the great majority of people find their identity and fix their allegiance and it is likely to remain so for a long time to come. Hence, each government must attend to the needs and respond to the felt concerns of its citizen constituents.

What, then, is the role of the states, of traditional political authority, faced with an economic force which refuses to recognize constraints and frontiers? Relations between national political power and multinational economic power are profoundly ambiguous, rather like an erratic love and hate affair. The states need the multinational enterprises because they stimulate local business activity, create jobs and bring in tax revenues. At the same time, the states dislike this anonymous force which, true only to its own aspirations, remains outside their control. Governments want to protect their own national interests against decisions taken elsewhere that can affect the everyday life, the economic climate and even the social stability of their countries.

Early in 1971, Henry Ford II, prince of a multi-national industrial domain, stepped out of 10 Downing Street after lunching with his friend Prime Minister Edward Heath, pointed his finger at Britain and threatened: "Behave yourselves or we will go elsewhere." Nothing could have symbolized more effectively the contest between the emerging might of the multinational corporation and the seeming weakness of the national state.

We can see this contest developing in areas as diverse as South America, the European Economic Community and our own country.

South American countries have been notable for their economic dependence upon a single commodity in earning their way in world markets. In Chile, copper exports provide over 80% of the country's export earnings and a similarly large percentage of the fiscal revenues of the government. In Bolivia, it is tin which provides the mainstay of the economy and in Venezuela it is petroleum. Even in countries with a more diversified export base, such as Argentina, Brazil and Columbia, the fate of a single product, beef in Argentina, coffee in Brazil, and Columbia, still, to a significant degree, controls whether the country has a good or a bad year. Traditionally, foreign companies, primarily American-owned, have been the ones that provided the capital, management, technology and marketing skills which enabled these raw materials to be lifted out of the ground and converted into the everyday products with which we are all so familiar.

The South American countries, however, are no longer content with this condition. In the past 25 years, particularly accelerated in the past decade, they have been going through a profound internal upheaval. Development has become the all-consuming goal in Latin America as well as in other nations in the developing world which captures the imagination and unites otherwise conflicting segments of their society: national entrepreneurs, labor union leaders, students, military officers and churchmen. There has thus emerged a broad consensus in those countries that they must control those sectors of the economy, primarily natural resources, which are the key to their national development. And this determination has, in certain instances, led to conflicts with American-owned companies and the United States Government.

It is not my purpose here to discuss the merits of these disputes. Rather, it is, with a view to the future, to emphasize the need to review past policies in light of the new realities which I have sketched above. The United States, for example, in future years, is likely to be a minerals and fuels deficit country. It will want to have access on a fair and equitable basis to the rich, natural resources of this region. American companies, I am convinced, must devise new modes of doing business abroad in the developing world which ameliorate rather than exacerbate conflicts. We should explore the possibility, as some authorities have proposed, of disaggregating the package of capital, management and technology, so that ownership remains in national hands but marketing and technology are provided on a contract basis by the multinational corporations. If we are to proceed along these lines, or some variation of it, which the Japanese appear to have successfully done, we must then ask whether there is a need for the United States Government to guarantee investments of U.S.-owned multinational corporations; or, does such a guarantee program, instead, inhibit the development of innovative ways of doing business or adapting to the changed circumstances in the developing world.

In Europe the focus is equally acute with respect to a different industrial sector: the high technology area of computers, electronics, and chemicals. The Europeans fear that if control of these sectors is left to American owned multinational corporations, basic management decisions with respect to technological advances will remain outside of their control. The former U.S. Ambassador to the European Economic Community in a recent issue of *Fortune* Magazine has characterized the choice facing the community in the following terms:

The E.C. is weighing two broad choices. The first at heart is discriminatory. It would involve, for example, "Buy European" government-procurement restrictions, or subsidies available only to European-owned companies, along with new inducements to encourage creation of larger and more aggressive purely European firms. Supporters of this French-led policy—and they are many and influential—see it as a way to hurl back "the American challenge." The second policy, favored by the Common Market Commission, consciously eschews restrictions against foreign companies, relying instead on measures that would stimulate European firms to greater efficiency, make them more competitive, and encourage them to market their wares throughout the enlarged Community.

The existence of the American-owned multinational corporations may thus be forcing an accelerated definition of a European personality.

This emphasis upon regional and national identity is not a phenomenon that is peculiar to foreigners. It is clear that we are not immune from the nationalistic reaction so evident in others. Ironically while the European and South American countries fear an American takeover, in America there is a fear that American companies will take leave, transferring capital and jobs. We have failed to deal with critical domestic problems and it should not be surprising that in failing to cope with our domestic ills, important segments of our society see in our external economic involvement a threat to their interests.

Important elements of the American labor movement, for example, fear that multinational corporations export jobs and technology that would otherwise provide employment to American workers. This fear is itself compounded by the poor performance of the United States with respect to achieving a basic objective of U.S. policy, incorporated into American law in the immediate postwar years, the achievement of full employment. According to computations of the Bureau of Labor Statistics which adjust the published rates of other countries to make them comparable to the United States, United States performance in this area was worse than any other major industrialized country of the non-Communist world; for the period 1959 through 1970, the unemployment rate in this country averaged 2.4 times as high as the weighted average rate of six of our major trading partners: Japan, Britain, France, Sweden, West Germany and Italy.

As one high union official put it, "persistently high unemployment obviously intensifies workers' fear that, if they should be displaced by imports or would lose export sales, they would have great difficulty finding new jobs and end up in jobs far inferior to those they have." The concrete manifestation of this fear is protectionist import and restrictive tax measures incorporated in the Burke-Hartke legislation designed to discourage U.S. corporate investment abroad. I do not propose here to argue the merits or demerits of this legislation. I merely note it as symptomatic of the fear on the part of a major segment of American society that they will be the victims of an integrated world economy. This fear must be addressed in a realistic and concrete way by a responsible national political leadership. It is not enough to characterize these fears, as some have done, as those of a benighted, troglodyte

sector of American society. Yet we wait, apparently in vain, for corporate leadership to suggest alternatives which avoid the evils of self defeating protectionism and at the same time assure full and satisfying employment of our human resources at home. If the way isn't found to keep the home fires burning, barriers will be raised to the flight of capital and protectionism will prevail.

What we are witnessing, then, is a process in which the global corporation, transcending the reach of any single nation-state, has come to symbolize a threat to the nation's ability to control its own destiny. Because most of these corporations are U.S.-owned, they have come to be perceived by others as the preeminent symbol of American world dominance. Ironically, within the United States, they are, at the same time, increasingly viewed as undermining American economic well-being. The multinational corporation may have set in motion a "counter-revolution" in which individual countries or groups of countries are asserting a determination to affirm their national identity by formulating "nationalist" policies. Whether it is a developing country that now demands control of its own natural resources, its minerals and oil, the EEC countries, fearful of falling behind in the technological race for industrial supremacy, real or imagined, or the United States, itself, seemingly unable to solve a chronic problem of unemployment, each is reacting, in increasingly nationalist terms, to the transnational character of the multinational corporation.

DÉTENTE

But if the issues posed by the emergence of the multi-national corporation as an important factor on the world scene are becoming acute within the non-Communist world, they are equally important in redefining our relationship with the Communist world.

I can remember, in July of 1971, when I had occasion in the company of David Rockefeller, General Gavin and Ambassador Yost, to interview Premier Kosygin at the Kremlin, how skeptical he was about the prospects of increasing trade between our two countries. The Russians were prepared to seriously discuss this subject, he said, but he doubted that the Americans were ready. Cold War politics, he felt, had left a legacy that no American government would soon surmount or disregard. But President Nixon has now visited both the Soviet Union and the People's Republic of China. According to Servan-Schreiber, "Soviet Russia is the new American frontier, ready for massive development by United States enterprise and anxious to cooperate in this great endeavor." The United States has consummated the biggest wheat deal in its history with the Soviet Union; it has discussed with the Russians the investment of billions of dollars of American capital for the development of Siberian gas fields which would permit the eventual export of liquefied gas to the United States in enormous amounts; we have even heard that this enterprise, and others, may be financed in part by floating Russian bonds in Western capital markets; United States firms have opened up discussions with state-owned entities in Communist Poland looking toward the possible formation of joint ventures in which the profits would be divided proportionately according to ownership; and the door has been opened to the People's Republic of China.

The economic opening to the East, however, raises a number of important issues which we shall have to resolve: we will have to strike a balance between the transfer of technology and security considerations; we must rethink and reexamine policies that were devised during the Cold War. Since World War II, the United States has encouraged private investment abroad as an instrument of development, whose ostensible purpose was to thwart and contain Communism. Important tax incentives and insurance guarantees were offered to companies which would invest abroad. I think it is time to question the relevance of these programs in light of the changed circumstances which are likely to prevail in the decade of the 70's and beyond. In the forthcoming inquiry which I shall head, the Senate Foreign Relations Committee plans to study the role of the multinational corporation and its relationship to American foreign policy. Hopefully, we shall stake out guidelines which will help us to avoid a self-defeating retreat into narrow protectionism, while, at the same time, guaranteeing ourselves an economy of full production and employment.

Eight centuries ago a conflict between the temporal might of the state and the spiritual power of the church was epitomized in the struggles between Henry Plantagenet II, prince of another multinational domain, England, France and Aquitaine, and his friend, Thomas Becket, Archbishop of Canterbury. In England, this conflict ended with murder in the cathedral. In the institution of the republic, we found a mechanism for resolving the nascent contest between church and state, enabling both to flourish. Our challenge is to do as well in finding the course of reconciliation between the national interests and the legitimate interests of the emerging multinational corporations in the United States.

LITTLE CIGARS

Mr. MOSS. Mr. President, there has been much publicity of late concerning certain legislation which I intend to introduce to eliminate the broadcast advertising of little cigar products. Apparently, little cigar smoke is being blown through a loophole in the Public Health Cigarette Smoking Act which the Congress enacted in 1970.

A particularly interesting comment was prepared by the editor and publisher of a North Carolina newspaper. I ask unanimous consent that the poem by Wallace Carroll, editor and publisher of the Journal and Sentinel, be printed in the RECORD.

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

JUST STICK TO GUNSMOKE

(By Wallace Carroll)

Sen. Frank E. Moss of Utah says he will introduce legislation to ban television advertising of Winchester little cigars.—News item.

Oh, Senator Moss is dreadfully cross,
He's strapped on his gun and mounted his hoss,
For he's going to deliver the land of the free
From those little cigars that they plug on teevee.
Inhalation threatens the nation—
Ring up a quorum, pass legislation.
An absolute ban an absolute "must" is,
Flag down the train and get the Chief Justice.
Bully the networks, just be impartial—
Let's impeach that Thomas R. Marshall.*
Worse than all drugs, even worse than VD
Are those little cigars that they plug on teevee.
Oh, Senator Moss he is leading a posse;
What is he after—Martini and Rossi?
Haig and Haig or Beefeater Gin?
Gay liberation, original sin?
Don't be a fool, it is something far worse,
As everyone knows it's a national curse—
Worse than those dames who take Haley's M.O.
Every night of the week on the Chancellor show;
Worse than the creep who is keeping his wife
Just for rubbing his back every day of his life;
Worse than the mom who takes care of herself
With a slug of the iron she keeps on the shelf;
Worse than the glutton who ate the whole thing,
Worse than the people whose dentures won't cling;
Worse than the joes who take pills for arthritis,
Worse than the schmoes who tout ills like colitis;
Yea, worse than the woes no beholder can flee
Are those little cigars that they plug on teevee.

* Vice President of the United States (1913–21) who said "What this country needs is a good five-cent cigar."

RULES OF COMMITTEE ON AGRICULTURE AND FORESTRY

Mr. TALMADGE. Mr. President, section 133B of the Legislative Reorganization Act of 1946, as added to by section 130(a) of the Legislative Reorganization Act of 1970, requires the rules of each committee to be published in the CONGRESSIONAL RECORD not later than March 1 of each year. Accordingly, I ask unanimous consent that the rules of the Committee on Agriculture and Forestry be printed in the RECORD.

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

RULES OF THE COMMITTEE ON AGRICULTURE AND FORESTRY

1. Regular meetings shall be held on the first and third Wednesday of each month when Congress is in session.

2. Voting by proxy authorized in writing for specific bills or subjects shall be allowed whenever a majority of the Committee is actually present.[1]

3. Five members shall constitute a quorum for the purpose of transacting committee business: Provided, That one member shall constitute a quorum for the purpose of receiving sworn testimony.[1]

ADDRESS BY JOHN H. SHAFFER AT WRIGHT BROTHERS MEMORIAL DINNER

Mr. COTTON. Mr. President, the United States has one of the strongest economies and the highest standard of living of any nation in the world. The lifestyle of our people is the most emulated and the most sought after. Ingredients of the American recipe for leadership of the world community are many. But, the staples of its success have been a devotion to the principles of free enterprise, technological innovation, and the mobility of its people, their goods and their products. Because of these, in no other nation has transportation developed as quickly, as broadly, and as completely, as it has in the United States;

[1] For further restrictions with respect to proxies and quorums in the reporting of measures and recommendations, see section 133(d) of the Legislative Reorganization Act of 1946.

nor has any form of travel so touched the lives of people everywhere as has the airplane.

But the U.S. transportation system, especially its subsystems—air, road, water, and rail—previously evolved as a gigantic tangle of largely unrelated enterprises. Today, however, there is a national purpose and plan to coordinate and to integrate to an optimum degree the various modes. And nowhere in Government is this effort more effectively and efficiently carried out than in the Federal Aviation Administration, promoter of aviation commerce, regulator and guardian of the U.S. airways.

December 17, 1972, marked the 69th anniversary of the Wright Brothers' historic first powered flight. The occasion was celebrated by the 1,600 members and guests of the Aero Club of Washington—a chapter of the National Aeronautic Association—with the presentation to John H. Shaffer, Administrator of the FAA, of our national aviation community's most coveted civilian award—the Wright Memorial Trophy.

In the key role as Administrator during one of the most dynamic periods in aviation history, Jack Shaffer has been in the forefront of many innovative efforts to broaden and strengthen the competitive stance of U.S. commercial and general aviation in world markets. He has spearheaded Federal Aviation efforts in the drive to develop pollutant free and quiet engine techology; and, he has insisted upon, successfully so, the upgrading requisites for aircraft maintenance and pilot training.

For these efforts, the trophy selection committee of the National Aeronautic Association in citing Shaffer's work said the award was made—

In recognition of his outstanding leadership of the worldwide operations of the Federal Aviation Administration which has greatly enhanced all aspects of U.S. aviation to the benefit and safety of the general public and of all who fly.

Indeed, as President Nixon said in a letter to Mr. Shaffer in regard to this accolade:

As the first Administrator of FAA to receive this prized recognition, you bring great credit, not just on yourself, but on my Administration. Your effective leadership has contributed to major advances in modernizing our aviation system, in improving safety and in promoting commerce. You have upheld for American Aviation the highest standards of excellence and helped win for it the respect of men and women throughout the world.

Jack Shaffer is a great and good friend of mine. And I take this opportunity to join with the aviation community and all of the general public who are so dependent on this Nation's aviation industry in saluting him for his dedicated service to America. Our country owes a debt of gratitude to men like him who do so much to promote the best interests of the Nation.

If ever there has been a man dedicated to the cause of aviation it is Jack Shaffer. His remarks to the Aero Club in accepting the Wright Trophy should prove to be of interest to all my colleagues in this Congress and to the American public. Therefore, I ask unanimous consent that the text of Mr. John Shaffer's address of December 15, 1972, to the Aero Club of Washington be printed in the RECORD.

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

REMARKS BY JOHN H. SHAFFER

I am greatly honored by this signal award, a tribute which I share with the 52,000 dedicated people in FAA whose superb efforts have made this possible. I thank them and I thank you.

The high honor you have bestowed upon me tonight is as flattering as the occasion almost four years ago when I was invited to join the President and serve my country again.

As I listened to those kind things which have been said about me earlier this evening, I took the opportunity to reflect on the wisdom of the decision to re-enter public life. I apparently didn't fully realize at that time that I'd be trading the relative serenity of private enterprise for one of the hot seats in this town. Or that I would be working much harder for less. But with a great sense of satisfaction, none the less.

When I was transitioning (like little Eva on the ice) no one knew, or if they did they didn't bother to warn me that we would soon be up to our hips in law enforcement and security. Nor was I alerted to the fact that the already "restless" controllers were getting more impatient and restless with each passing day. And there was nothing in the job description addressing the imaginary fears of gullible constituents who obviously believe everything that's printed; as a result some of the mail received has more blast than a better bomb.

But it has been an enlightening experience; I've learned how to live with perceived noise decibel groups and even those impatient consumer advocates who think in terms of "instant" solutions to everything.

Oddly, about the time we came aboard every expert's crystal ball suddenly got cloudy. Not a single forecaster in the place predicted the adverse impact that a transitioning economy might have on air transportation.

Let me shift gears for a moment or more appropriately adjust the power setting to a lighter tone for the next subject. My technical training and previous experiences didn't quite prepare me with some new information I will now share with you. Did you know that our commercial SST would leave a trail of wanton destruction all across the face of the Earth? Or that it would cause skin cancer, dislodge glaciers, change the climate, stop cows from producing milk, and make mother minks eat their offspring? Or that the high altitudes would sterilize the pilots and passengers? And conversely, that sonic booms would contribute to the population explosion by keeping people awake all night?

How preposterous! All the pilots I know who fly over 60,000 feet, including a few astronauts who have been to the moon and back, are pretty fertile fellows—judging from the size of their families. Besides who needs noise to inspire parenthood?

According to a Washington columnist whose name escapes me, I'm one of, if not the most traveled men in government. For some obscure reason the fact that I'm frequently "in the system" doing one of the things the job requires and something I've done for 30 years draws its share of attention. On the other hand, the fact my heavy schedule takes me away from home and family rarely rates even a casual mention.

Looking back with all modesty, I can count a number of significant aeronautical milestones we passed during my tour. But I hasten to add that these achievements were the result of the initiative, innovation and teamwork of many talented people in both government and industry. They are in the ranks of the airlines, the professional pilots, the general aviation community, the manufacturers, the military, the Congress, the FAA and the other federal agencies, the airport operators, the aircraft owners—including or rather especially the banks and insurance companies—and among all the users of the national airspace system. Many are in this room tonight.

Sincerely, ladies and gentlemen, I commend your diligence and perseverance in seeking solutions to the complex and difficult problems that continue to impede aviation progress. And if I may say so, I think that together, working in the mutual interest and for the common good, we have accomplished much in this span of four short years.

I am convinced we have a hammerlock on hijacking, thanks to our joint countermeasures. The skies are becoming cleaner and quieter and the airport a better neighbor—all the result of advances in technology and techniques. We are also making enormous strides in automating FAA's multiple services developing facilities, improving flight safety, enhancing aviation careers, truly providing equal opportunity through programs of substance not "tokenism" and we're implementing the concept of a total transportation system.

We are still training more fliers, building more planes, moving more traffic, carrying more payload and investing more capital in all elements of aviation than any other nation in the world. And all of this is happening because of your skills, your energies, your resources and, most importantly, your abiding faith in the future of aviation in all its forms.

Recently I observed to a group of young people that America's fabulous economic and technological power was increasingly turning toward peaceful pursuits; that we were beginning to marshal our forces to conquer hunger, poverty, disease and ignorance at home and abroad; that we were forming a higher partnership with nature, learning how to improve the quality of our environment, not just salvage it.

We are building a new America and this is good, for more than half the men and women of our nation have been born since World War II. Interestingly, many of these young men and women have never ridden a railroad train, an ocean liner or even a cross-country bus. But a great many of them have traveled by air at least once.

The fact is, ladies and gentlemen, we are fast becoming an air oriented society. And whether aviation's detractors and doubters like it or not, we are just in the leading edge of the vast and magnificent real air age in which transportation values are increasingly measured in time not distance—chronography as opposed to geography. Because of aviation an era of social, economic and cultural well-being such as the world has never known lies before us.

So, it is a time for technological renaissance, not curfew. I have no quarrel with the environmentalist and the ecologist. None of us in government or industry do. We all have the same goals. We all want smog free cities and unpolluted rivers, clean air and quiet skies.

But I would remind us all that nothing permanently good will come from holding science and technology at bay; they are the handmaidens of our social, cultural and economic progress. Harnessed to our incomparable free enterprise system, the two have made this nation the most knowledgeable as well as the most affluent, while keeping America the home of the free.

I am of the persuasion therefore, that those who complain about technology and its dis-

benefits would be on firmer ground if they concerned themselves with devising ways for exploiting science and technology, rather than illogically seeking, by self-deception, the means to stifle either.

As we live it day by day, history in the making seems uncommonly slow, but in retrospect, the time lapse is disturbingly ephemeral. Air travel is a case in point. Commercial aircraft transport speeds, during the first 40 years of flight, edged upward at the rate of about six miles per hour per year. During the following 20 years (half the time span), speeds more than doubled. And in the ten years since (half the time span again), with new generation supersonic aircraft such as Concorde, speeds have tripled.

If history remains precedent, and I'm confident it tracks coherently, the prologue just recited suggests that during the next quarter century air transport speeds will increase by a factor of four—to some 6,000 miles per hour, or Washington to Paris in a little over 30 minutes. And if such travel speeds were available today, the extra time allotted a Henry Kissinger in Paris, for direct political—or social—negotiations, alone is priceless.

Flight time from New York, or Dallas, or from Los Angeles to most any world capital, will require little more than one hour. The aircraft of tomorrow, hydrogen-powered, hypersonic transports and/or nuclear-powered cargo carriers capable of flying in these speed regimes, are already under study. And, parenthetically I might add, such passenger transports with essentially unlimited range and order-of-magnitude increase in efficiency approach the panacea for the environmentalist, the airline operator and the public users alike.

Aviation has realigned the roles and missions of our military services, drastically altered the order of battle. Moreover, the vistas for business and industry are no longer cramped by the constraints of distance. Men, machines and materials are now moved safely and swiftly to routinely meet market demands anywhere on earth. The corporate aircraft component of our general aviation fleet is increasingly becoming the backbone of business communications. Air transportation also provides vital and irreplaceable relief to remote areas stricken by natural disaster and other emergencies. But one of the airplane's most outstanding contributions, and perhaps the least heralded, is the personal and physical sense of freedom it affords.

Our cities are no longer the only focal point for business, culture and entertainment. Air transportation has radically increased the individual's opportunity to choose *where to live*—and just as importantly—*how* to live. It was John Galsworthy who once said, "If you do not think of the future, you cannot have one."

In our vigorous development of ways and means to get people and goods from where they are to where they need to be, not many cities in America have focused sufficient attention on their community air transport needs in the years ahead. Significant improvements in airway facilities, air traffic management, landing systems and terminal areas require a leadtime of at least seven years from preliminary design to fully operational status. Even modest expansion of existing airports, including land acquisition, environmental impact studies, highway easements and construction, sometimes take five to ten years from conceptual planning to commissioning. All-new airport construction programs often require 15 years or more from concept to completion.

Considering the fact we conservatively project that scheduled carrier traffic will reach 800 million passengers in the decade ahead—four times the number carried this year—it's already later than most people think.

We should remind ourselves that although we stand on the threshold of a generation of peace, we face a different battle—a struggle for economic security characterized by increasingly fierce competition for international markets. In the world marketing arena, there are unmistakable signs that the favorable balance of trade contributed by the aerospace industry component over the years—a unique asset and one that probably will not be replaced by any other industry—is slowly eroding. This situation must be reversed.

Despite our bright and expanding economic future, I can't recall a time when this nation has had a more negative attitude toward technological innovation and progress. I find it both curious and distressing that on the one hand there is public impatience with certain deficiencies in aviation, yet on the other there is an unwillingness to support programs and projects designed to overcome those shortcomings.

The flying machine is an integral part of the national transportation system. But it must interface with other systems to achieve a truly intermodal transportation balance. One national challenge then is to develop a formula for efficiently and effectively interconnecting the air mode with the surface in a manner which will produce the greatest public benefit.

And I'm confident we will. For if the proponents of aerospace have learned anything during the past 69 years, it's the simple fact that the only thing permanent in this industry is change.

Technology has contributed immeasurably in making our nation great. And I am absolutely convinced that technology can cure *any* environmental ill at a price we can afford. The real question left for resolution lies in the quid pro quo of national decision and policy.

We must all share the responsibility of determining that the malcontent, the demagogue and the misinformed do not deprive our country of its heritage in the air. America's strength, domestically and internationally, depends in large measure upon the aerospace industry of the United States and the viability and pervasiveness of air transportation.

I am always moved by affairs that bring so many good friends and associates together, such as this one we are attending tonight. (It also gives some of us a chance to do a little hangar flying.) All too often we forget the accomplishments of the past. And we are so embroiled in today's problems that we fail to see the promise of tomorrow. But if we are to have a future, we must plan for it now. Ralph Waldo Emerson said it aptly: "It is impossible to shove out to sea without first standing on the shore."

I have great pride in the FAA organization and a personal satisfaction in its record of performance. And I'm sincerely confident that the agency, which I consider the finest operating agency in all of government, will meet the demands for more of its kind of services in the exciting days ahead.

Truly the best is yet to come. Again, my sincere thanks to all of you for honoring me with the Wright Brothers Memorial Trophy. You have made this the second greatest night of my life.

SURFACE MINING BILL

Mr. MOSS. Mr. President, I have joined with the chairman of the Committee on Interior and Insular Affairs in putting before this body a surface mining bill. I have done so because I pledged that I would do my utmost, as chairman of the Subcommittee on Minerals, Materials, and Fuels, to see that such a bill was passed early in the 93d Congress.

As the chairman has indicated, the bill is a working draft. Indeed, before I left the Interior Committee I raised certain constitutional questions, such as:

First. Does the Federal Government have the authority to, in effect, create zoning requirements for privately owned lands in each of the States, as well as the public domain lands over which the Government has both legislative and proprietary powers?

Second. If a landowner is prohibited from mining by restrictions imposed in the proposed surface mining bills, is he entitled to compensation for the value of the mining property in an inverse condemnation suit?

Third. Can a State impose surface mining protection regulations that affect Federal lands generally; that is, unpatented mining claims and lands encumbered by mineral leases?

Fourth. Does a mining claimant have the right to the full use of his property as long as there is no clear demonstration of interference with right of adjoining landowners or water users?

In my view these and other questions must be resolved before a final decision is made on this legislation.

There are additional refinements necessary in the sections dealing with a definition of reclamation, prohibition of mineral development, the State-Federal relationship, enforcement, and so forth.

I would urge the chairman to hold early and extensive hearings so that a bill can be passed within 90 to 100 days. The intensification of coal development demands it. This winter's cold and the shortage of oil will force a turn to coal development, and appropriate safeguards are essential.

The fundamental structure of the bill is patterned on the bill which the subcommittee drafted during the last session. Many of the amendments which I offered at that time have been incorporated in the bill introduced today. I urge action on this matter at the earliest possible date.

DR. MERLIN DuVAL'S AAMC SPEECH

Mr. KENNEDY. Mr. President, last November the former Assistant Secretary for Health and Scientific Affairs, Dr. Merlin K. DuVal, delivered a superb speech outlining his views of "What Is at Stake in Health Policy." The theme of the speech was that academic health centers may have to surrender part of their traditional independence in order to accept the responsibilities that society has a right to expect from them.

At the time the speech was delivered, Congress had already adjourned. Since that time, Assistant Secretary DuVal has resigned. I take this opportunity to share the full text of Dr. DuVal's valuable remarks with the Senate, and to wish Dr. DuVal the best of luck in his new responsibilities at the University of Arizona.

I ask unanimous consent that Dr. DuVal's remarks be printed in the RECORD.

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

WHAT'S AT STAKE IN HEALTH POLICY

(Presented by Merlin K. DuVal, M.D., before the Annual Meeting of the Association of American Medical Colleges, Miami Beach, Florida, November 3, 1972)

Not until two or three days ago, did it occur to me how presumptuous it was to have selected for my topic this morning "What's at Stake in Health Policy?" To offer such an analysis, one must first ask—what lies ahead? Frankly, I don't know whether anyone knows the answer to that question and, in hindsight, I'm more than a little embarrassed to have implied that I do, because I don't.

Furthermore, I don't have any particular qualifications—beyond those that any of you already have—to consider the question. Like most of you, I have been a medical school faculty member; have worked in the research laboratory; have taken care of patients; and have served on admissions, curriculum and other medical school committees. True, I've had a turn in the dean's office, but I can't call on that for qualifications, either.

Then there's the matter of my sequence on the program. To follow both a Senator and a Congressman—four days before a national election—suggests that I ought to be political. I'll have no trouble resisting that temptation.

What's left, of course, is the challenge of sharing with you, for a few minutes, the view from my particular health-window in Washington. Of course, even that isn't very exclusive. I note, for example, that your program includes two-thirds of those who have occupied the position of Assistant Secretary for Health and Scientific Affairs. One thing I can say, with some confidence, is that as a learning experience this position has no equal. Had the timing been different, it wouldn't be unreasonable to think that Mark Twain had this job in mind when he noted that, "He who swings a cat by the tail, learns things that one can only learn by swinging a cat by the tail."

Several years ago, when I was in surgical training at a hospital in New York City, a senior and very much respected staff member admonished me not to label gastrointestinal hemorrhage as massive simply because the volume of blood loss was large. It was his conviction—many times since confirmed—that the capacity of the body to adapt to blood loss depended as much on the time over which the blood was lost as on its volume. In other words, an organism can't compensate—and will go into shock—if the change in its blood volume proceeds too rapidly.

There are several reasons to believe that all dynamic, living organisms—whether they be biological, social or institutional—may be subject to this same phenomenon; that is, if change occurs too rapidly for them to adapt, their capacity for homeostasis will be overstressed, and they may even lose their capacity to respond. Incidentally, for those of you who have not read it, Toffler's book entitled, "Future Shock" speaks to this question in an especially interesting way.

With this observation as background, then, I am next emboldened to suggest that "What's at Stake in Health Policy" will likely prove to be the resultant of two forces: the rate at which major changes in the health sector have been, and presumably will continue, taking place; and the capacity of our traditional institutions to adapt to those changes.

It is clear that the health-care field today is undergoing tremendous economic, political and technologic change. Although the forces underlying these changes have been at work for nearly a decade, the pace of change is quickening—accelerated by rising expectations and rising costs. The air is heavy with talk of a health care crisis, of national health insurance, of Health Maintenance Organizations, of comprehensive health planning, of consumer participation, of public accountability, and so on.

At the outset, I would acknowledge that such changes do not affect, at least to the same degree, all of the institutions with which this Association is primarily concerned. So too with the corollary—the institutions that make up the AAMC should by no means try to be responsive to all of such changes. But I do suggest that the responses your institutions choose to make, and the choice of changes you choose to respond to, will prove to be critical, even if your jurisdiction is not exclusive.

Any analysis of this issue must start with a sense of perspective. It will be useful, therefore, to touch upon a little of our contemporary history. Ten years ago, the AAMC was a "Dean's Club." Its meetings were more nearly retreats than expositions. The Coggeshall report was still two years away from publication; basic biomedical research was king of our castles; specialization and postgraduate training were continuing their displacement of primary patient care; the university hospital was the distinguishing and exclusive feature of medical education; the span of medical education was still on the increase; medical schools had little or no intercourse with schools of pharmacy and nursing; allied health workers were, for the most part, laboratory technicians.

Your Association was still headquartered in Evanston; it was still conducting teaching institutes; it had little, if any, political impact of its own; vice presidents for health sciences were virtually unknown; (indeed, in some instances, medical school administrative responsibilities were still shared with other responsibilities); and the Association for Academic Health Centers wasn't even at the dream stage.

There is no need to extend this list; I have cited it for purposes of illustration rather than comprehensiveness. Indeed, its purpose was served if it triggered your memories, and served as a reminder that, when one considers the profile of your institutions today it is perfectly apparent that within this ten-year period you have already been subjected to rapid change, and as nearly as anyone can tell, without having sustained any lasting damage.

On the other hand, the fact of your relatively graceful accommodation to the changes implied in that list does not constitute a fair test as regards your future. This is because each of the items I chose to mention was an item that was intrinsic to your own professional lives, and to the vineyards within which you have been toiling. Stated differently, in these instances you enjoyed the right to choose your response, and to be self-determining, in the best sense of the word.

But, there is another list—one that derives from issues that are, in general, extrinsic to your daily concerns. Let me illustrate. Today, many—if not most—of our citizens find that they can no longer meet the cost of a major illness; many can't get access to quality health care; inequities that are traceable both to geographic location and to ethnic, social, cultural and economic background are rampant; unfair discrimination persists; research is insufficiently targeted; there is a deficiency of first-contact physicians; there are too many specialists; one can no longer find his way into, or through, our "non-system;" consumers want to be partners in decision making; there must be increased accountability in the expenditure of funds.

This list, too, is incomplete; but I hardly need to complete it for this audience. You already know its omissions. I would submit that it is this list, and more particularly the institutional responses you choose to the items on it, that represent the real threat to your homeostatic mechanisms. It is possible—maybe even likely, that an incorrect choice of responses to any of the changes that are implied in this list—especially since they are coming so rapidly—could either throw your institutions into shock, or could invite the application of external forces which, no matter how well-intended, might cost you your well-earned professional heritage *of* self-determination.

The privilege of self-determination is one that mature societies have, for years, given over to their institutions and professions. In the case of health, we are allowed the privilege of selecting our students; we design their curricula; monitor their progress; determine who will receive our degree; select those who are subjects for advanced training; and oversee their certification and licensure. Our graduates are free to determine where they will live; who they will serve; how they will limit their practices; with whom they will associate; and what institutions they will join. We are free to conduct our own research; use or discard the products of our investigations; select among our bits of knowledge those that will be forwarded to the next generations, and so forth. To me, this adds up to a lot of freedom—a lot of self-determination.

But I don't have much confidence that this circumstance will long continue to pertain. On the contrary, I suspect that we may see a substantial erosion of professional self-determinism in our health care system of the future. Although physician income will undoubtedly continue to relate to productivity. I would expect increasing regulation of physician fees through national health insurance and other devices. And although physicians may still be allowed to choose their own specialty, and where they want to practice, it seems very likely that national health insurance and educational loans and scholarships will offer incentives, or even disincentives, so powerful as to warp the decision-making process and make some specialties and locations more, or less, attractive than others.

Such programs will have as their objective, of course, the resolution of the problem of getting health services to underserved populations. (Parenthetically, there is a growing feeling among many in this country that, because the public is underwriting the education of health professionals who can later command large incomes, that same public ought to have the right to commandeer, for a time, some of this professional expertise. In this regard, it may be well to recall that the United States today remains one of the few nations in the western hemisphere that does not conscript its physicians for non-military purposes.)

But if these constitute even a small sampling of the restrictions that may lie ahead on professional self-determinism for practicing physicians, they will be only moderate when compared with the controls which could be placed on institutional medicine in view of the climate that surrounds us. Mrs. Anne Somers described this well at a conference held at Michigan State University earlier this year. She said: "Of all the 'communication gaps' in our complex pluralistic society, probably none is greater than that between academic medicine and the general public. Whether the estrangement is any greater than it used to be, or whether it is simply that expectations and demands on both sides have increased so phenomenally, is debatable. What is not debatable is the persistence of a deep-seated mutual distrust, a distrust that could seriously impair both academic medicine and the public health."

As if to illustrate Mrs. Somers' point, consider that the academic health centers have asked for, and received, enormous levels of public support to underwrite the cost of

producing physicians and other health workers. Medical schools have received more than a billion dollars since direct Federal aid to medical education began, a few years ago. There is now reason to believe that the quid pro quo is at hand, and the academic health centers may find that they are increasingly obliged to give up part of their traditional independence and accept those responsibilities which society, in turn, may place upon them. Since it has a big stake in the institutions which produce its doctors, the public is now beginning to ask certain questions about the training process itself, questions which only you can answer.

Why does it take so long to train a doctor?

How much does it cost exclusive of research costs?

Must medical schools build such big research empires in order to train good doctors?

Why do we train so many specialists?

Inasmuch as you are now claiming hundreds of millions of the taxpayers dollars every year, you will undoubtedly be held increasingly accountable for them—academic health centers may be denied the opportunity of continuing to do their own thing without regard to the needs of society. As I am sure you already know, the Government Accounting Office, the watchdog agency for the Congress, has just asked HEW to start obtaining more detailed reporting from you on the way in which you spend public funds. Since you have also asked that Government meet the full cost of sponsored research programs, the GAO has countered by asking us to identify, separately, the break-out between faculty support for research and instruction.

Equally important, the health care system of the future will be increasingly influenced by changing national priorities. Health care is not the only domestic priority in this nation, and it has become increasingly evident that pumping more money into the health care delivery system and its educational processes may not be the only way to improve the level of health in America.

Already, as part of this new consciousness, public policy-makers have begun to ask a new type of question as, for example: Which is more beneficial to our nation—$100,000 spent to operate a coronary care unit in a hospital, or to purchase health insurance for 150 families? Or to teach young mothers in the ghetto about nutrition? Or to buy more research into low-cost housing? Or to develop a high protein vegetable product? Personally, I don't attempt to defend such questions as being the right questions, but they do typify the trade-off process, or cost/benefit thinking, that newly characterizes modern public policy administrators, politicians, and other public servants.

Three weeks ago, members of my top staff and I, together with the heads of our three health agencies, met with officials of the Office of Management and Budget to review the policies that underlay our budget request for fiscal year 1974. One senior OMB official cut right to the heart of the problem of justifying greater health expenditures amidst growing demands for the Federal dollar when he made this statement, and I quote: "You have got to find some way to justify the return the public is getting from the large investment which has been made in health over the recent years by the Federal Government. In this regard, no one else is at such an increasing disadvantage as is health in competing for scarce funds."

In one sense he is right. We know what $10 million will buy in sewage treatment plants. But how well have we presented our case for investing the same amount in a new institute at NIH? We know how much military hardware $1 million will buy for the Defense Department, because we can measure it. But what does the same amount buy when plowed into special project grants for medical schools? We know how much interstate highway, right down to the foot, $64 million in highway funds will buy. But what are we getting for the $64 million we will spend through the National Center for Health Services Research and Development this year? And what about those training grants at NIH (very much under the microscope this very week)? True, we can describe how they help to build centers of excellence which, in turn, develop superb faculty members who will subsequently train superb physicians. But the public is asking why it should put taxpayers dollars into a training program that will train specialists who can move from research into practices anytime they wish and earn $100,000 a year.

Here, another reminder is in order. When one examines, critically, the reduction in morbidity and mortality that has been achieved in the United States; or the reduction in disability that follows major illness or injury, it becomes apparent, that twentieth century medicine is not a big contributor in the gains. It has been suggested, in fact, that beyond a point, the effect of illness-care produces only marginal gains. While it is true that our infant mortality rates have been declining in the recent years, how much of this improvement can be traced to better health care services and how much derives from a better educated people, adequate sewage disposal, clean water, abundance of nutritious foods, and improved purchasing power among those who need prenatal care? Can we attribute reduced infant mortality figures to the number of dollars we pour into medical research?

The public is asking for more primary care physicians. Will the academic health center provide them? The public is looking at the possible advantages of team care. Can your academic health centers produce health manpower who will work together? The public is demanding more effective health planning to avoid costly duplication. Will you be willing to provide the planners?

A little earlier, I stated that your institutions should not try to be responsive to all of the changes that are implied by the current shift in the public mood. But I added that the responses your institutions do choose to make, and the choice of changes you choose to respond to, could be critical. You are now, by your own petition, a national resource. National resources must, of course, be responsive—not universally responsive—but appropriately responsive.

Before concluding, let me add that you, and this Association, have already done well with some of these problems. You have begun to correct your own unstable fiscal support by having achieved new support through first-dollar funding. You have responded with increased enrollments to the mandates of the Physician Augmentation Program and the Comprehensive Health Manpower Training Act of 1971. You have replicated yourselves by over one-third; you have started to change, substantially, your posture toward the professional education of women, and of students from backgrounds characterized by disadvantage. You have tolerated—even welcomed—radical experiments in your educational process. You have shown increased sensitivity to your communities and you have indicated a willingness to accept community and family medicine into your academic sanctuaries. You have declared your support for an increased effort in favor of targeted research and you have begun to acknowledge that your product—the physician—need not be all things to all people. Finally, you have created, with exceptionally skilled central leadership from your President, John Cooper, a proud, competent and effective voice in the construction of public policy.

But if this compliment makes you comfortable, let me add that you are not yet home free. If you have interpreted my message as strident, rather than urgent, you will have misunderstood. If your reaction to change is to mobilize your defenses, you won't win the game.

What we ask, from within Government, is that you display your leadership—not just superb administration. We ask for reasonable consistency between the goals you select for yourself, and those that are being selected by the society that pays your bills. And if change is upon us, we ask that you accommodate—appropriately—but without sacrificing the institutional integrity and stability that are the hallmarks of a free and productive society.

After all, as we say in Washington, you are the only game in town.

FINANCIAL DISCLOSURE LEGISLATION

Mr. MATHIAS. Mr. President, at the request of the Senator from Illinois (Mr. STEVENSON), I ask unanimous consent to have printed in the RECORD a statement by him relating to financial disclosure legislation.

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

STATEMENT OF SENATOR STEVENSON

I am pleased to join my friend and colleague, the Senator from Maryland (Mr. Mathias) in the introduction of legislation requiring full financial disclosure by Members of Congress and Congressional employees earning $22,000 or more.

At no time in recent memory has the need for this legislation been greater than it is today. Public confidence in the Congress has plummeted, as poll after poll has demonstrated. The citizen is becoming more cynical about politics and politicians, believing that they are more likely to do something to him than something for him. More and more Americans view the Congress not as a responsive institution of self-government or an effective check upon Executive power, but as a giant trading block at which favors are dispensed to the wealthy and powerful, in derogation of the public interest.

What then is to be done? The confidence of a concerned, well-informed public will not be won by empty gestures or pious exhortations; it must be earned and it must be deserved.

I can think of no better way to do that than by prompt passage of this bill and related bills to reform campaign financing and give the public more information about lobbying activities.

On the issue of financial disclosure, what is right coincides with what is necessary. Financial disclosure is right because the voter should have full access, consistent with the national security, to information about Congress and its Members. Financial disclosure is necessary because public confidence in the Congress will be regained only when we act in such a way as to convince the public that we have nothing to hide.

I recognize that there are at least two very good reasons why financial disclosure is not now required. First, we value our privacy; second, we fear that disclosure might encourage mudslinging and irresponsible campaigning. Understandable as these concerns are, they must in my judgment now yield to the public's right to know. Moreover, there is every reason to expect that the public will not be taken in by irresponsible efforts to misuse disclosure information.

Last month the Ad Hoc Committee created by Senator Mathias and myself held three days of hearings on strengthening the Congress. The twenty witnesses—including ten Senators and former Senators—expressed di-

vergent opinions on many of the issues we discussed. On the question of financial disclosure, however, there was no disagreement whatever; every witness who addressed the issue called for early passage of full disclosure legislation.

This is the first in a series of bills growing out of the December hearings. In the weeks that follow, Senator Mathias and I plan to build on the work of Committee by introducing other legislation in furtherance of our common objective: strengthening the Congress.

ADMINISTRATION CUTS BACK ON THE SUPPLEMENTAL FOOD PROGRAM

Mr. HUMPHREY. Mr. President, it is exceptionally distressing to learn that the Nixon administration plans to cut back the funding for the supplemental food program under the Child Nutrition Act.

The reports I have received indicate that the Nixon administration has no intention of spending the $20 million appropriation. In fact, I would be surprised if the administration spends even half this amount.

The supplemental food program serves about 156,497 persons nationally. Information I have indicates that about 11.2 percent of the participants will soon be phased out of the program; actual program operations will be cut by about 50 programs.

Mr. President, a recent article on the administration's action and attitude toward the supplemental food program began by stating:

A special feeding program intended to give poor infants better nutrition during their critical early months of life appears to be slowly starving to death.

That is exactly what is happening. By impounding these funds the Nixon administration is literally draining the lifeblood of these programs.

Mr. President, I ask unanimous consent that a listing of various programs scheduled for cutback or phaseout, and an article written by Austin Scott, of the Washington Post, be printed in the RECORD.

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

SUPPLEMENTAL FOOD PROGRAMS SCHEDULED TO CLOSE DOWN

Number of countries/independent cities	Location	Number of participants	Date scheduled to close
49 programs out of 261 nationally:			
1	1. Philadelphia, Pa	1,036 in July 1972	Jan. 12, 1973.
2	2. St. Louis, Mo	8,227 in July 1972	Feb. 1, 1973.
7	3. Northeast Iowa (Alamakee, Bremer, Chickasaw, Clayton, Fayette, Howard, Winneshiek—all rural).	633 in July 1972	Do.
3	4. Jackson, Clay, and Platte Counties, Mo. (including Kansas City, Mo.).	144 in July 1972	Mar. 1, 1973.
36	5. All other Iowa SFP's equals 36 other counties.	7,566 in July 1972	July 1, 1973.
Total		17,606 in July 1972 out of 156,497 nationally or 11.2 percent.	

SUPPLEMENTAL FOOD PROGRAMS CONTINUING BUT FORCED TO DECREASE LEVEL OF SERVICES

Number of countries/independent cities	Location	Number of participants	Date scheduled to close
7 programs out of 261 nationally:			
1	1. Jefferson County, Ark	1,353 in July 1972	Now.
1	2. Sumter County, S.C	830 in July 1972	Now.
2	3. Beaufort-Jasper, S.C	1,638 in July 1972	Now.
1	4. Cook County, Ill	4,544 in July 1972	Now.
1	5. San Francisco, Calif	4,992 in July 1972	Now.
1	6. Marin County, Calif	448 in July 1972	
Total		13,850 participants in July 1971 out of 156,497 nationally.	

[From the Washington Post, Jan. 2, 1973]

POOR-BABY FOOD PLAN IS VIEWED AS STARVING

(By Austin Scott)

A special feeding program intended to give poor infants better nutrition during their critical early months of life appears to be slowly starving to death.

As federal programs go, the Supplemental Feeding Program isn't very big. At last count, it served 157,144 of an estimated two million pregnant and nursing mothers whose low incomes mean high health risks for their children.

That count, taken by the Agriculture Department in October, is down from 164,093 last June, and way down from 202,296 in June of 1971.

Despite pleas from existing programs for more funds, USDA said it turned back to the Federal treasury $1.92 million that was budgeted but not spent to provide food for the program in fiscal 1972.

That figure is termed ludicrously low by a number of anti-hunger congressmen and organizations, who said Congress made $20 million more available, but USDA refused to consider spending it. USDA claims Congress never intended for it to spend that $20 million.

While arguments rage over what the $20 million was intended to do, the Office of Economic Opportunity has been cutting back the amount of money it was spending to transport and store the special foods the program uses.

In the spring of 1971, when about 300 supplemental food programs were operating, OEO's Emergency Food and Medical Service (EFMS) was paying more than half of their administrative costs, a recent study said.

But now, it noted, more than a year later, "the most commonly shared plight of existing supplemental food programs is the loss of EFMS funds for administrative costs."

"There should be money somewhere to help," said Mary Graham, program director of EFMS. "We are reaching the people in the rural areas and they do need it. And they (federal officials) take it away as soon as we start to help them. That's telling us nobody cares."

The Children's Foundation a non-profit anti-hunger organization in Washington, found during a study last month that all programs in Iowa are scheduled to close down during the first half of 1973.

Billie Stultz, who conducted the survey, said Iowa's programs cover 16,545 participants, more than 10 per cent of the national total.

The same problems are forcing a cutback in four Missouri counties serving more than 9,000 recipients; in Marin County, Calif.; in Chicago and elsewhere the survey found.

There is food available, Miss Stultz said, but no money for transportation, storage and administrative costs.

"We're floundering," said Marin County community action planner Gail Theller. "We're looking to private foundations and writing USDA about their picking up the tab . . ."

The Supplemental Feeding Program has been around since 1968. In the spring of that year, the Agriculture Department's iron grillwork gates were closed in the face of Poor People's Campaign demonstrators asking for just such a program, among other things.

Several months later, USDA agreed to supply especially nutritious surplus foods—cereals and fruit juices and corn syrup and milk—if the costs of transportation and storage were paid by someone else.

The agreement was similar to one worked out for USDA's surplus food distribution program, and except for a few experimental projects, the special feeding program was used only in conjunction with the food distribution program. Mothers getting food stamps, a far larger number, were generally not eligible, despite recommendations that they be included.

Although EFMS was paying more than half of the local program administrative costs in 1971, local administrators were forced to seek more money from state and county governments and private groups, as the EFMS budget was cut, and its priorities were changed.

The anti-hunger forces blame the Office of Management and Budget's determination to slash federal expenditures, and talk about hurting mothers and infants for the sake of subsidizing giant corporations like Lockheed Aircraft. But they haven't been able to stop EFMS funds from drying up.

Some local administrators say they're now facing a drying up of state, local and private funds.

"There are many more that we could reach—we have a maximum quota of 8,500—but we're afraid to get mothers into the program and then have to drop them," said Des Moines EFMS director Selma Flisher.

"A lot of the people walk a long way to get the food," she added. "This says 'we need this food.'"

"We don't foresee having to close down,"

said Rubey Johnson of the Sumter County, S.C., program. "It's a matter of robbing Peter to pay Paul, stripping the child care, job training and education programs in order to keep the food program going."

Although in the past month three new communities signed onto the program, the number of people served has been steadily declining.

"We had a lot of those programs going and we tried to stretch (the money) out," said a spokesman for the Kansas City regional office of OEO. "Well now that's gone."

While a lot of it went for surplus food storage and transportation last year, he said, "that is not happening now."

Instead, the Kansas City region earmarked its $626,000 allotment this year primarily for programs to aid the aged.

The money went to state economic opportunity offices on a formula geared to the proportion of poor people—in each state's population.

"They were to work with their state councils on aging," the spokesman said.

The 1970 White House Conference on Food, Nutrition and Health recommended that preschool children should be the first priority in developing nutrition programs, followed by pregnant mothers.

"Evidence at hand is sufficient to document the enhanced risks to mental and physical development from severe malnutrition during the first few years of life," its report said.

"This risk extends into the period of pregnancy if the expectant mother is unable to provide the infant with sufficient nutrients."

U.S. vital statistics "indicate a major shortage of national resources for medical and nutritional support committed to the pregnant woman and the infant," the White House conference report continued.

It then quoted President Nixon as saying "too many mothers and young babies do not receive life-saving care."

Just before the last session of Congress adjourned, Sen. Hubert H. Humphrey (D-Minn.) won passage of a bill providing $20 million for another special feeding program for pregnant and nursing mothers, this one to purchase special vitamin and mineral-enriched foods instead of just extra nutritious surplus foods.

The House-Senate conference committee report on Humphrey's bill said it would set up a pilot program "in a few urban and rural localities" to reach some of Humphreys target of 400,000 children.

While Humphrey repeatedly said his program was intended to supplement the existing program, not replace it, there is some concern that it might make it easier for the existing program to quietly fade away.

"It takes the heat off USDA," said Barbara Bode, president of The Children Foundation, to expand Humphrey's program because it makes them money. Nobody's making money "Commercial business interests will pressure from the other one."

TRIBUTE TO ROBERT L. RICE, OF SALT LAKE CITY

Mr. MOSS. Mr. President, I wish to pay tribute to a distinguished citizen from the State of Utah who is one of our Nation's leaders in the field of physical fitness. Mr. Robert L. Rice, of Salt Lake City, has been an active spokesman for fitness for more than 20 years, and has played a vital role in making Americans aware that physical fitness is an essential aspect of national well-being. Our State is proud that Mr. Rice now serves as a member of the President's Conference on Physical Fitness and Sports.

Mr. Rice is the founder and president of one of the country's most extensive health spa chains. He is also known nationwide as an author and lecturer on the subject of health. Born and raised in Utah, Mr. Rice has remained active in the affairs of his community and his native State. He is known to Utahans as a philanthropist and church leader. He is a member of the Dean's Council at the University of Utah Business School as well as the President's Council at the University. He recently made a generous gift of $1,000,000 to this institution. At a time when our Nation is becoming increasingly aware of the importance of physical fitness, I believe that it is proper that we pay tribute to one of our finest leaders in this area.

U.S. MILITARY SUPPLY SYSTEMS

Mr. McCLELLAN. Mr. President, for more than a year, the Permanent Subcommittee on Investigations, of which I am chairman, has been examining the disposal of surplus and excess war materiel by the armed services and the policies and procedures of the military supply and procurement systems. We have been conducting our inquiry in close cooperation with the Department of Defense. We have investigated carefully certain aspects of the international arms traffic, the policies and procedures which govern the disposal of war materiel declared excess within our military assistance program for our allies, improprieties in the surplus military sales field, and the question of whether the wholesale military supply and procurement systems have developed serious deficiencies and weaknesses in inventory practices and accountability.

We conducted hearings in 1972 which developed evidence that serious problems have occurred within the property disposal system, causing substantial financial losses to the Federal Government. Our hearings, however, also disclosed that corrective actions were swiftly initiated within the Department of Defense. Assistant Secretary of the Army Kenneth BeLieu testified that if improvements in policies and procedures produced an increase of only 1 percent in returns on the original cost of materiel, the Government would benefit annually by additional returns of approximately $50 million in sales of excess and surplus property.

The subcommittee is pleased that significant results of our work with the Defense Department developed quickly, but we found also that our early work in the inquiry disclosed only a portion of a complex and far-reaching case relating to military supply and procurement systems and that there were a number of areas of significant weaknesses that remained to be studied. In keeping with our responsibility to investigate efficiency and economy in the executive branch of the Government, we have continued our inquiry in order to determine how the taxpayers' dollars may best be conserved and augmented through improved procedures.

Mr. President, I wish to report that further significant actions have been taken within the Department of Defense in response to our cooperative effort. I have received a letter from Secretary of Defense Melvin Laird, dated January 15, 1973, a testimonial to the subcommittee's effectiveness in carrying out our duties and responsibilities in relation to conducting investigations of efficiency and economy in the executive branch of the Government.

Secretary Laird states that extensive changes in procedures and regulations for disposal of surplus property already have been made and others have been initiated within the Department of Defense. I quote excerpts from Mr. Laird's letter:

Before I leave office I would like to express my personal appreciation to you and members of your Subcommittee and staff for the significant improvements we have achieved in our supply systems as a direct result of the comprehensive review of the systems in Europe by your Permanent Subcommittee on Investigations . . .

The scope of your Subcommittee's investigation and the actions which DoD undertook as a result thereof were so far-reaching and comprehensive that I could not possibly detail all the specific remedial steps we have taken; however, I would like to provide you a brief outline of the most significant actions we have taken or are taking on the Subcommittee's findings . . .

The outline of the broad and important changes in policies and procedures which the Department of Defense has undertaken as a result of the subcommittee's work are found in Secretary Laird's letter, which I request be printed in the RECORD at the conclusion of my remarks.

Mr. President, on behalf of the subcommittee, I wish to express gratification that our efforts are considered effective and substantial by so distinguished a public official as the Secretary of Defense, but more importantly, in my view, we are pleased to know that our work once again has produced important benefits for the Federal Government and, in turn, for the taxpayer.

I ask unanimous consent to have printed in the RECORD a letter from Secretary of Defense Laird to me, dated January 15, 1973.

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

THE SECRETARY OF DEFENSE,
Washington, D.C., January 15, 1973.

HON. JOHN L. McCLELLAN,
Chairman, Permanent Subcommittee on Investigations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Before I leave office I would like to express my personal appreciation to you and members of your Subcommittee and staff for the significant improvements we have achieved in our supply systems as a direct result of the comprehensive review of the systems in Europe by your Permanent Subcommittee on Investigations. As you will recall, our General Counsel, the Hon-

orable J. Fred Buzhardt and the Under Secretary of the Army, the Honorable Kenneth E. BeLieu testified before your Subcommittee in hearings conducted on July 26, 27 and 28, 1972 on the subject of U.S. Military Supply Systems and the traffic in surplus war materiel. Subsequent to the hearings I was fully briefed on the subject and I requested the Honorable Barry J. Shillito, the Assistant Secretary of the Department of Defense for Installations and Logistics, to review the record of the hearings, and initiate and expedite those actions required to correct the deficiencies in our supply systems and disposal processes disclosed by your Subcommittee.

The scope of your Subcommittee's investigation and the actions which DoD undertook as a result thereof were so far reaching and comprehensive that I could not possibly detail all of the specific remedial steps we have taken; however, I would like to provide you a brief outline of the most significant actions we have taken or are taking on the Subcommittee's findings. I or members of my staff will, of course, be delighted to furnish you additional information on these or any other subjects as you may require, but I believe the following brief review of our major corrective actions will assure you that we have taken aggressive and effective action as a result of your investigation:

a. We have emphasized to the Secretaries of the Military Departments and the Directors of Defense Agencies the necessity for command control, supervision, and surveillance of property disposal and sales operations. Specific subjects and functions which have been emphasized, include command supervision and surveillance; accounting for materiel in-transit between the supply systems and the Property Disposal Offices (PDOs); accounting for, controlling, and assuring the security of materiel in the PDOs; identification, control and demilitarization of Munitions List Items (MLIs); and the investigation of inventory adjustments involving significant dollar values.

b. We have instituted two major reviews of PDOs in the Continental United States. One is by the Assistant Secretary of Defense (Comptroller) who is conducting comprehensive internal audits of five PDOs. The other has been in the form of a series of comprehensive examinations of several PDOs by representatives of the Assistant Secretary of Defense (Installations and Logistics). Since completion of these reviews we have initiated tests in several important areas to determine what changes, if any, should be effected in our current supply, utilization and disposal procedures. The most significant of these are:

(1) A review of our policies and procedures for retention of secondary items, spares and repair parts. This review is primarily focused on maximizing the use of suitable substitutes, retention of onhand stocks for which future demands can be reasonably forecast, retention of insurance-type items, a more careful review of potential inactive items, and the retention of support materiel for items held in contingency reserve or in the hands of friendly foreign countries.

(2) A review of the existing dollar floor for reporting materiel to the Defense Property Disposal Service for screening and utilization by other DoD activities.

c. We are carefully reviewing our policies and procedures concerning the identification and demilitarization of Munitions List Items (MLIs) in an effort to assure that MLIs are identified, controlled and, if required, demilitarized prior to sale. As I am sure you know, the most important factor in this regard is the identification of MLIs. We have not finished this major review but expect to complete it within six months. In the interim, we have:

(1) Emphasized the subject to all Department of Defense activities and have directed that, effective immediately, all items entering PDOs unless otherwise identified will be examined individually by competent technical personnel to assure identification and control of MLIs. Those items identified as MLIs but not requiring demilitarization will be identified and sold under Security Trade Control procedures if appropriate. In this regard, the Assistant Secretary for International Security Affairs is working closely with the Department of State to develop and initiate more effective Security Trade Control policies and procedures.

(2) Directed a temporary modification of our previous policies by expanding the category of "lethal materiel" to include parts, components and accessories directly related thereto which are not commercially available and contribute directly to the lethal nature of the property. All other property which is included in the International Traffic in Arms Regulation will be identified as MLIs and sold under Security Trade Control procedures as appropriate.

d. In addition to the major subjects discussed above, the Military Services have initiated prompt, aggressive and effective action in response to the findings of your investigation. I will not attempt to detail these actions but they include corrective actions with respect to internal organization, personnel, training procedures, surveillance, merchandising and facilities planning.

e. With respect to organization, fragmentation of functions and responsibilities, and other irregularities, deficiencies and conditions which may have had a direct influence on, or perhaps even encouraged improprieties and corrupt practices, the Defense Supply Agency (DSA) was directed some months ago to develop and implement a detailed plan which will provide for the transfer to DSA of all property disposal activities (worldwide) by July 1, 1973. This implementation plan, now in process, provides for the establishment of eight task groups to develop standard procedures for the receipt, processing, reporting, accounting, and transfer or disposal by sale of property determined excess to the needs of DoD activities or DoD supported activities, other Federal Agencies and authorized donees. In addition, when the plan for transfer of all property disposal activities to DSA is completed, we are studying whether and how best to provide from one organization a criminal investigative service to DSA for this, and possibly other associated activities.

I particularly want to commend, and express my appreciation for the efforts of the Chief Counsel of your Subcommittee, Mr. John P. Constandy, whose outstanding ability and dedication have been brought to my attention repeatedly. One of the more important benefits of this investigation has been the enhanced spirit of cooperation between members of the Subcommittee staff and DoD personnel involved. Mr. Constandy has been forthright and open minded, and has impressed responsible DoD personnel at all levels with the vital importance of improving our supply systems and our procedures for surplus property disposal.

I wish to assure the Subcommittee that we are very much concerned about the deficiencies which were revealed during the course of your excellent investigation. We are taking positive corrective actions as rapidly as we can, consistent with sound management practices and personnel resources.

In summation, I would like to again express my appreciation to you and the members of your Subcommittee, and to your fine staff for the outstanding assistance and cooperation that we have received.

Sincerely,

MELVIN LAIRD.

PRICE SUPPORT PROGRAM FOR TOBACCO

Mr. MOSS. Mr. President, I noted the statement of the junior Senator from North Carolina (Mr. HELMS) concerning my efforts to terminate the price support program for tobacco. It is somewhat ironic that the distinguished Senator selected the ninth anniversary of the indictment against tobacco released from the Surgeon General's Advisory Committee on Smoking and Health, as the date for his comments.

I would like to correct the assertion of the distinguished Senator that "This matter has been before the Senate on numerous occasions in the past." The fact is that I continue to reintroduce this legislation, but the Committee on Agriculture and Forestry refuses to hold legislative hearings on the tobacco support program. It is hypocrisy for the Government to continue this program in view of conclusive evidence of health hazards caused by this commodity.

HUMPHREY RELEASES WHAT OMB WILL NOT

Mr. HUMPHREY. Mr. President, it has been approximately 3 months since the Humphrey impoundment information amendment became law, and still there is no official response from the Office of Management and Budget as to when a listing of impounded funds will be made.

I find this "Congress and the American people can wait" attitude contemptuous of law. It certainly does not recommend itself for an administration which claims there is too much "permissiveness" in our society. I am beginning to believe that President Nixon is right—there is "too much permissiveness in our society," beginning with the administration's "own permissiveness" on the impoundment information law.

It is for that reason, Mr. President, I am today placing a list of the fiscal year 1973 funds withheld from the U.S. Department of Agriculture. The totals impounded from the various agriculture division budgets indicate that more than $1.56 billion is being withheld as of January 4, 1973.

Included in these amounts are the $210 million REAP program, cutbacks in the REA loan program, contingencies of more than $150 million in the food stamp program and more than $100 million in withheld funds for rural water and waste disposal projects.

Mr. President, I ask unanimous consent that the list of funds withheld from the Department of Agriculture be printed in the RECORD.

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

U.S. DEPARTMENT OF AGRICULTURE—SUMMARY OF 1973 FUNDS WITHHELD FROM USE

Agency and account	For contingencies and to meet requirements of the appropriation act	Amounts withheld to meet 1973 outlay limitations	Amounts not currently required to carry out budgeted program levels
Office of Secretary		$500,000	
Agricultural Research Service:			
Agricultural Research Service (Annual)		8,048,000	
Agricultural Research Service (No-Year)		1,650,000	$70,000
Animal and Plant Health Inspection Service (Annual)	$2,555,000	2,046,000	
Cooperative State Research Service	2,000,000	1,500,000	
Extension Service	2,000,000	3,000,000	
Statistical Reporting Service		50,000	
Economic Research Service		273,000	
Farmer Cooperative Service		100,000	
Foreign Agricultural Service: Special Foreign Currency Program			2,240,192
Agricultural Stabilization and Conservation Service:			
Rural Environmental Assistance Program		[1] 210,500,000	
Dairy and Beekeeper Indemnity Program			2,500,000
Water Bank Program		[1] 10,000,000	
Commodity Credit Corporation: Administrative Expenses	2,866,000		
Federal Crop Insurance Corporation: Federal Crop Insurance Corporation Fund			36,510,311
Rural Electrification Administration: Loans		[2] 456,028,000	
Farmers Home Administration:			
Agricultural Credit Insurance Fund			28,401,571
Rural Water and Waste Disposal Grants		[3] 108,000,000	
Rural Housing for Domestic Farm Labor		1,250,000	
Mutual and Self-Help Housing			832,130
Emergency Credit Revolving Fund			150,147,000
Self-Help Housing Land Development Fund			852,700
Salaries and Expenses		500,000	
Soil Conservation Services:			
Conservation Operations		$5,000,000	
Resource Conservation and Development		6,000,000	
Watershed Planning		500,000	
Watershed and Flood Prevention Operations		17,412,500	
Great Plains Conservation Program		62,500	
Agricultural Marketing Service:			
Marketing Services		36,000	
Payments to States and Possessions		900,000	
Perishable Agricultural Commodities Act Fund			$10,423
Food and Nutrition Service:			
Food Stamp Program	$158,854,000		
Child Nutrition Programs	2,342,000		
Total, U.S. Department of Agriculture (excluding Forest Service)	170,617,000	833,358,000	221,564,327
Forest Service:			
Forest Protection and Utilization (Annual)		21,720,000	
Forest Protection and Utilization (No-Year)			615,000
Construction and Land Acquisition		12,601,900	
Youth Conservation Corps			1,557,000
Forest Roads and Trails		18,000,000	262,789,000
Expenses, Brush Disposal			18,557,967
Forest Fire Prevention			134,326
Total, U.S. Department of Agriculture	170,617,000	[4] 885,679,900	505,217,620

[1] No additional agreements will be entered into after Dec. 22, 1972. Amounts represent the current estimate of unused authorizations.

[2] Amounts represent unused direct loan authorizations. However, $390,000,000 in electric and $89,000,000 in telephone loans have been authorized as insured or guaranteed loans under the Rural Development Act.

[3] Emergency loan applications will not be accepted after Dec. 27, or 60 days after designation (whichever comes later) in secretarially designated disaster areas and will not be accepted after Jan. 15, or 60 days after designation (whichever comes later) in presidentially designated areas. Additional operating loan funds will be made available to eligible applicants after the application period for emergency loans has expired.

[4] In addition a reduction of $10,000,000 in travel has been prorated to all programs of the Department of Agriculture.

SECRETARY OF DEFENSE ELLIOT RICHARDSON

Mr. MATHIAS. Mr. President, I have followed closely the hearings held by the Committee on Armed Services on the nomination of Elliot Richardson as Secretary of Defense. His nomination by the President and his approval by the Armed Services Committee are most heartening.

The experience he brings to bear on military programs is extensive. He worked on some military questions as assistant to Senator Saltonstall, the distinguished chairman of the Senate Armed Services Committee in the 83d Congress, so he has a perspective of security matters from the legislative point of view. His term of service as Under Secretary of State demonstrated his firm grasp of foreign policy and national security matters. As Secretary of Health, Education, and Welfare, he obtained during the period of his very able leadership, a firsthand understanding of the demands of domestic priorities. It is my expectation that as Secretary of Defense he will better be able to place the questions of domestic and security requirements in proper perspective than perhaps any previous Secretary of Defense.

I note that in his testimony, he repeatedly expressed his willingness to look into all the key questions of national security with an open mind. His predecessor, Secretary Laird, quite properly, following the President's policy, has stated time and time again that our foreign policy and national security policy were in a period of transition. In this regard, Secretary Richardson's expressed willingness to study and hear all points of view on the majority security issues will serve the administration and country well.

Secretary Richardson said that he would do everything possible to assure that the United States has the best trained and best equipped military force in the world. As an important example of what we can expect in the vital area of strategic policy he, in response to questions by Senators BYRD and HUGHES, said that he supported President Nixon's and Dr. Kissinger's often stated approach to strategic negotiations that all relevant factors numbers, megatonnage, technology, deliverable warheads, geography among others, would be considered in any future agreements on nuclear weapons reductions. On practically every question that was addressed to him, he said that he would study the matter with an open mind. We have every reason to expect that Secretary Richardson will assure that our military forces will remain the best and most powerful in the world and that our security policy will contribute to President Nixon's goal of a generation of peace.

I hope that the Senate will act promptly to confirm the appointment of Mr. Richardson as Secretary of Defense.

ENERGY CRISIS AND THE CONSUMER

Mr. MOSS. Mr. President, an article written by the distinguished Senator from Washington (Mr. MAGNUSON) has recently come to my attention. It analyzes the consumer ramifications of the "energy crisis" about to face the Nation.

The article proposes a blueprint for alleviating the Nation's energy difficulties and points out that the "energy crisis" may be exacerbated and used by certain vested interests in an effort to increase greatly consumer prices and to relax environmental controls.

I ask unanimous consent that the article be printed in the RECORD.

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

[From the Seattle Post-Intelligencer, Dec. 31, 1972]

ENERGY CRISIS AND THE CONSUMER

(By Senator WARREN G. MAGNUSON)

Civilization cannot exist without energy. Our security as a nation, the strength of our economy, the opportunity for leisure time and freedom from manual labor all require adequate supplies of energy.

But of late there has been much talk of an energy crisis.

What is the nature of this energy crisis? It is not a shortage of resources. The nation has supplies of coal that are sufficient for hundreds of years. There is enough uranium, although likely to be more expensive in the future, to meet demands for the foreseeable future. The supplies of natural gas and oil appear sufficient until at least the next century if improved recovery and better exploration methods are developed. The nation is not running out of basic resources, but there are problems of a different nature.

First, there are short-term capacity difficulties. Some parts of the nation have experienced electric power brownouts and blackouts because transmission systems were inadequate, equipment failed or new power

plants were not completed on time. The real problem in the electric utility industry is that it is seeking to double its capacity every 10 years or less. This means that in each 10-year period the industry must build anew what it has constructed over its entire past history.

Each successive doubling becomes ever more difficult because each time the task is twice as large as before. The simple fact is that the industry is feeling growing pains. Its mammoth new plants are far more complex and more likely to break down than the old. It appears that technology was inadequately developed prior to commercial introduction and as a result the electric utilities are in a jam today.

Similar short-term capacity problems have arisen with low-sulfur oil and coal and natural gas.

POLLUTION IS AN URGENT PROBLEM

But the nation faces more than short-term capacity problems. A second increasingly urgent problem is pollution. The environmental impact of energy utilization is enormous. Strip mining for coal is devastating large areas of the nation—soon an area greater than Pennsylvania and West Virginia combined will be ruined. Oil shipments over water last year resulted in more than 10,000 oil spills and the situation promises to become worse as we import more oil and commence shipments from Alaska.

Power plants rank with the automobile as the nation's worst polluter. Air pollution from fossil fuel plants caused over $8 billion in health and property damage last year—over $40 for every man, woman and child in the United States. Nuclear plants, while not a source of air pollution, present problems of their own. Normal operation results in release of radioactive materials into the environment.

Many scientists have warned of the inadequacy of procedures for dealing with nuclear plant emergencies. Concern has been voiced about the possibility of illicit diversion of nuclear materials. The most serious problem, however, is the disposal of radioactive waste products which must be isolated from the environment for thousands of years.

As the nation's appetite for energy expands these pollution problems become more critical. There is a limit to how many pollutants the nation's air, water and land can absorb. When this threshhold has been exceeded, as is the case in many of our urban areas, the real quality of life is jeopardized.

In too many areas water is unfit for use or consumption and the air is too filthy to breathe. If current growth continues and pollution is not abated then man is inviting disaster; he will irreversibly upset the delicate balance of nature upon which all life and progress ultimately depend.

There is a third difficulty which aggravates our energy problem. The nation has a structural and institutional bias which causes the consumption of too much energy, too fast and too wastefully. There is no coherent national energy policy.

Too often energy policy is decided on an ad hoc basis in response to one problem after another, without any adequate consideration of the overall picture. Although oil and gas are often discovered together, federal activities effectively place a floor on oil prices while on the other hand the Federal Power Commission places a much lower ceiling on natural gas prices.

On occasion the Federal Power Commission will adopt practices to promote exploration and development for natural gas, while on the other hand leasing policies by the Department of Interior operate to effectively discourage such activities. Government policy, particularly in regulated industries, often operates to discourage efficiency and innovation and instead encourages political manipulation, economic concentration and secrecy.

NATIONAL GOALS HAVE CHANGED

Many energy programs have remained fundamentally unchanged from the beginning of this century. At that time the primary goal was national industrialization and the conquest of the West. Programs were adopted to encourage maximum production of energy to fuel the nation's developing economy. Today national goals are far different. We are attempting to improve the quality of life and protect the environment. Those earlier policies which served the nation so well must now be redirected to meet today's problems.

The price of energy has not generally reflected its true social costs. It did not include the cost of air and water pollution nor the cost of ravaging the land. Energy was underpriced and consequently energy demand was artificially elevated. To compound the problem, rate structures are promotional in character.

The price per unit declines with greater usage. Customers are thus encouraged to use as much as possible. In addition many utilities spend heavily on advertising. Allowing such expenditures to be passed on to customers is absurd when many areas of the nation are experiencing electricity, oil or gas shortages and when increasing energy production means further environmental degradation.

The nation's energy difficulties stem not from a shortage of natural resources, but from short term capacity problems, pollution difficulties and institutional structural problems that have prevented the development of a coherent national energy policy while establishing a climate that promoted wasteful energy consumption.

In remedying the nation's energy difficulties, we must protect the consumer and guard against windfall profits to powerful vested interests. Some have even suggested that the energy crisis to a large extent came out of the public relations offices of the oil and gas companies.

NATIONAL POLICY NEEDED

There is some truth to this charge. There are frequently ominous warnings of disaster unless a given course of action is undertaken. Many recent institutional ads are designed to panic the public into providing additional "incentives": Increasing gas prices, giving special tax benefits, restricting oil imports, ending price regulation and relaxing environmental controls. The American public should not be fooled into rash actions and approval of all proposals propounded by the energy industries.

What should be done to solve the energy problems? Extensive Senate Commerce Committee studies convince me that the following programs should be undertaken:

First we need bold federal leadership in establishing a coherent national energy policy. Sen. Ernest F. Hollings and I have proposed the creation of a Council on Energy Policy.

This council would collect and analyze energy data, coordinate the energy activities of federal agencies and monitor energy impact statements. It would establish national energy policies that would serve our total society. It would formulate guidelines under which existing agencies would be better able to carry out their assigned tasks. Its mandate would cover all of government as well as reflecting the needs and aspirations of all segments of society.

One of the first tasks of the Council on Energy Policy would be the development of capabilities within the federal government to independently gather data regarding energy resources. At the present time such information is too often solely gathered by the industry and presented to the public and the government in summary form.

Such an arrangement is unsatisfactory when it is to the advantage of the industry to show shortages and declining reserves in order to obtain more favorable government regulation or incentives. The public has the right to expect that the government will develop its own information base so that it can adequately protect consumers and effectively anticipate problems before they develop into a crisis.

Second, it is essential that a farsighted, balanced research and development program be immediately undertaken. There is little doubt that a significant number of promising technical options exist for alleviating the shortage of clean energy.

Many of them would provide relief from the energy-environment crisis we face. New priorities would be established in accord with balance consideration of energy, the quality of our environment, our capability to control the technologies we are developing and our attitudes towards the resources that supply our energy needs.

Because of uncertainties of fuel supply and unforseen technological difficulties or social costs associated with new technologies, it is imperative that a U.S. energy Research and Development program be broad based and flexible. No single technology should dominate our efforts lest we become irrevocably committed to technologies which may one day be judged socially unacceptable.

Such a sound R&D program would provide substantial support for the development of clean, synthetic fuels from coal, for controlled thermal nuclear fission, for geothermal and solar power, for fuel cells and other efficient energy converters, for large storage batteries as well as for nuclear fission which has dominated our R&D effort in the past.

Third, we need to develop effective power plant siting procedures so that the necessary electric power can be produced in a way that is compatible with a sound program of environmental protection. There should be a provision for open, long-range planning and public certification of sites so that needed power plants can be built where they harm us the least. Such legislation would insure minimum damage to the environment and timely construction and operation of major power facilities.

We need to streamline natural gas regulation so that adequate supplies of this clean-burning, essentially pollution-free fuel are available to consumers. To encourage vigorous exploration and development, such proposals as streamlining Federal Power Commission regulatory activities creating an insurance mechanism to reduce the financial risks and share the rewards of exploration efforts, changing government leasing practices to encourage participation by smaller independent producers and establishing a government corporation to explore, develop and market natural gas.

A comprehensive range of incentives should be considered to insure that adequate supplies of natural gas at the most reasonable prices are available to American consumers.

It is time to encourage new, flexible regulatory approaches towards solving these problems. Regulatory bodies which largely determine consumer prices for energy should be broadly representative of the consumer interest. Too often in the past there has been a revolving door between the regulated industry and the regulators: this disturbing trend must be brought to a halt.

CONSUMER NEEDS REPRESENTATION

Innovative regulation and government policies can encourage energy conservation which would end wasteful uses of energy that unnecessarily pollute the environment and reduce the true quality of life.

Conservation can be encouraged by developing balanced transportation systems while encouraging better building designs and installation standards, by making beneficial use of waste heat from electric power production and encouraging the structuring of new communities to minimize the need for

commuting, which is becoming ever more costly in terms of money, energy and time.

Energy conservation programs would not call upon anyone to sacrifice the quality of his life. Instead it would be committed to securing for all persons the full amenities of a comfortable and healthy climate in which to live.

But the simple reality is that energy is now wasted on inefficient production methods, inadequate insulation, and virtually non-existent mass transportation which would be more than sufficient to upgrade the true quality of life for all citizens.

DEATH OF J. N. HEISKELL, EDITOR OF ARKANSAS GAZETTE

Mr. FULBRIGHT. Mr. President, J. N. Heiskell, editor of the Arkansas Gazette and one of the most remarkable men in the country, died in Little Rock on December 28 at the age of 100.

Under Mr. Heiskell's leadership, the Gazette became one of the Nation's outstanding newspapers. He served as editor for more than 70 years, and was in his office at the Gazette 5 days a week until October 1971.

Mr. Heiskell observed his 100th birthday on November 2. I was privileged to be one of several hundred friends who attended a reception in his honor on that date.

In addition to his long record of service as editor of the Gazette, Mr. Heiskell was for a brief time a Member of the Senate. Sixty years ago—in 1913—he served for 22 days as a Senator from Arkansas, having been appointed to serve until a successor could be elected to finish the unexpired term of Senator Jeff Davis.

Mr. Heiskell later said:

I am probably the only United States Senator who ever telescoped his maiden oration and farewell address into one speech. Maybe we should have more of that in the Senate.

Following his short stay in Washington, Mr. Heiskell returned to Little Rock where he continued to help build the Gazette into one of our most respected and courageous newspapers.

In 1958, the Gazette won the Pulitzer Prize for public service and executive editor Harry Ashmore won the Pulitzer for editorial writing. That same year, Mr. Heiskell received the Columbia Journalism Award, the distinguished service award of the Syracuse University School of Journalism, and the Elijah Lovejoy Award from Colby College. He was made a fellow of Sigma Delta Chi.

Later awards won by Mr. Heiskell included the University of Missouri Distinguished Service Medal, the John Peter Zenger Freedom of the Press Award from the University of Arizona in 1965, and the Sigma Delta Chi citation for journalistic excellence and editorial integrity.

Mr. Heiskell set forth his journalistic philosophy in accepting the Columbia Award in 1958:

The supreme goal of the responsible head of a newspaper should be to fulfill the obligations of the trust that has been committed to his hands . . . so let me still borrow words from Saint Paul and say for my associates in the Arkansas Gazette and for myself: We will strive to fight a good fight as long as it is granted us to follow our course. And that we may be saved from accusation by conscience and show ourselves worthy of the respect of our fellow men, we will keep the faith.

I think the editorial comments of the Gazette's rival newspaper in Little Rock, the Arkansas Democrat, provide a fitting tribute to Mr. Heiskell:

Unlike some newspaper owners, Mr. Heiskell had no interest in accumulating great wealth and making vulgar displays of it. Another thing that set him apart from many of his peers is that he was not an empire-builder, monopolist bent on controlling communications in this or any other area. No one was prouder than he was of the fact that Little Rock is one of the few cities in America that still have two locally-owned, independent daily and Sunday newspapers.

The Democrat editorial continued:

Last, but maybe most important, he was not a crowd-pleaser. He never hesitated to take the unpopular side when he thought it was the right one.

He was a great humanitarian and a great newspaper editor. He and his newspaper have made a strong imprint on Arkansas and set the standard for the high quality of journalism that has been prevalent in the State.

In addition to his professional attainments, Mr. Heiskell was a man of unusual personal charm. He had a remarkable memory and a lively sense of humor which made him one of the most interesting and entertaining conversationalists that I have ever known. He was a serious student of history in general with a profound and thorough knowledge of the history of Arkansas and the South. I believe that all who knew him well respected his integrity and his devotion to the enlightenment of his fellowman.

Mr. President, I ask unanimous consent that an article about Mr. Heiskell from the Arkansas Gazette of December 29, and an additional editorial from the Arkansas Democrat of December 31 be printed in the RECORD.

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

J. N. HEISKELL DIES AT 100; LED PAPER AS EDITOR 70 YEARS

J. N. Heiskell, aged 100, of 6015 Greenwood Road, editor of the Arkansas Gazette, died Thursday.

Mr. Heiskell was hospitalized Wednesday for the second time in a month because of increasing difficulty in breathing. He had returned to his home December 10 after a week-long hospital stay and had spent Christmas with his family.

He was alert Thursday morning and had asked that the morning edition of the Gazette be read to him. Suddenly, there was a loss of pulse rate, and he died about 12:15 p.m. at St. Vincent Infirmary.

The unofficial cause of death was congrestive heart failure caused by a general degeneration of the circulatory system in advanced age.

Mr. Heiskell had led the Gazette to become one of the most honored newspapers in the United States. In 1958, the Gazette became the first newspaper in history to win two Pulitizer Prizes in the same year.

He had served continuously as editor since June 1902, and was president of the company until January 1970, when he became chairman of the Board. From a struggling, obscure country newspaper, the Gazette rose during those years to a position of honor and respect among the great newspapers of the nation.

On November 2, Mr. Heiskell observed his 100th birthday. He greeted hundreds of persons at a reception at the Country Club of Little Rock and received hundreds of messages of congratulations from acquaintances across the nation and from important figures in government and journalism.

An eight-page special section devoted to Mr. Heiskell and his career was prepared by the Gazette staff as a surprise special tribute and appeared in the Gazette the morning of his birthday.

Survivors are his wife, Mrs. Wilhelmina Mann Heiskell of Little Rock; two daughters, Mrs. George Whitfield Cook of Los Angeles and Mrs. Hugh B. Patterson, Jr., of Little Rock; one sister, Mrs. Powell Smith of Knoxville, Tenn., three grandchildren and one great-grandchild.

Funeral will be at 1:30 p.m. Saturday at Trinity Episcopal Cathedral. Pallbearers will be Dr. Henry G. Hollenberg, James A. Penick, Richard C. Butler, Rabbi Ira Sanders, S. J. Beachamp, Judge Edward F. McFaddin, Dr. Robert Watson and Paul Jackson Pickens.

Honorary pallbearers will be members of the XV Club and the Board of Directors of the Little Rock Public Library.

The family requests that contributions be made to the Little Rock Public Library in lieu of flowers.

HIS PHILOSOPHY WAS WIDELY QUOTED

Mr. Heiskell's journalistic philosophy was well known and widely quoted in newspaper circles. As he expressed it in 1958, "Every newspaper must come to judgment and accounting for the course that forms its image and its character. If it is to be more than a mechanical recorder of news; if it is to be a moral and intellectual institution rather than an industry or a property, it must fulfill the measure of its obligation, even though, in the words of St. Paul, it has to endure affliction. It must have a creed and a mission. It must have dedication. It must fight the good fight. Above all else it must keep the faith."

He believed it was part of his responsibility to have a detailed knowledge of his own newspaper, and he conscientiously gave every issue a thorough reading and critical appraisal.

The editorial page, which he regarded as the "conscience" of the newspaper, was always his special domain, but he showed almost as much interest in all the other departments of the Gazette. Until October 1971, he was in his office five days a week, wrote most of the "editorial paragraphs" and an occasional editorial, often made assignments for news and feature articles and offered frequent suggestions to the staff.

Several generations of Gazette reporters remember him as an inflexible grammarian and a stickler for accurate, detailed reporting. He considered it his duty to call errors to the attention of the writer, and was not often inhibited by the fact that some of those writers were not on his payroll.

Friends marveled at his physical stamina, mental alertness, and sharp wit, remarkable for a man of his age.

WINS COLLEGE MEDALS AS DEBATER, ESSAYIST

John Netherland Heiskell was born November 2, 1872, at Rogersville, Tenn., in the home of his maternal grandfather, John Netherland. He grew up at Memphis, where his parents, Judge Carrick White and Eliza Ayre Netherland Heiskell, had established their home shortly after the Civil War.

Even as a boy, he was studious and spent most of his time reading and writing. His first journalistic venture came when he was about 8 years old, when he put out a newspaper containing news items about his large family.

Most of his early education was in a private academy conducted by James C. Jones and at the Sewall School, both at Memphis. At 16, he won a gold medal at the Sewall School for an essay on Shakespeare.

He entered the University of Tennessee at Knoxville in 1890. At the suggestion of one of his professors, he doubled up on his courses and completed his college work in three years. He studied Latin, Greek, French, English, math and physics, the usual classical courses of the period. He distinguished himself as a debater, orator and essayist and received gold medals for each.

The day after his graduation in 1893, he went to work as a reporter for the Knoxville Tribune. He soon became the Tribune's city editor, a title then given to the reporter assigned to local news. He also handled the small telegraph report and read proof on the editorial matter. Later he was city editor of the Knoxville Sentinel, and then went to the Memphis Commercial Appeal, where he soon became the city editor.

He left the Commercial Appeal to work for The Associated Press, first in the Chicago office for one year, and then in the Louisville office for two years. At Louisville, his job was the equivalent of the modern bureau chief.

SIXTEEN HOURS OF WORK ON FIRST DAY AT GAZETTE

In June 1902, he, his father, his brother Fred Heiskell, and Fred W. Allsopp purchased the Arkansas Gazette from W. B. Worthen and others. Mr. Heiskell was named editor of the paper and president of the company, and went to work immediately.

On his first day at the Gazette, he worked all day on news and editorials, and then took over the telegraph desk until midnight, a total of 16 hours.

Fred Heiskell was then private secretary to Gen. Luke E. Wright, governor general of the Philippines, and did not arrive at Little Rock to assume his duties as managing editor of the Gazette until January 1903. Allsopp had been with the Gazette since 1883, and continued in the positions he had held for several years, business manager of the paper and secretary of the company.

The Gazette always had been more powerful than prosperous, and the newcomers found it in a rock-bottom financial condition. The press was obsolete and worn out and had to be replaced immediately, and the rented building on the southwest corner of Markham and Center streets was, as Mr. Heiskell later described it, "just a rat-hole."

The Heiskell brothers introduced many journalistic innovations to the Arkansas press, though some of the old-timers gasped at their seeming extravagance in making expensive improvements not forced by the competition. But the Heiskells wanted to set the pace, not follow the trend, and they wanted to bring the Gazette up to the standards of metropolitan newspapers in other parts of the country.

Some of the things they brought to the Gazette in their first few years were comic strips, then color comics, publication seven days a week instead of the usual six, and publication of society news.

They had many conferences with the business office before they were able to get advertising removed from the upper half of the front page. It took a harder fight and several more years to get the ads off the front page altogether, because the business office resisted throwing away thousands of dollars worth of advertising income merely to gratify the Heiskells' aesthetic tastes.

Their ideas were soon vindicated by circulation figures. When they came to the Gazette, its circulation was less than 6,000, approximately the same as it had been in 1884. Four years later, they needed only 17 more subscribers to double that figure.

Mr. Heiskell's keen sense of humor added zest to the paper, and frequently showed up in his editorials. He wrote most of the Gazette's "editorial paragraphs," the short, pithy comments on the news used in the editorial columns.

Soon after he came to the Gazette, one of his humorous editorials was reprinted by The New York Times and attracted the attention of Arthur Brisbane, then the famous editor of the New York Journal, a Hearst paper. Brisbane offered a job to Mr. Heiskell with the Hearst syndicate on the strength of that editorial, but he had found his niche at the Gazette and turned down the offer with no regrets.

THE PAPER'S CAMPAIGN AGAINST GOVERNOR DAVIS

Mr. Heiskell began his career as the Gazette's editor in the middle of Jeff Davis' campaign for his second term as governor. Mr. Heiskell continued the vigorous opposition to Davis that had been begun by his predecessor, Dickinson Brugman, and became one of his severest critics.

But Davis' colorful campaign rhetoric had more appeal for the voters than the logic of a handful of newspaper editors, and he became Arkansas' first three-term governor.

When it became apparent in the spring of 1906 that the legislature would elect Davis to the United States Senate, Mr. Heiskell wrote an editorial almost eight columns long. It is believed to be the longest editorial ever published by an Arkansas newspaper, and stands today as the best contemporary analysis of Davis' political career.

NAMED TO SENATE TO SUCCEED DAVIS

When Davis died in January of 1913, Governor George W. Donaghey appointed Mr. Heiskell to finish the unexpired term in the Senate. He never had political ambitions, believing office-holding to be incompatible with his responsibilities as an editor, but he accepted the appointment because only two months of the term remained.

He was seated by the Senate on January 9, but served only 22 days. The legislature elected W. M. Kavanaugh to finish Davis' term, and he served from January 31 until March 4, when Joe T. Robinson began the next full term.

Mr. Heiskell addressed the Senate only once, on his last day as a member. He later said, "I am probably the only United States senator who ever telescoped his maiden oration and farewell address into one speech. Maybe we should have more of that in the Senate."

The speech of less than 1,600 words was about equally divided between humorous comment on his brief tenure in the Senate and praise for his state, with reference to her needs. After aluding to the two men who would soon occupy his seat, making four in a little more than two months, he said, "There is senatorial glory enough to go round—if you keep it moving fast enough."

He married Miss Wilhelmina Mann of Little Rock on June 28, 1910. They had two sons, J. N. Heiskell Jr. and Carrick W. Heiskell, and two daughters, Elizabeth Heiskell Cook and Louise Heiskell Patterson. Both sons died in 1943, Carrick Heiskell as a casualty of World War II.

The Gazette moved into its existing building at Third and Louisiana streets in 1908, renting space in it until 1936, when the property was purchased by the company.

The owners of the Gazette—the Heiskells and Allsopp—bought the Arkansas Democrat in 1909, but sold it in 1911. They had no intention of being its permanent owners, believing that it was not good for the community for competing newspapers to be controlled by the same persons. Today, Little Rock is one of the few cities of its size in the nation where the major newspapers are not jointly or absentee owned.

For almost three decades, the Heiskell brothers worked together in the management of the Gazette. Novelist James Street, a Gazette reporter of the 1920s, said of them, "Mr. Fred was our Gunga Din—a better man than we were—and Mr. Ned was our Buddha."

The end of World War II found Mr. Heiskell the only remaining member of the team that had assumed the management of the Gazette in 1902, his brother having died in 1931 and Allsopp in 1946. The son he had hoped would succeed him had not survived the war. A new team was assembled that combined his own long experience with dynamic new leadership.

The key members of the new team were his son-in-law, Hugh B. Patterson Jr., Harry S. Ashmore, and James R. Williamson. Patterson joined the Gazette staff in 1946 as national advertising manager, and was named publisher and secretary of the company in November of 1948. Ashmore came to the Gazette in 1947 as editor of the editorial page, and was subsequently elevated to executive editor. Williamson began in 1950 as business manager, and was later made general manager.

The Gazette stock originally owned by Mr. Heiskell's father had descended to his children and the stock of Allsopp and Fred Heiskell was purchased from their heirs. All the current stockholders are members of Mr. Heiskell's immediate family and the descendants of his sisters.

Two of Mr. Heiskell's grandsons worked under the tutelage of their grandfather at the Gazette. Carrick H. Patterson now is the news editor of the Gazette, and his brother, Ralph B. Patterson, is with Cranford-Johnson-Hunt & Associates, Inc., a Little Rock advertising and public relations firm. The third grandson, George Cook, is a student at the University of Rochester at Rochester, N.Y.

BOLD EDITORIAL STAND ON RACIAL UNREST

The Gazette took a bold liberal stand in the racial unrest that marked the 1950s. Ashmore wrote most of the editorials on the subject, but Mr. Heiskell read and approved them before they were in type. He was neither surprised nor perturbed by Ashmore's liberalism, having been fully aware of it before he hired him. He was, however, sometimes dismayed by Ashmore's tendency to use a comma where a semi-colon was preferred.

The public was conscious of the Gazette's liberalism long before the Supreme Court decision of 1954 by which the doctrine of "separate but equal" educational facilities was knocked down. Passive acceptance of the ruling appeared to be more or less general in Arkansas until September of 1957, when Governor Orval E. Faubus called out the Arkansas National Guard to resist the desegregation of Little Rock Central High School.

Fired by the hope that there might be an alternative to abiding by the Court ruling, many people gave ardent support to Governor Faubus and the segregationist side of the issue.

Ashmore and Patterson, who worked with Mr. Heiskell in formulating the Gazette's editorial policies, made no effort to minimize the risks involved in continuing the liberal viewpoint.

GAZETTE STANDS ALONE DURING SCHOOL CRISIS

Ashmore later described this meeting with Mr. Heiskell:

"He had to realize, I told him, that we would stand alone; the politicians and civic leaders were already running for cover, and the opposition Arkansas Democrat would play it safe and grow fat on our blood."

But he already knew what standing alone would mean, for many times he had taken unpopular stands on highly emotional issues, including a series of racial disorders in the teens and 1920s. His decision was predictable: The Gazette would not back down or compromise its principles, though the stakes were everything he had worked for during most of his adult life.

And indeed, the Gazette did stand virtually alone for months in its advocacy of peaceful acceptance of the Court ruling as

the law of the land. During the period of the greatest stress of 1957–58, circulation dropped from 100,000 to 83,000, and some of the small advertisers withdrew their ads. An attempted boycott of Gazette advertisers failed because the major advertisers refused to be intimidated.

The financial loss cannot be estimated with any degree of certainty, since it involved not only business that was withdrawn but also business that simply never materialized, and extra costs occasioned by the conflict.

At one point there was talk that Mr. Heiskell's views did not coincide with Ashmore's and Patterson's, and that they were taking advantage of him. He wanted to publish a full personal endorsement of the Gazette's editorial position, but was talked out of it.

When the controversy was at its peak in 1958, the highest awards the profession can bestow began to arrive, including the coveted Pulitzer Prize. The Gazette received a Pulitzer Prize for public service and Ashmore received one for his editorials. It was the first time in history that the two major Pulitzer Prizes had gone to any newspaper in the same year.

Also in 1958, Mr. Heiskell received the annual award of the Columbia School of Journalism, a medal and citation for distinguished service to journalism awarded by the Syracuse University School of Journalism, and the Elijah Parish Lovejoy Award from Colby College. He was made a fellow of Sigma Delta Chi, and shared with Ashmore and Patterson the Freedom House Award.

Later awards included the University of Missouri School of Journalism Distinguished Service Medal in 1962, the John Peter Zenger Freedom of the Press Award from the University of Arizona in 1965, and the Sigma Delta Chi citation for journalistic excellence and editorial integrity in 1966. He shared with Mrs. David D. Terry the 1971 Brotherhood Award of the National Conference of Christians and Jews.

After the initial shock of the school crisis wore off, the moderate element in the city and state rallied to bring the situation back to normal. As public sentiment leveled off, so did the Gazette's circulation slump, and the paper now is in the most dominant competitive position in its history.

BOOKS AND HISTORY HIS LIFELONG INTEREST

Mr. Heiskell had a lifelong fascination with books and a desire to make them easily available to others. He was one of a small group of persons who worked to establish the Little Rock Public Library, and had served as chairman of its Board of Directors since 1910. He held card No. 1 issued by the library, and a gold replica of it was presented to him in 1970.

He received a citation from the American Library Association in 1957, in recognition of his many years of valuable service to libraries.

The history of Arkansas was his hobby and his principal nonprofessional interest for more than half a century. He collected a large library of material pertaining to Arkansas and its people, purchasing many rare items from dealers and individuals in all parts of the nation and several foreign countries.

His library is regarded as the finest private collection of its kind in existence, and has been used to good advantage by hundreds of persons working on Arkansas subjects. At one time Yale University tried to buy it, but Mr. Heiskell was unwilling to part with it or to allow it to be taken outside Arkansas.

He wanted to give it to the public in such a way as to perpetuate its usefulness and allow the collection to continue to grow. In 1957, he moved the entire library to the Gazette building, transferred title to the Arkansas Gazette Foundation, and opened it to the use of the public. Since it consists largely of primary source materials, it is of interest principally to graduate students and others of high professional qualifications.

He was recognized as the father of city planning at Little Rock. For several years, by Gazette editorials and personal visits, he urged the City Council to provide the means of assuring orderly growth. This eventually resulted in the creation of the first City Planning Commission, by an ordinance passed on March 26, 1928. As its first chairman, Mr. Heiskell arranged for the preparation of Little Rock's first city plan.

He held five honorary doctorates, awarded by Little Rock College in 1929, by Arkansas College in 1934, by the University of Arkansas in 1938, by Colby College in 1958, and by Hendrix College in 1970.

He was an active member of the Inter-American Press Association, American Society of Newspaper Editors, American Newspaper Publishers Association, and Southern Newspaper Publishers Association. His nonprofessional memberships included the Little Rock Club, the Top of the Rock Club, XV, and the Country Club of Little Rock.

[From the Arkansas Democrat, Dec. 31, 1972]

HIS TITLE WAS EDITOR

When a man is known as widely and has lived as long as J. N. Heiskell, there is not much new or different that can be said about him.

But on Thursday, a few minutes after having the morning newspaper read to him, Mr. Heiskell's 100-year-old heart stopped beating. So something needs to be said, because his death is a signficant event like the closing of a major street, the demolition of a special building or the damming of an important river.

Since 1904 he has been principal owner and editor of the Arkansas Gazette. Until a few years ago when his age forced him to step into the background, this has meant that the man who determined the newspaper's news and editorial policies also owned the place. This is unusual because major decisions on most large newspapers today are made by boards of directors or corporate managers. It is because this man was both editor and proprietor that his newspaper won many awards. And it is also why the Arkansas Democrat always found the Gazette to be a tough but honorable competitor.

Unlike some newspaper owners, Mr. Heiskell had no interest in accumulating great wealth and making vulgar displays of it. Another thing that set him apart from many of his peers is that he was not an empire-builder, a monopolist bent on controlling communications in this or any other area. No one was prouder than he was of the fact that Little Rock is one of the few cities in America that still have two locally-owned, independent daily and Sunday newspapers.

He was not given to solemn and overlong speeches or articles; in fact, terseness and wit were two of his best-known characteristics. Except for a 22-day fling as an interim U.S. Senator when he was 40 years old, Mr. Heiskell was satisfied merely to observe and comment about passing events, rather than to jump in and try to change their flow, as is the custom today with many journalists. And last, but maybe most important, he was not a crowd-pleaser. He never hesitated to take unpopular side when he thought it was the right one. In fact, there are many who say that occasionally Mr. Heiskell would line up arbitrarily against the establishment just to keep it from becoming too self-satisfied.

These are some of the qualities of the traditional newspaper editor, which is what J. N. Heiskell was and all that he ever wanted to be.

MUSKIE AMENDMENTS TO THE FEDERAL-AID HIGHWAY ACT

Mr. MUSKIE. Mr. President, the 92d Congress failed to enact an extension of the Federal-Aid Highway Act in 1972 because of disagreement between the Senate and the House on use of the highway trust fund moneys for mass transit projects. That failure, however, should not overshadow the historic significance of the Highway Act passed last year by the Senate. By adopting the Cooper-Muskie amendment, this body served notice that the highway trust fund is too narrowly focused to serve today's transportation needs. Had the Senate bill been accepted by the House conferees, cities and States could today be developing alternative forms of transportation with support from highway funds.

When the Senate considered the Cooper-Muskie amendment, it was clear that a more flexible and more sensible transportation policy was a necessary step in the direction of securing for us the benefits of growth without making us its victims. That national growth policy and the national transportation policy, which is one of its critical elements, ought to be one of the principal concerns of the 93d Congress. We must seek ways in which we can all move freely about, without endangering our health, destroying our communities, and wasting our resources in the process.

Today I am proposing three bills to help develop a new and more flexible transportation policy by authorizing new uses for the highway trust fund. These bills will provide for the expenditure of trust funds to reduce traffic congestion in urban areas, to assist in the control of air pollution, and to begin reducing the heavy demands of private automobiles for dwindling petroleum resources. They will be introduced in the Senate later this month.

The first bill will permit highway trust fund support for public transportation projects. It is a revised version of the 1972 Cooper-Muskie amendment, and it represents the cornerstone of a new transportation policy for America. This bill would correct the most glaring flaw in our present policy: a closed circle of Federal funding which perpetuates highway construction as virtually the only solution to transportation problems that most cities and States can afford to choose.

Every year the circle closes tighter as the problems multiply. Whether the transportation problem in question involves moving workers to their jobs, moving goods and people from city to city, or bringing essential services to the rural population, more highways and more cars have become the only answer—even when they are obviously not the right answer. Before it is too late, we should take a hard look at the consequences of this closing circle and decide whether those consequences should be an inevitable part of our future.

The second bill would add to the Highway Safety Act a requirement that States

establish programs to inspect each vehicle's auto emission control system. We know that achieving the necessary levels of emission control will be difficult, even when all systems operate effectively. Today, however, it appears that many—if not most—control systems are not working properly; and we know that some garages are disconnecting the devices for their customers. Inspection programs are necessary to curb these practices and to assure the public that the devices are working properly. This inspection program would be funded from the highway trust fund.

The third bill would permit the Secretary of Transportation to utilize as much as 10 percent of annual highway trust fund revenues for emergency programs for the development or improvement of urban areas which are forced, by air quality regulations, to reduce reliance on private motor vehicles. It also would authorize the use of funds from highway building programs in those urban areas with dangerously high air pollution levels to other transportation system improvements. Finally, it would prohibit approval of any new highway construction projects which might cause air pollution levels to exceed the levels considered safe for public health.

In addition to the bills I propose, I look forward to working with the distinguished chairman of the Committee on Public Works (Mr. RANDOLPH) and other committee members on a comprehensive revision of the Highway Act. New legislation, similar to that which the Senate enacted last year, should authorize a special program to focus on the highway needs of urban areas of less than 50,000 population. It should give Governors the program direction authority now given to State highway departments. It should finance the separation of highway-railway grade crossings from the highway trust fund. And, finally, a new bill should give local governments increased authority to make transportation decisions through an allocation formula for regularly apportioned urban system funds.

The automobile has revolutionized life in America, but now, it threatens in many ways to degrade the quality of life in America. Highways and the cars that use them pollute the air and menace our health, transform and degrade the urban environment, inefficiently consume our resources, and distort our transportation priorities.

The Clean Air Amendments of 1970 explicitly excluded considerations of economic and technological feasibility in setting ambient air quality standards, because Congress resolved that protection of the public health was of primary and overriding importance. The deadline for meeting those air quality standards is 1975, less than 3 years from now; but as of today, 67 metropolitan areas have air quality which threatens health due to one or more auto-related air pollutants, and the Environmental Protection Agency has estimated that the annual cost of air pollution in direct damage to health, vegetation, and property amounts to $16 billion.

These costs take the highest toll among the residents of our Nation's great cities, where motor vehicle emissions account for upward of 80 percent of urban air pollution. In Baltimore, for instance, 96 percent of the deadly carbon monoxide emissions are produced by motor vehicles. On streets where urban children live and play, levels of carbon monoxide often exceed 50 parts per million—the maximum health-limits set for the safety of factory workers. Traffic jams often produce levels of over 100 parts per million. Children who live just a few blocks from this Chamber on North Capitol Street often are subject to carbon monoxide levels that poison as much as 5 percent of their blood supply. But these percentages and parts per million are only cold statistics; they mean more when they are expressed in terms of the symptoms they produce. Dullness of thought occurs at carbon monoxide air levels of 10 parts per million; a carbon monoxide content of 5 percent in the blood or exposure to air levels of carbon monoxide of 100 parts per million result in headaches and dizziness; death comes at 1,000 parts per million.

Lest anyone make the mistake of assuming that these excessive urban levels of carbon monoxide are rare, consider that in Chicago the 1-hour standard of 48 parts per million is exceeded 48 times per year, and the 8-hour standard is exceeded 713 times per year; in Washington the 1-hour standard is exceeded 87 times per year, and the 8-hour standard is violated 99 times. And escape to the suburbs is not an answer, even for those who can afford to escape. Current estimates indicate that there will be a 200 to 300 percent increase in carbon monoxide levels in Arlington and Alexandria, Va., over the next 15 years, unless substantial changes are made in available transportation.

It is no wonder, in the face of these statistics, that heart disease, high blood pressure, and respiratory ailments have been found to occur two to three times as frequently among the urban poor than among other segments of the population.

Motor vehicles are also the major source of urban noise, which has been increasing at the alarming rate of nearly one decibel per year. This means that within the next 15 years, the overall noise level in our cities will double if it continues to increase at the present rate. These high noise levels, 60 percent of which is generated by people who live outside the cities, have been found to be a major cause of sleeplessness, tension, and mental distress.

Highways and automobiles have had as destructive an effect on our cities themselves as they have had on the health of the people who live in those cities. Highway construction divides our urban areas with ribbons of concrete—separating people from their jobs and from each other, destroying the integrity of communities, and encouraging suburban sprawl and other questionable land uses. As places of urban and suburban employment have become more and more dispersed, with access to them provided only by highways, more and more workers have been forced to rely on cars to get to their jobs. The available highways have in turn become more congested, forcing us to build more and more roads. We have devoted so much of our living and working space to the automobile that up to 60 percent of the land area in our major cities is required for the circulation and servicing of our cars.

The senseless construction of urban freeways has run roughshod over the real transportation needs of city residents, displacing hundreds of thousands of people and businesses in the process. Often the grandiose plans end in tragic waste for the benefit of no one. Just a few blocks from here, for instance, a portion of the Inner Loop, constructed over the objections of thousands of city residents, is a four-block long, six-lane highway running from nowhere to nowhere. It is now being used as a parking lot for Federal marshals and college students—a concrete symbol of much that is wrong with our transportation planning and priorities.

In the process of destroying the environment, threatening our health and ravaging our cities, highways and automobiles are also helping to lead us to an energy crisis from which there may be no road back. Motor vehicles currently account for 40 percent of all petroleum consumed in the United States, with 55 percent of that share—or 65 billion gallons—devoted to keeping private cars on the road. This luxurious use of motor vehicles to carry, as is so often the case, only one person is a wasteful and inefficient use of valuable, nonrenewable resources.

Automobiles effectively utilize only 5 percent of the potential energy from the fuel they burn; the rest is wasted. Where buses are capable of 110 passenger miles per gallon in urban traffic, cars average only 20 passenger miles per gallon and get as few as 5 to 8 passenger miles per gallon for one person in a large car. In light of an impending energy and fuels crisis, this waste is unacceptable; but as long as automobiles remain our principal mode of urban transportation, that reckless consumption of dwindling supplies of fuel will continue unchecked.

It is clear, then, that Americans are paying a heavy price for the luxury and convenience of private automobile transportation. But many Americans who pay the price get nothing in return. For these Americans, the highway trust fund and the transportation systems it creates rob Peter to pay Paul. In many American cities—including Baltimore, Milwaukee, Richmond, and Columbia, S.C.—nearly one out of every four dwellings have no car. Fifty-seven percent of households with incomes below $3,000 have no cars; 14 percent of those households reporting incomes between $3,000 and $10,000 have no car. Most of the 20 percent of Americans who have no car are poor, handicapped, young or old—people who need mobility the most to gain access to adequate education, health care, job opportunities and other necessities of life. The unemployment of at least one-half of the 1 million jobless handicapped is attributable to a lack of adequate transportation. In five Ohio cities, 54 percent of the households whose head is over 65 have no car, and 42 percent of those households reported a need for transportation beyond any available to them.

These inequities and imbalanced transportation priorities are perpetuated by the highway trust fund, a transportation financing system designed for a time long past. Trust fund moneys are readily available for highway-oriented solutions to transportation problems, often requiring only a minimal amount of State or local matching funds. Federal support for alternative solutions such as mass transit, on the other hand, is limited to a maximum share of 66 percent and often less. The Federal Government spends billions of dollars each year through the trust fund, while the Urban Mass Transit Administration is budgeted at much less. Because funding for highways is thus assured, more and more roads are built. As more roads are built, more vehicles use them; and more user tax revenues pour into the trust fund. This vicious spiral must be controlled if we are to bring order out of our chaotic transportation priorities.

These distorted priorities are the product of conscious government policies and investments of tax dollars. With great ingenuity, productivity, and activity, we have created the present mess. I am convinced that with an equal amount of ingenuity, productivity, and activity, we can reverse it—and create a sensible national transportation policy.

The three bills which I am proposing are the essential first steps in that direction. They will not provide automatically the ingenious new transportation systems we need nor quick public acceptance of mass transportation as a substitute for the luxury and convenience of the private automobile. But the diversion of funds from highways to public transportation must come first, both to signify our willingness to change and to make it financially possible to do so.

These bills will be introduced formally next week. In order, however, for Senators to examine their provisions, I ask unanimous consent that section-by-section analyses and texts of the three bills be printed in the RECORD at this point.

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

SECTION-BY-SECTION ANALYSIS: HIGHWAY ACT AMENDMENTS TO ALLOW SUPPORT FOR PUBLIC TRANSPORTATION

In Section 1: Subsection (a) broadens the uses of funds authorized for the urban highway systems (paragraph 6) to support any capital projects to improve ground transportation, including rail mass transit facilities and equipment.

Subsection (b) allows use of funds from the Federal-Air primary system, Federal-aid secondary system, the urban extensions of the primary and secondary ssytems, and the Interstate system to support any highway related public transportation improvements, including the purchase of buses but excluding any rail mass transit facilities or equipment.

Subsection (c) is identical to subsection (b) of the existing law requiring that routes and schedules for mass transit systems be developed through the regular urban transportation planning process.

Subsection (d) is designed to avoid any concerns that directives in the Highway Revenue Act or other sections of the Highway Act will be violated by use of highway trust funds for what some may allege to be non-highway purposes. This subsection defines all projects authorized under subsections (a) and (b) as highway projects. It also indicates that the Federal share paid for these projects would be the same as if these projects were regular highway projects (70% for most projects, 90% for projects using Interstate funds).

Subsection (e) revises subsection (c) of the existing law requiring DOT to receive assurances that any public transportation project will have adequate capability to utilize, maintain and operate equipment or facilities received under this section. The present law requires that these assurances be received from the State, which would be inappropriate with the revised procedures necessary to implement the urban system. This subsection is also changed from requiring that the proposed project be utilized fully to require satisfaction that any equipment obtained will be maintained and operated properly.

Subsection (f) prohibits use of equipment acquired with financial assistance under this section for charter, leasing or sightseeing in areas beyond the metropolitan area where the equipment is intended to be used.

Subsection (g) requires that equipment meet emission standards published by EPA under section 202 of the Clean Air Act and that wherever practicable, equipment also meet special criteria for low emission vehicles established in section 212 of the Clean Air Act.

Subsection (h) requires assurances that facilities will be planned to recognize and deal with the special needs of the elderly and the handicapped.

Subsection (i) states the clear Congressional intent that funds available for mass transit through this section are absolutely intended to be in addition to those funds appropriated under the Urban Mass Transportation Act. Substitution of funds derived from the Highway Trust Fund for funds which otherwise could be available under the Mass Transportation Act would be a violation of Congressional intent.

Subsection (j) states that the regular policies and procedures of the Highway Act shall apply to implementation of provisions of this section except where DOT determines that the provisions of the Urban Mass Transportation Act would more appropriately apply.

Subsection (k) prohibits transfer of any funds authorized for the urban highway system for use on any other highway system. The section is designed to prevent state highway departments from transferring funds out of the urban system for use on other highway systems over which they exercise greater domination.

Section 2 changes the title of the particular section in the table of contents to "Public Transportation".

Section 3 authorizes $1 billion annually from the Highway Trust Fund for the urban highway system in fiscal years 1974 and 1975.

A bill to authorize uses of urban highway system funds for public transportation improvements, and for other purposes

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

SEC. 1. Section 142 of title 23, United States Code, is amended to read as follows:

"SEC. 142. PUBLIC TRANSPORTATION

"(a) To encourage the development, improvement, and use of public mass transportation systems for the transportation of passengers within urbanized areas, so as to increase the efficiency of the Federal-aid systems, sums apportioned in accordance with paragraph (6) of subsection (b) of section 104 of this title shall be available to finance the Federal share of the cost of construction of and acquisition of facilities and equipment for public mass transportation projects. For purposes of this section the term 'public mass transportation' means ground transportation which provides general or special service (excluding school bus, charter, or sightseeing service) to the public on a regular and continuing basis, and includes activities designed to coordinate such service with other transportation. Projects which may be financed under this subsection shall include, but not be limited to, exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus, rail, and other public mass transportation passengers, construction of fixed rail facilities, and for the purchase of passenger equipment, including rolling stock for fixed rail.

"(b) To encourage the development, improvement, and use of public transportation systems for the transportation of passengers in such urban areas and rural areas as may be designated by the State and approved by the Secretary on the basis of local transportation need, so as to increase the traffic, capacity of the Federal-aid system, sums apportioned in accordance with paragraphs (1), (2), (3), and (5) of subsection (b) of section 104 of this title shall be available to finance the Federal share of the costs of projects within their respective systems, for the construction of exclusive or preferential bus lanes, highway traffic control devices, passenger loading areas and facilities, including shelters, fringe and transportation corridor parking facilities to serve bus and other public transportation passengers, and for the purchase of passenger equipment other than rolling stock for fixed rail.

"(c) The establishment of routes and schedules of such public mass transportation systems in urbanized areas shall be based upon a continuing comprehensive transportation planning process carried on in accordance with section 134 of title 23, United States Code.

"(d) For all purposes of this title, a project authorized by subsections (a) and (b) of this section shall be deemed to be a highway project, and the Federal share payable on account of such project shall be that provided in section 120 of this title.

"(e) No project authorized by this section shall be approved unless the Secretary of Transportation is satisfied that public mass transportation systems will have adequate capability to utilize fully the proposed project and to maintain and operate properly any equipment acquired under this section.

"(f) No equipment which is acquired with financial assistance provided by this section shall be available for use in charter, leased, sightseeing, or other service in any area other than the area for which it was acquired.

"(g) In the acquisition of equipment pursuant to subsctions (a) and (b) of this section, the Secretary shall require that such equipment meet the standards prescribed by the Administrator of the Environmental Protection Agency under section 202 of the Clean Air Act, as amended, and shall authorize, wherever practicable, that such equipment meet the special criteria for low-emission vehicles set for in section 212 of the Clean Air Act, as amended.

"(h) The Secretary shall assure that the provisions of subsection (a) of section 16 of the Urban Mass Transportation Act of 1964, as amended, relating to planning and design of mass transportation facilties to meet special needs of the elderly and the handicapped (as defined in subsection (d) thereof) shall apply in carrying out the provisions of this section.

"(i) Funds available for expenditure to carry out the purposes of this section shall be supplementary to and not in substitution for funds authorized and available for obligation pursuant to the Urban Mass Transportation Act of 1964, as amended.

"(j) The provisions of chapters 1, 3 and 5 of title 23 of the United States Code shall

apply in carrying out the provisions of this section except with respect to projects within urban areas as to which the Secretary determines the provisions of the Urban Mass Transportation Act of 1964, as amended, are more appropriately applicable."

"(k) No sums apportioned in accordance with paragraph (6) of subsection (b) of section 104 of this title shall be transferred and utilized on any other Federal-aid system than that authorized by subsection (d) of section 103 of this title."

SEC. 2. The table of contents of chapter 1 of title 23 of the United States Code is amended by striking

"142. Urban highway public transportation."

and inserting in lieu thereof:

"142. Public transportation."

SEC. 3. For the purpose of carrying out the provisions of title 23, United States Code, there are hereby authorized to be appropriated for the Federal-aid urban system, out of the Highway Trust Fund, $1,000,000,000 for the fiscal year ending June 30, 1974, and $1,000,000,000 for the fiscal year ending June 30, 1975.

SECTION-BY-SECTION ANALYSIS: HIGHWAY ACT AMENDMENTS TO PROVIDE MOTOR VEHICLE EMISSION PROGRAMS

Subsection (a) requires that after January 1, 1975, no State highway safety programs under Section 402 be approved by the Secretary of the Department of Transportation unless he determines that the State has established an EPA certified program to inspect emission control systems of motor vehicles for 1972 and later model years. Inspection systems must include (1) an examination of the emission control system to assure that it is operating properly and (2) once a system for testing emissions of vehicles in actual use has been developed pursuant to section 207(b) of the Clean Air Act, an in-use test of the operation of emission control system to assure compliance with standards of the Clean Air Act. Failure to approve a State inspection system meeting these requirements would result in application to the State of penalties for failure to implement the Highway Act under Section 402(c). This would result in a reduction of 10 per cent of the State's allocation of highway funds.

Subsection (b) authorizes Federal payment of up to 75% of the cost establishing the auto emissions control inspections system. The Federal share may be increased to 90% if the State combines the emission control inspection system with its safety inspection program. This provision allows those States which maintain their safety inspection programs through private garages to continue to do so, while requiring all States to establish and maintain on their own auto emission inspections programs and encouraging them, through increased matching funds, to combine both of their programs.

Subsection (c) directs that funds be apportioned among the States on the basis of population, but with no State receiving less than one-half of 1% of the total apportionment.

Subsection (d) authorizes $300 million for the program in fiscal 1974 and $400 million in fiscal year 1975 with funds to be appropriated out of the Highway Trust Fund and to remain available until expended.

Subsection (e) requires the Administrator of the Environmental Protection Agency to develop regulations to implement the emission controls inspection program in cooperation with the Secretary of the Department of Transportation.

S. —

A bill to establish and support state inspection programs for auto emission control systems

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

SECTION 1. Chapter 4 of Title 23, United States Code is amended by adding at the end thereof the following new section:

"SEC. 405. MOTOR VEHICLE INSPECTION PROGRAMS

"(a) After January 1, 1975, the Secretary shall not approve a state highway safety program under section 402 of this Act unless he determines that the state has established a program, certified as adequate by the Administrator of the Environmental Protection Agency, to inspect the auto emission control systems of motor vehicles which have been sold in accordance with certifications granted under the provisions of Section 206 of the Clean Air Act (42 U.S.C. 1857 et seq.), which inspection programs shall include:

"(1) An examination of the emission control system of each motor vehicle licensed to operate in the state, on at least an annual basis, to assure that the emission control system is operating properly, and

"(2) As soon as the Administrator of the Environmental Protection Agency has announced the existence of an in-use motor vehicle emission control inspection system in accordance with the provisions of section 207 (b) of the Clean Air Act, a test of the operation of the emission control system of each motor vehicle licensed to operate in the state, on at least an annual basis, to assure that emissions of that vehicle do not exceed limits required by regulations published in accordance with section 202 of the Clean Air Act.

"(b) Funds authorized to be appropriated to carry out this section shall be used to aid the states in establishing and operating emission control system inspection centers and shall be available to pay up to 75 per centum of the cost to the state of establishing and maintaining such centers, provided, however, that Federal share of the cost of establishing and maintaining such centers may be increased to 90 per centum of the cost to the state where such centers are also used for inspection programs relating to safety, as prescribed in standards published in accordance with section 402 of this Act.

"(c) Sums authorized to be appropriated in accordance with subsection (d) shall be apportioned among the states in the ratio in which the population of each state bears to the total population of all the states, as determined by the latest available Federal census: *Provided, however,* that the annual apportionment of each state shall not be less than one-half of 1 per centum of the total apportionment.

"(d) There are authorized to be appropriated to the Secretary of Transportation for implementation of this section, out of the Highway Trust Fund, $300,000,000 for the fiscal year ending June 30, 1974 and $400,000,000 for the fiscal year ending June 30, 1975. Sums appropriated in accordance with this subsection shall remain available until expended.

"(e) The Administrator of the Environmental Protection Agency, in cooperation with the Secretary of Transportation, shall publish regulations for implementation of the inspection programs required by this section."

SEC. 2. The table of contents of chapter 4 of title 23 of the United States Code is amended by adding at the end thereof:

"405. Motor Vehicle Inspection Programs"

SECTION-BY-SECTION ANALYSIS: HIGHWAY ACT AMENDMENTS TO ALLOW TRANSFER OF FUNDS IN AIR-IMPACTED URBANIZED AREAS FROM HIGHWAY PROGRAMS TO OTHER PROGRAMS TO IMPROVE TRANSPORTATION

Section 1 requires the Secretary of Transportation to withdraw approval of routes on the Interstate System, the Federal-aid Primary System, and the Federal-aid Secondary System where such withdrawal is requested by the Governor and the effected local officers and is for route within an urbanized area which is in an air quality region where the Environmental Protection Agency has indicated that automotive related air pollutants will exceed levels considered safe for public health in 1975 or thereafter. Funds authorized for projects on the withdrawn routes would be reallocated for expenditure as if they were urban highway system funds, thus allowing their use for public transportation improvements. (The effect of this provision would be to allow cities such as Boston, Los Angeles, or Washington, D.C. to use funds originally allocated for highway construction for broader transportation system purposes, at their option, where it is indicated that automotive air pollution poses a threat to public health.)

Section 2 allows the Secretary of Transportation to use up to 10 percent of Highway Trust Fund revenues for any given year ($500–$550 million) to provide emergency assistance for transportation system improvements, as he deems necessary, in areas where the Environmental Protection Agency has indicated that, in 1975 or later, automotive-related air pollution will exceed levels considered safe for public health Funds would be used under terms and conditions applying to the Federal-aid urban system, which allows use of funds for public transportation-related purposes.

Section 3 prohibits the Secretary of Transportation from approving any highway project which the Environmental Protection Agency has stated may result in levels of air pollution in excess of that considered safe for public health.

S. —

A bill to allow use of highway funds for any transportation improvements necessary to avoid air pollution dangerous to public health, and to prohibit highway projects which may create air pollution dangerous to public health.

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

SECTION 1. Subsection (f) of Section 103 of title 23, United States Code, is amended by adding "(1)" immediately following "(f)" and by adding a new paragraph to read as follows:

"(2)(A) The Secretary upon the joint request of a State Governor and the local governments concerned, shall withdraw his approval for any route or portion thereof designated or selected in accordance with the provisions of subsections (b), (c) or (e) of this section and within an urbanized area where he determines that the Administrator of the Environmental Protection Agency has certified or otherwise stated that the air quality region which contains such urbanized area will fail to achieve, by July 1, 1975, levels of air quality necessary for attainment of the primary ambient air quality standard specified for carbon monoxide, nitrogen dioxide, or photochemical oxidants (hydrocarbons) in accordance with Section 109 of the Clean Air Act (42 U.S.C. 1857 et seq.).

"(B) Amounts apportioned to a State for projects on routes or portions thereof for which approval has been withdrawn in accordance with subparagraph (A) shall be

transferred to and added to the amounts apportioned to such State under paragraph (6) of subsection (b) of section 104 of title 23, United States Code for the account of the urbanized area from which the withdrawal of the routes or portions thereof was made."

SEC. 2. Subsection (a) of section 104 of title 23, United States Code, is amended by adding "(1)" immediately following "(a)" and by adding a new paragraph to read as follows:

"(2)(A) Whenever an apportionment is made of the sums authorized to be appropriated for expenditure upon the Federal-aid systems, the Secretary shall deduct a sum, in such amount not to exceed 10 per centum of all sums so authorized, as the Secretary deems necessary to provide emergency assistance for transportation system improvements in those air quality regions within a state which the Administrator of the Environmental Protection Agency has certified or otherwise stated will fail to achieve, by July 1, 1975, levels of air quality necessary for attainment of the primary ambient air quality standard specified for carbon monoxide, nitrogen dioxide, or photochemical oxidants (hydrocarbons) in accordance with section 109 of the Clean Air Act.

"(B) Amounts made available to a state in accordance with the provisions of subparagraph (A) of this paragraph shall be transferred to and added to the amounts apportioned to such State under paragraph (6) of subsection (b) of section 104 of title 23, United States Code, for the account of the urbanized area within the air quality region designated by the Secretary to receive the emergency assistance.

SEC. 3. Section 105 of title 23, United States Code is amended by adding at the end thereof a new subsection to read as follows:

"(h)" The Secretary shall not approve any project in accordance with the provisions of this section where he receives a statement from the Administrator of the Environmental Protection Agency that such project may result in a failure to attain any primary ambient air quality standard specified in accordance with section 109 of the Clean Air Act."

NO-FAULT INSURANCE

Mr. BAKER. Mr. President, one of the leading items of business to come before the Senate Commerce Committee this year will be no-fault insurance. The Members of this body will recall that the committee proposal to establish a Federal program of no-fault stirred considerable controversy last year both within the committee and on the floor of the Senate, when the bill was re-referred to the Judiciary Committee for additional study of its impact upon the McCarran-Ferguson Act and its constitutional implications.

Regrettably there has been considerable misunderstanding regarding criticism of the Hart-Magnuson bill. One aspect of that criticism which I find particularly and personally disconcerting has been the tendency to characterize those who oppose the bill as being against the concept of no-fault itself. These same reporters are often guilty of advancing State-by-State successes in the area of no-fault as evidence that Hart-Magnuson should be passed even though the bill would force the abrogation of every one of these existing programs and would stringently limit the ability of the States to develop programs in response to their peculiar needs.

I ask unanimous consent to have printed at this point in the RECORD an article regarding no-fault insurance from the Tampa Tribune-Times of Tampa, Fla., which was recently reprinted in the Maryville-Alcoa Times in my State.

The article points up the success which State legislatures can accomplish when they are allowed to devise and design no-fault programs in response to their own needs. I hope that in the future the proponents of Federal no-fault programs will assist the Members of Congress by measuring the projected impact of their programs against these State undertakings, which I am certain we will see more of this spring.

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

ALL SIDES HAPPY WITH FLORIDA NO-FAULT INSURANCE LAW

(By Bud Newman)

TALLAHASSEE, FLA., December 20.—On the eve of statewide premium reductions for automobile insurance, spokesmen on all sides of Florida's no-fault insurance law say it works surprisingly well—so far.

"Experts say the Florida no-fault law is the best in the nation," said state Insurance Commissioner Tom O'Malley.

Even the Florida Academy of Trial Lawyers—a bitter opponent of the no-fault concept at the time the legislation was debating it in 1971—has mellowed considerably.

"Now that the thing is in effect, it hasn't been so bad, said Art Kinnerly, an association spokesman. "The trial lawyers have taken the view that maybe we should wait about three years in order to get the statistics."

The insurance companies are also cautious, but some spokesmen say the state's no-fault system is, so far, devoid of any major problems.

Despite the insurance industry's claim of too little time to really know the facts—no-fault coverage began in Florida only last Jan. 1—O'Malley will announce new company-by-company rate cutbacks tomorrow.

Shortly after no-fault went into effect in Florida there was a 15 per cent across-the-board decrease in car insurance rates. O'Malley refuses to hint how much the new cuts will be.

The commissioner said the no-fault law was working "eminently well" and claimed he hadn't seen five compaints about it in the 10 months the law has been on the books.

He said the whole purpose of no-fault is to get claims dollars to the accident victims quickly. However, he said, "we can't assume everything is 100 per cent perfect."

O'Malley said he plans to ask the next legislature to make no major revisions in the original bill—just to tighten up some weaker areas to include more types of vehicles under no-fault coverage.

The basic no-fault concept is very simple: Your own insurance company pays you for damages to your person or property after an accident, regardless of who is at fault legally.

In the past, claims frequently went to court ending up in long arguments over which party was actually at fault and consequently delaying for months or even years needed payments to cover hospital and medical bills. And in accidents involving several cars, the confusion was compounded even more.

The Florida law does not operate quite as simply as the basic concept. Beyond certain maximums in personal injury and property damage, the innocent party in an accident can still sue the guilty party.

And certain types of vehicles—cabs, commercial vehicles and city transit vehicles—do not yet come under no-fault, although legislation will be proposed, next session to include them.

Merrill Grafton, regional vice president for State Farm Insurance at the Winter Haven headquarters, says limited statistics available now "say the law is working the way the legislature intended it to work."

State Farm, which writes about 20 per cent of the auto insurance on private passenger cars in Florida, has long been a backer of no-fault in Florida while strongly opposing a national no-fault plan.

Under Florida's plan, Grafton says, the number of lawsuits should decrease. State Farm is now defending in court a lawsuit challenging the constitutionality of the Florida no-fault law, he said.

Grafton admits he is "anxious to see the legislature leave the (no-fault) law alone" next session.

Prentiss Mitchell, Allstate public affairs manager in St. Petersburg, says that while no-fault is working "extremely well . . . we are not pleased with property damage being part of no-fault."

The problem with property damage coverage is that under certain conditions, the legally innocent party in an accident may not be able to recover his losses. And under other conditions, he said, the law is helping to make garage owners wealthy by taking advantage of car repair situations.

WAR POWERS

Mr. FULBRIGHT. Mr. President, the Senator from Missouri (Mr. EAGLETON) has written a thoughtful guest editorial for the journal Foreign Policy on the subject of war powers. In the editorial, Senator EAGLETON points up the contrast between constitutional precept, which vested the authority to initiate war in Congress, and recent Executive practice, which amounts to an all but complete Presidential takeover of Congress' authority to initiate war. I do not wholly concur with Senator EAGLETON'S interpretation of the significance and validity of the Gulf of Tonkin resolution; I do, however, strongly endorse his overall thesis.

Senator EAGLETON summarizes the provisions of the war powers bill enacted by the Senate last year and goes on to advocate its reenactment.

Mr. President, I ask unanimous consent that Senator EAGLETON'S noteworthy article be printed in the RECORD.

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

WHOSE POWER IS WAR POWER?

(By Senator THOMAS F. EAGLETON)

"It should be difficult in a republic to declare war; but not to make peace." These words of Justice Joseph Story in 1833 express a fundamental principle of our Constitution.

Yet in Vietnam, war came easy and peace comes hard. The decisions that committed our nation to war from a miasma of television speeches from the oval office, public chauvinism and congressional acquiescence.

Our route into the Vietnam quagmire is strewn with the debris of false hopes and false assessments, of over-optimism and miscalculation, of poor strategic planning and poor tactical execution—of a disregard for the real national interest of the United States.

And, as I look back on the events that led to Vietnam, I think that there is also another theme—one which forms part of a recurring conflict in American history: the vital question of relations between Congress and the President. In short, who has the power to declare war? Did the institutions established by our Constitution fail us, or were they gradually abandoned over time? Today, as we look forward hopefully to the post-Vietnam era, is the time to examine these vital questions.

The Great Depression and World War II thrust America into a decade of constant crisis. The crises of this period seemed to require an extraordinary concentration of power. Frank D. Roosevelt was well qualified to assume this power, and to consolidate and expand the role of the Executive. Since then, the Executive's power has grown as Congress' role has declined.

The trend toward increased Presidential power might have proceeded uninterrupted but for a minor war in a far-off Asian country which was transformed by Presidential initiative into a major—and unsuccessful—engagement of American forces. The institutions created by our Founding Fathers to filter and check the fallibility of human decision-making had failed.

From 1955 until 1964, as U.S. military involvement in Indochina grew, most of the various U.S. quasi-military activities were not disguised. During this period, there was no effort by a President to seek authorization for his actions. Congress seemed unconcerned with the usurpation of its power, and continued unquestioningly to appropriate funds for the Vietnam war. After all, the conflict was not going too badly. It was not inordinately expensive. And, in line with the new Kennedy doctrine of "flexible response," it constituted an important experiment in limited warmaking and in the training and support of foreign forces to participate in the worldwide struggle against Communist-dominated "wars of national liberation."

Then came the Gulf of Tonkin incident. Again, Congress was not consulted before the response. On the day after the event, the President presented Congress with certain facts regarding the incident and asked Congress for its complete support. Both Houses approved a vaguely worded and ill-defined White House draft which became known as the Gulf of Tonkin Resolution. There were only two dissenting votes in the Senate—those of Wayne Morse and Ernest Gruening.

The resolution stated, in part:

"The Congress approves and supports the determination of the President as Commander in Chief, to *take all necessary* measures to repel any armed attack against the forces of the United States and to prevent further aggression.

"The United States is, therefore, prepared as *the President determines*, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

"This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured . . . (Italics added.)

Despite anguished protestations in retrospect, I think that Congress should have known what power it was delegating to the President at the time it passed the Tonkin Gulf Resolution. Senator Morse tried desperately to warn Congress that it should not grant the President a broad "predated declaration of war." The record of debate also contains the following colloquy between Senator Fulbright, Chairman of the Foreign Relations Committee and floor manager for the Resolution, and Senator Brewster:

Mr. BREWSTER. My question is whether there is anything in the resolution which would authorize or recommend or approve the landing of large American armies in Vietnam or in China.

Mr. FULBRIGHT. There is nothing in the resolution, as I read it, that contemplates it. I agree with the Senator that that is the last thing we would want to do. *However, the language of the resolution would not prevent it. It would authorize whatever the Commander in Chief feels is necessary. It does not restrain the Executive from doing it. Whether or not that should ever be done is a matter of wisdom under the circumstances that exist at the particular time it is contemplated.* This kind of question should more properly be addressed to the Chairman of the Armed Services Committee. Speaking for my own committee, everyone I have heard has said that the last thing we want to do is become involved in a land war in Asia; that our power is sea and air, and that this is what we hope will deter the Chinese Communists and the North Vietnamese from spreading the war. That is what is contemplated. The resolution does not prohibit that, or any other kind of activity. (Italics supplied.)

Later that day, Senator Fulbright and Senator John Sherman Cooper discussed the meaning of the Resolution:

Mr. COOPER. *Then looking ahead, if the President decided that it was necessary to use such force as could lead to war we will give that authority by this resolution?*

Mr. FULBRIGHT. *That is the way I would interpret it.* If a situation later developed in which we thought the approval should be withdrawn, it could be withdrawn by concurrent resolution. (Italics added.)

In 1964, no member of Congress thought that within a year American planes would be flying daily bomb runs over North Vietnam, or that thousands of American troops would be engaged in "search and destroy" missions in South Vietnam or constructing American base camps throughout that country. Even President Johnson probably had no idea that the limited military operation in South Vietnam would soon blossom into a $30 billion-a-year war.

But faulty vision and political pressures cannot be permitted to minimize the legal significance of the Tonkin Gulf Resolution.

In my judgment, the Resolution—pared of its verbiage and placed in the context of its legislative history—was a broad congressional charter to the President to combat North Vietnamese forces anywhere in the SEATO area. It was an extremely broad delegation of authority in the area of foreign affairs but as the Supreme Court noted in Zemel v. Rusk, 381 U.S. 1, 17 (1963), Congress has always been permitted to grant extensive powers in foreign affairs and to "paint with a brush broader than that it customarily wields in domestic areas." Although the existence of the Tonkin Gulf Resolution did not make the war we have waged in South Vietnam any wiser or any more explicable, it did make it a war authorized by the Congress.

But did the Congress fully comprehend the power it had delegated in the Tonkin Gulf Resolution? Did the individual members understand the burden of responsibility assigned to them by the Constitution when they cast their votes? In the period of introspection that has followed the passage of that Resolution these questions prompted a major effort to reassert the proper relationship between the two branches. Even though I was in my first term, and had not been a member at the time of the Tonkin Resolution, I became involved in that effort.

Some of us in Congress began to take a careful second look at the excessive power of the Presidency. As it became obvious that the power of the Presidency had been abused—and that of Congress neglected—the checks and balances of our adversary system took on a new meaning. Traditional conservatives, even though supporting the President on Vietnam, joined anti-war senators in a coalition, the force of which would advocate a "strict construction" of the Constitution.

The Constitution of the United States was written by men who had experienced the tyranny of a monarch and who clearly understood the danger of placing absolute power at the disposal of a single man. These men sought to create a process by which important decisions would be reached after thorough deliberation. They fully expected that the responsibility for committing the nation to war would be shared—and that Congress, the most representative branch of government, would authorize this important commitment.

Unlike most issues which are dealt with in the Constitution in just one reference, the question of waging war and raising military forces is treated in several places:

Article I, Section 3 gives the Congress power to "declare war," grant "Letters of Marque," order Reprisals, "raise and support Armies," but for no longer than two years at a time, "provide and maintain a Navy," make rules which will regulate and govern the military forces, and provide for organizing the militia and calling it up so that insurrections can be suppressed and invasions repelled.

Article I, Section 10 forbids the states—absent congressional consent—from keeping military forces in time of peace or from engaging "in war, unless actually invaded, or in such imminent danger as will not admit delay."

Article II, Section 2 makes the President "Commander in Chief of the Armed Forces as well as the State Militia, when it is called into service for use by the federal government."

Article IV, Section 4 provides that the central government shall guarantee "a Republican Form of Government" to every state and "shall protect each of them against invasion."

These provisions were specifically designed to show how the roles of Congress, the Executive, and the states would mesh, and to assure that the awesome consequences of war did not flow through chance or mistake. The Founding Fathers set relatively simple ground rules to control what they referred to as "the dogs of war."

First, they drew a distinction between offensive and defensive hostilities. If the United States were attacked, the President would act to repel the attack. Congress could provide the President with a small standing Army and Navy to fulfill his functions as defender of the nation's integrity. The states could maintain militia and Congress could establish procedures under which the President might nationalize them rapidly to meet foreign attacks.

Second, Congress was to decide whether defensive action would be supplemented by offensive action The time lost in this process was considered less important than having the nation's elected representatives express their collective judgment. The Congress was to sanction in advance whatever actions were taken, whether simple repricals, complex military operations or all-out war.

Third, the President's independent role in the warmaking process was limited to the direction of operations. The draftsmen of the Constitution carefully changed the term "make war," which might imply the idea of Congress conducting hostilities, to read "declare war," which carried the connotation of congressional initiation but Presidential direction.

The convention records make clear the delegates' surprise at the possibility of giving the President power to make decisions which might result in offensive military action. One delegate commented that he "never expected to hear in a republic, a motion to empower the Executive alone to declare war."

Even Alexander Hamilton, the foremost defender of centralized Executive power among

the Framers of the Constitution, noted in Federalist Paper 75:

"The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States."

True, the Constitution left a gray area of responsibility between the President and Congress—what Justice Jackson called a "twilight zone"—which recent Presidents have fully occupied. Now however, a widely diverse group of senators and representatives has taken the intiative to reassert Congress' share of that twilight zone.

On April 13, 1972, the United States Senate passed the War Powers Act—jointly introduced by Senators Javits, Stennis, Spong and me—by an overwhelming margin of 68 to 16.

The Act specifies those emergency situations in which the President can act to commit forces without the specific prior authorization of Congress. The President is statutorily delegated the authority to repel attacks—or the imminent threat of attacks—upon the United States, its armed forces abroad, or upon U.S. nationals abroad in carefully defined circumstances. The President is prohibited from taking action beyond the limits of the emergency categories without "specific statutory authorization"—language which excludes appropriations measures and treaties as tacit authorization for the engagement of U.S. forces in war.

Those who believe that our postwar treaty commitments are self-executing take considerable issue with the exclusion of treaties as congressional authority to engage forces in hostilities. A careful examination shows clearly, however, that the war powers of Congress cannot be delegated by the treaty ratification process.

The Senate is the only body to act on treaties. It does not possess the power to commit the United States to hostilities without the consent of the House. In fact, Madison noted that the possibility of giving the Senate alone the power to "declare war" was considered—and rejected. Butler of South Carolina reported to his State's Legislature that such a proposal "was objected to as inimical to the genius of the Republic," because it would destroy the necessary balance that the Framers were anxious to preserve.

Appropriations measures are excluded as implied authorization because the "power of the purse" is not a sufficient enforcement mechanism. If the after-the-fact power of denial were the only check available, the President would be free to initiate and sustain hostilities unilaterally. Congress, on the other hand, instead of being able to grant initial authorization by a simple majority, would be placed in the position of either attempting to override a Presidential veto or killing legislation intended to fund the troops in the field. If the war powers of Congress are to have the effect intended by the Constitution, they must be asserted positively. Congress must be assured of involvement in the initial decisions that could lead to war.

Even when the President uses his emergency powers, he would be required under the bill to make a full report to Congress immediately. The President would be required to obtain congressional authority to continue his action beyond 30 days. If Congress does not extend the President's authority he must terminate hostilities unless he certifies in writing to the Congress that continued engagement is required for the protection of U.S. forces involved in "disengagement." Without congressional authority, however, these forces may not be used to continue pursuit of the policy objective for which they were initially deployed.

The most common criticism of the War Powers Act is that it would constrain the President from responding expeditiously to the sudden hazards of the modern world. But, as we emphasized throughout the debate on the War Powers Act, we do not anticipate that the bill would restrain the President in any way from acting vigorously to meet any threat to the security of the United States. The emergency provisions permit the President to take a wide variety of actions in defense of the nation or its citizens and forces stationed abroad.

Many have pointed out that the War Powers Act, in the real world, could not prevent Congress and the President from jointly engaging the country in war unwisely. These critics state that the Gulf of Tonkin Resolution would have passed with or without the Act. This, of course, is entirely possible, but I believe this criticism is based on an excessively ambitious interpretation of what the bill is intended to accomplish. It is not possible to legislate common sense, and no bill can establish a procedure that would assure that all decisions are proper. The Act provides no panacea, but I believe that it can insure that the collective wisdom of the President and the Congress will be brought to bear, as the Constitution provides, when the all-important questions of war and peace are considered.

The present Administration has strongly opposed the War Powers Act as a restraint on Presidential power. This unfortunate position is in direct contrast to the overwhelming nonpartisan support the bill received in the Senate which included affirmative votes by the minority leader and the minority whip. The Secretary of State's testimony before the Senate Foreign Relations Committee was equally unfortunate and reflected an unwillingness to accept the legitimate role of Congress.

Under the threat of a Presidential veto, The House may not act this year, but the War Powers Act already has accomplished a great deal. The President has been put on notice that Congress will be less willing in the future to delegate its war powers. The debate on the Senate floor has reminded members of Congress that they can no longer ignore their constitutional responsibility to decide whether or not America goes to war. If not this year, then in the future, I am confident that Congress will act to translate that awareness into law.

UKRAINIAN INDEPENDENCE DAY

Mr. BUCKLEY. Mr. President, I take this opportunity to acknowledge the bravery of the Ukrainian people, who, on January 22, 1918, declared their independence from Russian domination. Prior to this time, czarist regimes had made many attempts to suppress the Ukrainian desire for independence. Although the new Soviet regime recognized the Ukrainian Republic, their freedom was short lived and; because of severe handicaps, the Ukrainian military was forced to bow to Communist tyranny, a tyranny which continues today. Though this oppression continues, the independent spirit of the Ukrainians is to this day obvious. News reports indicate that Soviet authorities are continuing their relentless efforts to stamp out dissent in the Ukraine and elsewhere in the Soviet Union.

The Ukrainians have remained under Communist domination, but the courageous drive for freedom has not left them. It is this spirit that calls forth so many people to participate in the celebration of Ukrainian Independence Day. And so, it is with great respect, that I extend my appreciation and my prayers to the Ukrainians in their pursuit of freedom.

EDUCATION OF HANDICAPPED CHILDREN

Mr. FULBRIGHT. Mr. President, on December 22, 1972, Dr. Bettye Caldwell, director of the Center for Early Development, in Little Rock, was interviewed on Station KATV, regarding her recent participation in a seminar, held in the Soviet Union, on the education of handicapped children. The interview was very interesting and I think worthy of the attention of Senators.

I ask unanimous consent that the text of the interview be printed in the RECORD.

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

INTERVIEW OF DR. BETTYE CALDWELL

Are there any impressions you picked up in the Soviet Union that stands out above all others?

Well, there were many, but I think the outstanding one was the eagerness of the people that I met in Russia to get to know us as Americans in the same way that we had this eagerness to get to know them. They are very friendly people, very sentimental and outgoing and expressive of their feelings. And at first, there was a lot of reserve on both sides. We were maybe a little afraid of one another but three weeks is enough to let some of those barriers break down and by the time we left, the people that I really had a chance to get to know, and I felt very friendly toward one another, and I felt this was quite a reciprocal feeling. So, that was my outstanding impression.

As far as childhood education goes, any impressions in that regard.

Well, they are very committed to early education. They use the word kindergarten to describe programs for children all the way from 3 to 7. 90% of the children in the Soviet Union, almost 100% they tell me in the big cities, are enrolled in kindergarten programs. And they are not free . . . the parents have to pay approximately 12 rubles a month . . . that would be about 15 American dollars, and the salary, in a family, might be 100 rubles a month, so that tells you something about the condition that the people have that this is an important service as well as the condition of the government. Now, programs for handicapped children, early childhood programs, are completely free. And here is where you really feel the compassion of the people and the dedication. They realize, for example, that a deaf child needs more education, more help and they say the families have to have help in supporting these children, so these programs are totally free.

How did you compare the commitment of the Soviet government to this field, as compared to this country?

Well, it's hard really. You have to realize I'm a '3-week' expert now, but most of the people that have been there before had altered us to the fact that they seem to believe even more deeply in the importance of childhood . . . not just early childhood. They have an elaborate network of programs for children in the 7–10 age range, called the Octoberist's, that's the month of the revolution; from 10–14 they are called Pioneers, and then from 14 up to young adulthood, they have a group called the ———. And every city, every district in Moscow, for example, has headquarters, very lovely buildings . . . nicer than the apartments and really nicer than the schools in some ways, in which the children can come together for these activities, whether it's an interest in

space, in stamp collecting, in ballet, in music, every kind of enrichment activity that you could think of, and this is made available through the government, there is no charge for it. So obviously there is a tremendous national commitment to the importance of the childhood years.

Other than just government funding did your trip give you a perspective on our problems in this country in regard to early childhood education?

Well, I think one of the things that impressed me most about the schools was the fact that the children are remarkably happy. They are very, I rarely saw a quarrel, never saw two children get in a fight or an argument, and of course, we went to some of the show places obviously. But if you came to Kramer for example, and you were there 50 minutes, you wouldn't see any either. But if you stayed for hours, the reserve of the children breaks down and the normal behavior begins to appear. When we were in many of these schools, we visited 14 schools altogether, which was very good, and some of them 4 to 6 hours, and you still saw children with a great deal of what we strive for in the way of internal control. One of the things that most puzzled us is how do they get this control, because you see no evidence of punishment of the children at all, and they tell you no physical punishment is ever used in the schools. So, I am very impressed with the fact that even though it seems more regimented than our schools do and I think maybe some American children might rebel or protest at the degree of schedule that they have, the children seem very happy and seem to lead productive lives. That was very impressive.

You indicate, Dr. Caldwell, that in the Soviet Union, supplementary cultural activities are quite common.

Yes. The schools operate a shorter day. An elementary school runs roughly from 9 to 1, and the secondary schools until about 2 or 2:30 and yet they are all open, as our school is at Kramer for the extended day. What happens, when the formal lessons are over, is that the activtites that are arranged for their circle, this is what they're called, whether they are Pioneer or an Octoberist, or what have you, take over. Now in this Palace of Pioneers that we visited in Moscow, I have never been so impressed and at attempts to set up a world, if you will, an environment that really appeals to young children. The section with the children involved in space activities was particularly impressive, and Valentino Tereskous is the unofficial sponsor of this group. She comes in and meets with the children . . . here's someone who has been into space, you know, and has come back and can talk with the children about it. There was an art section, a ballet section, a theatre group was going in another part, a chorus was rehearsing in another section, an international friendship where they wrote to children all over the world, I gave them my daughter's address and hope that she'll have a pen pal from this group. In another section, they had stamp collection, and here was an example where you saw the collective spirit. Instead of each child having a book, the stamps were kept posted on the wall around where every child, in fact, could share the stamps that they had found. Now, apparently a great deal of indoctrination also goes on in these groups. For example, some of them are set up to study the role of Russia in the war, to study the role of the leaders of the revolution and the contributions that they have made. You see pictures of Lenin everywhere . . . in every classroom and in the early childhood classrooms, there's usually a picture of Lenin as a little boy. So, there is a great deal of material just, if you will, infused into the total school curriculum that relates to the objectives of the government and the organization of the Soviet Union that's bound to be a remarkably potent force in cultivating the attitudes that are necessary to perpetuate this regime and the ideas.

In what respect do the Soviets excel where this country, in your opinion, falls short the most?

Well, you know we have a lot of, in our secondary schools . . . not so much in the elementary schools, we seem to have a modest amount of this disaffection. I'll use a colloquialism to describe what I felt. You have the feeling in America now that at a very early age the kids are afraid of being square. The reinforcements of the teachers become less effective and you're not quite cool if you go along with things that are set up. In the children that I saw in Russia, I didn't feel this. You felt that the praise, the enticements, the encouragements are really internalized in some way in a more effective way with the children of Russia. This was one thing. I guess in the Olympic events would tell us that they excel in athletics.

One of the things that we went to was an international skating competition held there and they, again in these Pioneer groups, if you have a child who is skilled in skating, for example, there is a group in which he will be taught the rudiments and be given the opportunity to continue in this, whether it be gymnastics, skating, soccer, what have you. So, I think that the process of selecting children who have outstanding talents and giving them whatever they need to develop those talents is one thing that seems to me to be different in terms of the two countries. I don't think we are a little more hung up on the idea of making certain that the children have the freedom to select for themselves than the Russians are. It seemed to me that they were more likely to say, you have a talent in this, now let's develop it.

Again, we do as much as we can within our framework to develop talent in this country, but I do have the feeling that there's probably directiveness in this in Russia and much less is left to chance.

I don't want to cover plowed ground here, but is there anything that you would tell our legislators, our lawmakers, after your visit that you might not have before?

Well, that's a good question, Mr. Barnes, I hadn't thought of that, I think one thing that very much impressed me, related to their education of the handicapped, it was absolutely gorgeous, that they have some philosophies that differ from ours rather sharply. For example, they are strong believers in separating out every category of the handicapped. For example, they don't just take children who are hard of hearing and send them to one school. There is a school for deaf children and another one for hard of hearing children. They feel that the educational techniques need to be slightly different for these two categories. Well, and then the same is true for blind and partially sighted and orthopedically handicapped and mentally retarded. Well, about the second school that we went to I asked the question, how many are on your waiting list . . . which is a very common question that you might ask in this country, and the director the first time I asked him, was astounded. A waiting list . . . we have no waiting list. We develop programs for the children who need them, and I really became convinced that that was true. That they have an elaborate case-finding network and when they encounter a child with a special problem, they get that child into some kind of corrective program. Now that to me is very impressive and I don't think we have reached that level in our funding of state and federally operated programs in this country.

THE HOUSING PROGRAM

Mr. PERCY. Mr. President, I wish to express again my concern about the administration's recent decision to halt for an indefinite period approval of new construction under the federally assisted housing programs.

In support of my position, I refer to testimony presented last month, December 4 to 7, at the Joint Economic Committee hearings on our housing programs.

In the words of Anthony Downs, senior vice president of the Real Estate Research Corp.:

> The most dramatic and most often repeated myth is that the federal housing subsidy programs as a whole have failed, are disastrously ineffective, or are not working. I believe this is false.

It is true that the 10 witnesses, including Mr. Downs, who appeared before the committee offered a long list of complaints about the design and administration of the programs.

They told the committee that the programs, among other faults, were overly complex and confusing in conception, had failed to help the poorest of the poor, and were mismanaged—occasionally to to the point where well-publicized scandals resulted in legal indictments.

Witness after witness called for improvements in, or wholesale revamping of, the Federal housing effort. But none suggested that we simply shut down the system, without having a new one to take its place.

I am particularly concerned that the homeownership subsidy program—the so-called section 235 program—is affected by the moratorium.

I have been a strong advocate of the principle of homeownership since before I came to the Senate in 1967.

This program, like the others, has faults, but it also has demonstrated virtues which received specific comment from some of the committee witnesses.

Walter L. Smart, executive director of the National Federation of Settlements and Neighborhood Centers said:

> The design of this program, I believe, is excellent.
>
> The major problem is that practically no one knows about the program. In gatherings of sophisticated people who are not related to the housing field, few, if any, know about Section 235. Thus, the target population we are trying to reach with the program knows even less.

According to Lawrence S. Katz, former FHA regional director in Milwaukee, Wis.:

> Small towns, medium sized towns and large cities have seen this housing built and with just a few exceptions, it has been accepted. The housing in most cases cannot be distinguished from housing being built for those who do not need a subsidy.

Philip Brownstein, former Commissioner of the FHA, also praised the section 235 program, but said it needs to be augmented by providing counseling to the home buyers and guarantees that the homes will not shortly need major repairs.

I introduced legislation in the *last* Congress designed to accomplish both those objectives.

I would now like to relate some of the general comments of the committee witnesses that would pertain to the programwide moratorium.

Mayor Roman S. Gribbs of Detroit, whose city was one of those hardest hit by housing scandals said:

While FHA programs have indeed been mismanaged, I do not wish to suggest for a moment that the programs be abandoned,

Henry Aaron of the Brookings Institution spoke similarly:

Neither the real shortcomings of existing programs nor the political furor occuring around them justify scrapping them without an adequate alternative,

Mr. Aaron is one of the leading advocates of a system of housing allowances to replace the housing programs.

Mr. Downs said:

It is unfair to fault housing subsidies for not solving social problems they were not designed to solve.

Moreover, it would be unfortunate if housing subsidy programs were abolished for this failure and no other programs were adopted. That would mean giving up altogether on the problem of concentrated urban property,

While the testimony of builders and developers may be considered somewhat less objective, since it is they who profit—some unduly—from the subsidy programs, nonetheless their comments deserve to be considered.

Stanley Waranch, outgoing president of the National Association of Home Builders testified:

We firmly believe that the present housing subsidy programs represent the best method designed so far to meet the housing needs of the nation's low and moderate income families.

That is not to say that any of these programs is perfect, or could not stand perfecting changes,

Philip I. Emmer, president of the Emmer Development Corp., in Gainesville, Fla., expressed a similar view:

On balance, I must conclude that the subsidy programs are good are necessary, but can be substantially improved,

Mr. Katz and Mr. Brownstein also took the position that the programs overall were basically sound and should be continued, though improved.

Mr. Smart called for the creation of a Federal Public Works Administration to undertake directly the construction of public housing.

Elmer B. Staats, Comptroller General of the United States, presented an analysis of the management ills in the housing programs.

Arthur Burns, Chairman of the Board of Governors of the Federal Reserve System, made recommendations for smoothing out the cyclical variations in the supply of housing credit.

In short, none of the 10 distinguished witnesses even faintly hinted that the Federal housing programs should be summarily halted.

We must remember that this Government in 1968 declared a national need for 26 million new and rehabilitated housing units by 1978. Of those, 6 million were to be federally assisted units.

Although housing production since 1968 has increased dramatically, it has not reached a rate that would allow us to come close to meeting those goals.

Now we have a moratorium on assisted units, putting those goals even further out of reach.

The moratorium comes without any assertion by anyone that the need for housing has declined.

George Romney, the outgoing Secretary of Housing and Urban Development, did come close to saying that the Federal programs are superfluous.

"The private conventional housing market has demonstrated its basic capacity to meet the Nation's housing needs," Mr. Romney said.

But the administration is studying Government subsidy programs with the idea in mind of improving them.

I place considerable reliance on the analysis of Mr. Downs, who says it is a myth that the free market system alone can meet national housing needs.

"If having several million households live in dilapidated dwellings is satisfactory, then existing markets can indeed meet national needs adequately," Mr. Downs told the Joint Economic Committee.

"If these conditions are not satisfactory, some type of nonmarket intervention is necessary," he said.

The necessity for reform in Federal housing programs is by now well-documented and undeniable. But to shut down those programs completely, pending new policy decisions, ignores the continuing need for assisted housing. It could prove to be a socially disruptive policy. I trust that cooperation between the executive and legislative branches can help develop a better answer.

OPEN COMMITTEE MEETINGS

Mr. MATHIAS. Mr. President, 110 years ago, Abraham Lincoln declared that our federal system of government was "of the people, by the people, and for the people." Certainly at the national level, the Founding Fathers intended the Congress to be the most representative, responsive, and accountable branch of our Government. In recent years, however, the Congress has fallen from a position of equality with the other branches. As a result, it has lost some of the faith of the people which it has historically held.

The citizens' confidence in Congress has dropped from 64 to 26 percent, and the Congress is now the least respected of the three branches. At stake, however, is not just a popularity contest, but the question of whether or not the Congress will, as the Constitution envisions, wisely decide questions of war and peace, of taxation and appropriations, and of the ordering of our national priorities.

Early in December, Senator ADLAI STEVENSON and I formed an Ad Hoc Committee on Congressional Reform which held hearings on the state of the Congress. We heard witness after witness tell us that Congress has fallen to the status of a third or fourth-class power, and that there is a pressing need for a stronger, more effective Congress.

Yet, perhaps the most impressive fact that emerged from those hearings was the widespread public confidence that Congress can and will regain its historic role in our federal system.

The bill S. 260, which I am happy to cosponsor along with the Senator from Florida, the Senator from Illinois, and many others, is one step toward restoring the Congress as an equal partner in our Government. I am hopeful it will also help regain the faith of the American people in the Congress. This bill provides that all committee meetings should be open—unless they are closed by a specific vote of the committee. If the matters being discussed by the committee include issues of sensitive national security, criminal allegations, or internal staff operations, then the bill provides that it is proper to close the committee session. The bill also provides that a properly edited transcript of the proceedings of closed committees be made public as quickly as possible after the committee session.

What this bill means is that the actions of the Congress will be visible in almost all cases for review by the people. It means that the people can hold Congress accountable for its decisions, and thus, this bill will go a long way toward restoring the Congress as the most responsive and representative branch of Government. The provisions of the bill apply as well to the Federal agencies, and I suggest that its salutary effects will be found to be as welcome to these agencies in the long run as they will be to the Congress.

Mr. President, I am very pleased to be a sponsor of this legislation, I want to congratulate the Senator from Florida for his continued leadership on this issue. I hope that this bill will get very serious and very rapid consideration by the appropriate committees so that the Congress can now move into the bright sunshine of a new day.

THE NEED FOR CONGRESSIONAL REFORM

Mr. PACKWOOD. Mr. President, the current issue of The National Observer contains a most interesting article entitled "What Congress Needs To Do Is Vote, Vote, Vote," written by James Perry.

The article emphasizes the fact that the United States is presently in the midst of a constitutional crisis. It demonstrates that while the President's powers and resources have mushroomed in the past three decades, Congress is "facing nuclear problems with colonial procedures."

But the article points out that the most startling aspect of the demise of Congress is that all Congress must do to reclaim its lost prerogatives is to vote. As Mr. Perry said:

If the leaders can't lead, Congress can vote to replace them.

If its committee chairmen are crusty with age, it can vote to get new chairmen.

If it can't get the information it needs to make independent judgments, it can vote to buy computers and data-retrieval systems.

If it doesn't have the staff to read what the computers print, it can vote to hire computer-age employees.

If it believes that some members can't vote their convictions because special interests have financed their campaigns, it can vote for public financing of campaigns.

If it believes that lobbyists dictate the terms of some legislation, it can vote to tighten the rules governing the conduct of lobbyists.

If it believes that its own members ought to understand the rules under which Congress is run, it can vote to put those rules on paper, now.

If the press won't pay attention to what the Congress is doing, the Congress can vote to open its meetings and even, heavens above, to allow TV cameras on the floor.

If the Senate can't get on with its business because of filibusters, or the threat of them, the Senate can vote to make filibusters a lot more difficult.

If Congress believes that honesty starts at home, it can vote to make its own Congressional Record honest.

And, finally, if it believes that Presidents have been permitted to fight their own wars, in their own way and at their own leisure, it can vote to stop payments for such Napoleonic adventures.

Or, it could go even further. I could vote for a "war powers bill," such as the one that was introduced by Senator Jacob Javits, passed last year in the Senate by a vote of 68–16, only to die later, as adjournment neared, in conference committee. The bill, soon to be reintroduced, would limit the conditions under which a President could order American troops (or advisers) into combat, and then require the President to seek congressional approval of his decision within 30 days.

The trouble with Congress is that—while it talks about the need to reassert its constitutional prerogatives—it has done very little about it. And very little will be done until Senators and Representatives decide for themselves that they want to take the difficult road of leadership and make the hard decisions that the framers of the Constitution intended Congress to make.

I agree with Mr. Perry that Congress has "probably turned the corner" through the adoption of several long overdue reforms recently. I urge every Senator to read the article so that Congress may become again what it was during the days of Clay, Webster, and Calhoun.

Mr. President, I ask unanimous consent that Mr. Perry's article be printed in the RECORD and urge every Senator to read it.

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

WHAT CONGRESS NEEDS TO DO IS VOTE, VOTE, VOTE

(By James M. Perry)

You can't take a vacation any more without returning to discover that the nation is up to its ears in a brand-new "crisis." I've been away for five weeks and, sure enough, we have another one—the "Crisis in Congress," Time magazine calls it Apocalyptically, Time says:

"The U.S. is facing a constitutional crisis. That branch of government that most closely represents the people is not yet broken, but it is bent and in danger of snapping."

And Warren Weaver, Jr., in his new book *Both Your Houses: The Truth About Congress*, says:

"The Capitol is a hall of illusions, peopled by the myths that the legislative branch remains proudly co-equal. . . . Clumsy, unresponsive, controlled in large part by its most ordinary members, the national legislature blunders on, facing nuclear problems with colonial procedures, insisting all the while that nothing is wrong. In fact, a great many things are wrong."

Well, Weaver is right. A great many things are very wrong. Congress is about as up-to-date as Kansas City. The "crisis," presumably, is compounded by the presence of Richard Nixon—"The Sullen Emperor," the New York Times has called him—in the White House, a Wizard of Oz, running everything secretly behind the great, whirling, clanking machinery of the Executive Branch.

I am not overly sympathetic with members of Congress whining about usurpation of their powers by the White House. If a woman spends years staggering from bar to bar dripping with diamonds, well, someday somebody is going to heist the goodies. You can't blame the executive for making the legislative rip-off.

SOLUTION IS OBVIOUS

The important thing to remember about this "crisis" is that the solution is so obvious: All Congress has to do is vote.

If the leaders can't lead, Congress can vote to replace them.

If its committee chairmen are crusty with age, it can vote to get new chairmen.

If it can't get the information it needs to make independent judgments, it can vote to buy computers and data-retrieval systems.

If it doesn't have the staff to read what the computers print, it can vote to hire computer-age employes.

If it believes that some members can't vote their convictions because special interests have financed their campaigns, it can vote for public financing of campaigns.

If it believes that lobbyists dictate the terms of some legislation, it can vote to tighten the rules governing the conduct of lobbyists.

If it believes that its own members ought to understand the rules under which Congress is run, it can vote to put those rules on paper, now.

If the press won't pay attention to what the Congress is doing, the Congress can vote to open its meetings and even, heavens above, to allow TV cameras on the floor.

If the Senate can't get on with its business because of filibusters, or the threat of them, the Senate can vote to make filibusters a lot more difficult.

If Congress believes that honesty starts at home, it can vote to make its own Congressional Record honest.

And, finally, if it believes that Presidents have been permitted to fight their own wars, in their own way and at their own leisure, it can vote to stop payments for such Napoleonic adventures.

Or, it could go even further. It could vote for a "war powers bill," such as the one that was introduced by Senator Jacob Javits, passed last year in the Senate by a vote of 68–16, only to die later, as adjournment neared, in conference committee. The bill, soon to be reintroduced, would limit the conditions under which a President could order American troops (or advisers) into combat, and then require the President to seek congressional approval of his decision within 30 days.

It could vote for such a bill—if only it would. But it won't. It won't, so far, do any of these things and, thus, it is a "crisis" of Congress' own making. It is not an institutional "crises" because the institution stands; it is a problem of leadership and a will to use the institution in ways the Constitution directed.

JOHNSON, KENNEDY RIP-OFFS

It is no use to turn our anger towards the White House, because this President is not alone in specializing in legislative rip-offs. Presidents have been manhandling the Congress ever since we had Presidents, and our most recent Presidents—Johnson and Kennedy—were no exceptions. It is a situation that is built into the system.

It is my own suspicion that we've probably turned the corner, even as we have now discovered how badly the corner needs to be turned. It is fair to say, I think, that the membership in this Congress is more alert, less somnolent; more rebellious, less complacent; more sophisticated, less parochial than it has been in the past.

Modest reforms have been made, and the reform movement is almost certain to continue, probably at an accelerated pace. Beginning this session, as a very minor example, the House will use for the first time a computer-operated electronic voting system, designed by former quarterback Frank Ryan. The first patent for an electric vote recorder, Congressional Quarterly points out, was granted to Thomas Edison more than a century ago. Well, that's progress.

It is a glorious opportunity for the Congress, whose members are always complaining that nobody pays them much attention. Now, they'll get the attention, if for no other reason than that the President seems to have disappeared, which is strange because I thought he'd won a great landslide victory just before I began my vacation.

NIXON'S REORGANIZATIONS

I thought we'd get to meet him again, perhaps on more convivial terms than when we last saw him. But he marched into his Cabinet meeting when the victory was won and told everyone to get their resignations down on paper. Then he began accepting the resignations and changing around people's jobs and reorganizing the Government in the exact way that Congress had said he couldn't.

And then he began bombing North Vietnam back into the Stone Age. It is all very puzzling. Last I heard, "peace was at hand." But Kissinger is back in Paris and perhaps Nixon just forgot, in a moment's irritation, what the game plan really was. Or maybe Kissinger misunderstood. We don't really know, because Nixon won't tell us, and even Secretary of State Rogers, who usually doesn't know, won't talk to us or the Congress.

Nixon does want the Redskins to win the Super Bowl; we do know that. If he loses, watch out. Maybe we'll bomb Miami.

It is easy—oh, it's so easy—to be facetious, but this really is something of a problem. How can the Congress proceed, even in its ancient, clumsy way, if it doesn't know what the people down Pennsylvania Avenue are doing? How can we the people react when no one will tell us what's happening?

Goldwater, among others, tells us to shut up because the President, with all his intelligence resources, knows best. Well, John Kennedy knew best when he foundered in the Bay of Pigs and Lyndon Johnson knew best when he sent ground troops to Vietnam.

What we need most right now, it seems to me, is openness—by the President and by the Congress. It is here that Congress is on such treacherous ground itself because it has long believed it is some kind of club—two clubs, really, the Senate and the House, and never the twain shall meet.

If the Congress really is ready to take on the White House, it could begin by opening its own windows, and let the sunshine in. Let it be. Let it be.

BILINGUAL JOB TRAINING

Mr. PERCY. Mr. President, I am pleased to join Senators TOWER and DOMINICK in their fine endeavor to bring job training opportunities to Americans whose primary language is not English.

In the past decade, our manpower programs have accomplished much that is good. Hundreds of thousands of people have been taught new skills and given the opportunity to make a better life.

However, our manpower programs have not been consistently successful for all of our citizens. For example, a recent study contracted by the Department of Labor found that manpower programs fall far short of the needs of Spanish-speaking Americans because, among other problems, the programs are not *tailored* to the unique language and cultural needs of these citizens.

I have long been a supporter of bilingual education, and I thank Senators TOWER and DOMINICK for bringing bilingualism to job training. Since the enactment of the Bilingual Education Act of 1968, bilingual education has been a fast-growing phenomenon that many educators think will spread to thousands of schools in the next few years. Soon, educational bilingual television series will also be broadcast. Bilingual education has experienced success because, unlike traditional education, it addresses the linguistic and cultural needs of non-English-speaking students.

Bilingual job training, I believe, will be the key to the future success of manpower programs for all our non-English-speaking minorities and, especially, our Spanish-speaking Americans. Like bilingual education, bilingual job training can help the Spanish-speaking trainee bridge two languages and two cultures, while he resolves his own uncertainty in self-concept, his confusion of values, his hesitation and frustration at learning "Americanization," and his intimidation by an Anglo culture that communicates negative feelings about the Latin culture. Most important, through bilingual job training the Spanish-speaking American can learn the skills so that he has a way out of poverty not only on the Anglo's terms but also on his own terms.

It is for the Spanish-speaking Americans of Illinois and all other minorities whose primary language is not English that I am cosponsoring the Bilingual Job Training Act of 1973. In the past I have time and again protested against what I considered as bias in the Federal funding of bilingual education programs against Illinois and the Midwest. However, I was always told that the cause of my grievance was alleged lack of initiative or quality initiatives on the part of Illinois and the Midwest. I therefore want to be on record as among the first to support the Bilingual Job Training Act of 1973 so that Illinois cannot in the future be faulted for any lack of initiative.

SYNERGY III AWARD TO ARTHUR SAMPSON

Mr. BAKER. Mr. President, improvement of the quality of American life is an overriding priority of the Nixon administration, and of the first session of the 93d Congress which has just convened. In this context, I would like to draw your attention to an individual who has played a very important role in insuring that the Federal Government fulfills its responsibilities to the environment during the conduct of its daily business.

Arthur F. Sampson wears two hats as Acting Administrator of the General Services Administration and Commissioner of its Public Buildings Service. As such, he is in a unique position to influence the ways in which the Government can add to or detract from the quality of our environment. Over the past 3 years Mr. Sampson has met this challenge with creative ingenuity, professional management, and dynamic personal leadership.

It did not come as a surprise to me, then, to hear that Mr. Sampson had been the unanimous selection of the Society of American Registered Architects to receive its Synergy III Award, presented annually to the individual who has done most to contribute to the advancement of architecture, the environment, and fine arts. Previous recipients of this award have included Buckminster Fuller and J. Irwin Miller, chairman of the board of Cummins Engine Co.; the Synergy Award had not previously been given to a Federal official.

Perhaps the best way for me to illustrate Mr. Sampson's leadership qualities is to quote from his speech following acceptance of the award on November 19, 1972:

> The development and encouragement of an environmental awareness within the Federal Government is vitally dependent upon an effective environmental design policy and an imperative course of direct concerned actions. The General Services Administration is committed to the fact that its environmental design program will be a positive step in this direction. Such a program will necessarily provide the broad, cohesive framework within which GSA can productively continue to build its systems and management oriented programs, as well as achieve its more important environmental objectives.
>
> These are large and important goals. Neither the General Services Administration, nor any individual organization, public or private, can achieve them by working alone. The public and private forum that is represented here this evening must work together in the attainment of environmental design objectives.
>
> To this end, the General Services Administration is continuing to refine development in many areas which relate directly to you.
>
> We are firmly committed to a program of cultural development. GSA has set aside ½ of 1% of the total construction budget for a specific project-by-project selection of fine arts. Under President Nixon's program of increased emphasis on our cultural heritage, this program now amounts to over $1.5 million, and I have established an Office of Fine Arts and Historic Preservation within GSA's Public Buildings Service to concentrate on this area.
>
> Aided by recent legislation, this office is now moving ahead with a major effort to inventory, evaluate and preserve distinguished Federal artwork, architecture, and property. Our efforts have been rewarded: 1,400 murals, 75 sculptures and 43 buildings have been identified.
>
> Also within the Agency, I have called for a definite commitment to design quality. This, of course, includes the performance of our design professionals. Our responsibility to perform is seriously affected by the selection of competent designers and an evaluation of their product.
>
> The National Public Advisory Panel on Architecture is an important link in the process of design evaluation. This panel of architectural peers provides the architect and the General Services Administration with valuable insight to the optimum design solutions.
>
> My search for design quality and professionalism continues beyond the selection of qualified design teams and the work of the Architectural Advisory Panel through activities on a Presidential Task Force with the Civil Service Commission. We are intensifying our efforts to require professional registration for staff members most responsible for design quality.
>
> We have moved out of the Agency to talk about a concern for environmental quality and now our actions are beginning to feed the fires of that concern. The more we examine, test and evaluate new environmental concepts, the more aware and informed we become. Recommendations of the April 1972 GSA Public Buildings Service Environmental Conference on Building Construction have been translated into reality. Two buildings, one in Saginaw, Michigan, and one in Manchester, New Hampshire, will act as virtual design laboratories to test environmental concepts in areas bounded only by the creativity and ingenuity of the design team. The future of environmental quality becomes brighter as we build the pieces of the problem into a whole of understanding.

It is my sincere hope that the other Members of this Chamber will join with me in congratulating Arthur Sampson on receiving the Synergy III Award, and in saying "Thank you" for a job well done.

JOE KAUFFMAN

Mr. PELL. Mr. President, Dr. Joseph Kauffman, who recently resigned as president of Rhode Island College, was a great asset to the higher education community in my State. He will be sorely missed. A man imaginative in his long-range view and appropriately sensitive to the needs of the present, Dr. Kauffman describes himself as "eclectic," and stresses the need for an open and inquiring atmosphere in an educational institution, where experimentation and reform occur alongside conventional approaches.

During his tenure as president of Rhode Island College, 1968 through 1972, the school made rapid progress, acquiring a new image and gaining stature in the community. Dr. Kauffman articulated a few specific goals, some of which have already been realized, when he said:

> What I wanted to do here . . . I have started and we have made a lot of progress . . . in the size of the place, the diversity of the student body, the community emphasis of almost all of our new programs, and in the feeling of increased respect for the college both outside and inside.

A picture of Rhode Island College in factual terms shows the enrollment up 52 percent, a notable rise in black attendance and faculty, increased flexibility in curriculum, and new urban studies and community service programs. Dr. Kauffman successfully steered Rhode Island College in the dynamic direction of an "inclusive" rather than an "exclusive" college. My congratulations to Dr. Kauffman on his term at Rhode Island College and best wishes to him in his new position as full professor of higher education administration at the University of Wisconsin in Madison.

I ask unanimous consent that a Providence Evening Bulletin tribute to Dr. Kauffman be printed in the RECORD.

There being no objection, the article

was ordered to be printed in the RECORD, as follows:

DR. KAUFFMAN LOOKS BACK AT SUCCESSFUL RIC EFFORT

(By Carol J. Young)

Dr. Joseph F. Kauffman got a rather strong message a few years ago when he had to give some "very distinguished community leaders" directions to the president's house on the Rhode Island College campus.

"The college was underappreciated by the community and the state . . . to the point where some people expressed to me that I might be overqualified for the presidency," he recalled.

"This upset me and I was determined as one of my first priorities to help both those inside and outside the institution to understand the potential of a college such as this," he said.

It didn't take long for Dr. Kauffman to start a face-lifting campaign for RIC. And four and one-half years later it is difficult to find anyone connected directly or indirectly with RIC who does not think he succeeded.

Rhode Island College today has a new self-confidence and a new public image.

At his first convocation in 1968 Dr. Kauffman called RIC an "inclusive, not an exclusive college." He said it was an institution which should brag about how many people it was able to accept, not how many applicants were rejected.

"I find in New England respect tends to be given for exclusivity and I wanted to meet that head on," he said of that first major address.

"I don't think any public institution, certainly not an urban institution, should be in the business of picking winners and leaving to some other agencies the average and the adequate. I think our responsibility is to the whole community and if we do no more than make adequate the competence and the lives of the majority, that is a tremendous contribution," he proclaimed.

Dr. Kauffman added he believes it important that the most talented people be respected and nurtured, "but society cannot survive by cultivating only an elite."

"I think for society to remain open and optimistic the majority of people must see their lives as able to be improved," he said.

Dr. Kauffman, who is resigning Jan. 8, made these observations during a lengthy interview recently during which he talked quietly and often philosophically about his reasons for leaving, his administrative style, his goals for the college and his personal views of education.

It is his view of education—public education—which clearly has governed the changes accomplished during the "Kauffman years" and which favors the new mood and spirit at RIC today.

Dr. Kauffman said he had no specific plan of action when he arrived. "My practice of administration is not manipulative. I don't set goals by myself and push and pull people to reach them," he said.

What he tried to do, he said, was "create a climate in which people could not only disagree with one another but advocate all sorts of audacious ideas for this place without fear of penalty."

Change is apt to come about more easily when people know it is safe to challenge existing practices, he observed. "I found people were perfectly willing to be more flexible in such areas as admissions and curriculum when they learned it was all right with the president," he said.

Among the tangible signs of change has been an increase from a meager 10 or so black undergraduates in 1968 to more than 200 black undergraduates this year; the opening of a part-time undergraduate degree program which now enrolls more than 700 students, including many adults, and a sharp increase in the number of junior college transfers.

Overall the RIC enrollment has increased by 52 per cent since 1968, making it the fastest growing four-year institution in the state.

Along with black students have come more black faculty and staff—from fewer than a dozen black employes in 1968 to 31 employes, including secretaries, administrators and faculty, in 1972. Many are associated with federally-aided, community-based projects.

Accompanying the physical growth has been a change of priorities within the institution. Dr. Kauffman didn't just talk about the need for more financial student aid, about beefing up student counseling services, about creating community service programs. He backed up the goals with money when internal budget decisions were being made, often at the expense of other campus activities.

The late 1960s was a period of undergraduate curriculum reform throughout the nation and Dr. Kauffman is particularly proud of RIC's solution in this area.

"One of the things we have done in the curriculum is to allow both teachers and students to select different styles of learning and teaching without forcing all conservatives to be gung ho innovators or repressing all innovators and making them all be conventional classroom teachers," he said.

"If anything, I'm an eclectic," he mused. "I think one of the greatest values of a college or a university is the role it plays in permitting people to be different.

"So while I have a great deal of respect for the challenger-type faculty member who is a countervailing force, who is an anti-status quo type person, I also nave a great deal of respect for the rank and file person who has preserved what we have come to take for granted but which is very, very precious if we were ever to lose it."

In addition to breathing flexibility into the general curriculum, the college has moved into a variety of new programs with a decided urban focus.

Education majors can now specialize in a new urban teaching curriculum; students can now get credit for volunteer community service work; an ethnic heritage project has been launched to prepare curriculum materials and provide in-service training for teachers and a center for economic education, which also works on curriculum and in-service training, has flourished.

RIC is one of the three institutions in the country with a federally-aided, three-pronged approach for encouraging disadvantaged youngsters to go to college. The Talent Search staff identifies poor students in their early school careers who are considered "college potential"; the Upward Bound staff works year-around to prepare high school students for admission to college and a third special services staff provides tutoring and counseling for disadvantaged students after they enter college.

A Bureau of Educational and Social Services also has been set up as the formal link between campus and community. The bureau works to match internal talents and, when possible, funds with the needs of school systems, community organizations and others.

At a recent testimonial dinner, Dr. Kauffman told the campus community that RIC still has "promises to keep."

Asked what he had meant, Dr. Kauffman spoke first of the need to continue the college's commitment to ethnic and racial diversity and secondly of the need to press forward on the move to make RIC a comprehensive institution.

"We have a lot of tensions on this campus among black and white students," he said. "Dealing with that, accepting the fact that there is going to be conflict, being prepared to learn from it, to be involved in it, to agonize with it and not merely turn your back on it, is one thing this college must keep doing," he said.

RIC, known best as the state's major teacher producer, has expanded its offerings in recent years, moving into the field of health education, nursing, social work, medical technology and other science-related areas.

This expansion is important, Dr. Kauffman said.

"If this institution is going to be the only possibility for most students to attend a four-year college, we shouldn't be restricting any of the opportunities for them to obtain a vocationally-applicable result of their education," he said.

Dr. Kauffman's words rang against the walls of his soon-to-be-empty office. He spoke as if he wished his successor were listening.

EDUCATOR'S SUPPORTERS VIEW HIS DEPARTURE AS REGRETTABLE

Supporters of Dr. Joseph F. Kauffman view his departure from the presidency of Rhode Island College as inevitable.

But many say it was prematurely prompted by an insensitive state Board of Regents which waited until his resignation to tell him he was doing a good job and which consistently has exhibited more interest in the management of education than in the goals of education.

Dr. Kauffman does not describe his reasons for leaving in such harsh terms but what he did say appears to lend credibility to the observations of others.

Prior to assuming the presidency in 1968, the 51-year-old administrator held deanships at both Brandeis University and the University of Wisconsin, was associated with two national education organizations and was the first director of training for the Peace Corps.

He is leaving to become a full professor of higher education administration at the University of Wisconsin, Madison campus, a career choice he made after declining to show interest in a half dozen or more serious approaches about other college presidencies during the last year alone.

"What I'm going to is, in some ways, a respite, in the sense that I am not sure that I will find it completely fulfilling, but it will offer me an opportunity to take all that I have learned both as a student and a practioner in higher education and try to develop teaching and research programs that hopefully will improve the knowledge and art of administering colleges and universities," he said of the new job.

"What I wanted to do here, I have started and we have made a lot of progress . . . in the size of the place, the diversity of the student body, the community emphasis of almost all of our new programs, and in the feeling of increased respect for the college both outside and inside," he said.

"There would be some kind of limit on how long I would spend . . .," he said, letting his voice trail off without finishing the sentence.

He went on, "The role of the presidency as it has developed here doesn't really allow one to be as creative intellectually as I feel the need to be and it often requires one to stifle such aspirations."

"It also requires one to work with and justify to persons who have much less understanding of the whole background of what this institution is doing and where it ought to be going," he said.

He hastened to add that he attributes no malevolence to those individuals, namely members of the state Board of Regents and the commissioner of education and staff, who were making increasing demands on his time as they moved toward cost-effectiveness analysis, long-range master planning, management information systems and internal budget controls.

"I can't get really angry at anything or

anyone in the system that is evolving. It is just that some aspects of it I do not regard as fundamentally productive. Some aspects I regard as fads, and some aspects I regard as probably of some use," he said.

Dr. Kauffman was hired by the old Board of Trustees of State Colleges, one of the two state education boards dissolved when the single state Board of Regents was created under the Education Act of 1969.

"I think my own experience, development, interest and talents leave me with some impatience for visiting all over again why we have a college, what is education and justifying what we are doing or what we had approval to do three or four years ago," he said.

Dr. Kauffman said he is willing to develop considerable time and effort on coordination efforts within public higher education, on sharing information, on being monitored and "letting people see that I am not doing anything inappropriate"—all references to his dealings with the regents and the commissioner's office.

"But that has to be accompanied by at least an equal amount of my energies dealing with what I consider to be the intrinsic aspects of education—such things as concern for the development of student talent, human capacities, concern for the aspirations of people which education should nurture," he continued.

"I think effective management is important only insofar as it relates to managing an important enterprise. I find it hard to give it my fidelity as an end in itself," he said.

Dr. Kauffman said the Education Act of 1969 which created a single governing board for all levels of education "is exceedingly difficult to implement", but he added that he has no solution to propose.

"I am not sure that one board can be that informed and knowledgeable and involved with the problems and opportunities in higher education, and at the same time be involved and informed about public broadcasting and educational television and what developments ought to take place there and at the same time be that concerned with special populations and at the same time give leadership to elementary-secondary education and hear all appeals . . . ad infinitum," he said.

"I don't know how one executive officer (a commissioner) can be expected to be informed and advise the board on all such matters," he went on.

He said he does not blame anyone for filling these governing positions but "I think it is impossible to provide the kind of quality of leadership for all of these areas in any kind of equal way. Some things have to be sloughed off just to cope with what appears to be most urgent from day to day," he said.

WILLIAM F. BUCKLEY

Mr. PERCY. Mr. President, there is abroad in the land a walking-talking highly intelligent and sparkling literate dictionary-encyclopedia. His name is William F. Buckley, the brother of the distinguished Senator from New York. For the past several years, his television interview program, "Firing Line," has become more than just a talk show where starlets giggle about their latest movie. On the contrary, the program has offered on a continuing basis simulating and thought-provoking exchanges of ideas, philosophies, and perceptions of and about our country and our world.

The fact that this program has appeared on the public broadcasting network has helped to raise both the quality and the balance of this publicly financed, commercial-free network. Certainly, his program is a model of what public television should be. It is an attempt to inform and entertain the viewing public, but in a manner that sacrificed neither information nor entertainment.

Mr. President, there has been some talk that William F. Buckley is a conservative, or to the right of the political spectrum. I say, so what? He offers his views in an unabashed and forthright manner, and he does not pull his punches. His performance on his show should be measured solely on his ability to make his show what it is today, a popular and immensely enjoyable television program. The question of his politics or his personal predilections is completely inappropriate to any consideration of whether or not his show should be continued or not. Consequently, I was quite concerned over recent reports that his program was going to be canceled from public television for reasons based on considerations other than the quality of the program.

An editorial in the Christian Science Monitor of January 8, 1973, offers some valuable thoughts on this matter. I ask unanimous consent that the editorial be printed in the RECORD.

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

KEEP BUCKLEY ON TV!

We do not always agree with every opinion William Buckley expresses on his controversial program called "Firing Line." But it happens to be one of the more lively, thought-provoking, and sophisticated of public affairs programs to be witnessed on any American television network, and it will be a loss to all of us if what we think is a badly misguided White House policy drives it off the air.

At the present moment it is one of the public affairs programs being driven off the Public Broadcasting network by deliberate White House policy. The administration's intent, announced publicly by Clay Whitehead, has been largely bought by PBS president Henry Loomis; PBS is dropping Mr. Buckley. Mr. Buckley is looking for a commercial network slot and we certainly hope that he finds one if the ax falls finally on the public network. And if the same policy can be made to apply to commercial broadcasting Mr. Buckley will be barred from there as well.

Current administration policy is aimed at ending all controversy on all networks. The White House approach would lead to entertainment and a vehicle for official government policy—nothing more. The prospect is chilling, and dangerous.

Howard K. Smith loves to point out that there are twice as many government propagandists on the public payroll in Washington as there are newsmen trying to find out what the official government press officers are trying to conceal.

Public Broadcasting programming probably was overbalanced on the liberal side. An argument could be made that the impact of the Buckley program was as great as the others combined. There is a case for saying that it needed more balance between liberal and conservative views.

But it's pretty silly for a conservative administration to kill the Buckley program in order to get rid of "Bill Moyers's Journal," "Washington Week in Review," and the views of Sander Vanocur.

We very much hope that we will never have to conclude that even Buckley conservatism is too nonconformist for the Nixon White House.

IMPOUNDED FUNDS NEEDED FOR EMERGENCY RELIEF IN RURAL MISSOURI

Mr. SYMINGTON. Mr. President, we in Missouri join other parts of the Nation in being only too well aware of present and future hardships which have resulted, and will result, from recent administration decisions to terminate programs providing relief for farmers who have suffered heavy losses because of natural disasters.

Last year, southeastern Missouri counties experienced an exceptionally wet fall and winter. Crops in many parts of the State were ruined because they could not be harvested. To add to these losses, areas in western Missouri have suffered two ice storms in the past 6 weeks which destroyed thousands of acres of crops and miles of power lines.

If these hard hit rural Missourians are to continue farming, they will need low-interest-rate loans and cost-sharing programs. These citizens need assistance now and will need loans for planting new crops in the spring.

In order to meet emergencies of this nature over the years, the Congress has authorized and appropriated funds for the Farmers Home Administration, the Rural Electrification Administration, and the rural environmental assistance program. Now these funds are being withheld.

On January 9 the Missouri House of Representatives passed unanimously a resolution which called attention to the impact the weather was having on the livelihood of our State's farmers and appealed to the President to reinstate the disaster relief funds.

On behalf of my colleague, Senator EAGLETON, and myself, I ask unanimous consent that the text of this resolution be printed in the RECORD; also that it be referred for appropriate consideration to the Senate Committee on Agriculture.

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

RESOLUTION

Whereas, the southeastern area of Missouri has suffered an exceptionally wet fall and winter; and

Whereas, as a result of this weather, unprecedented in our state, greater than fifty per cent of the crops are unharvested or completely ruined, and thousands upon thousands of acres of cotton, soybeans and other major crops which form the mainstay of Missouri's agricultural industry must remain in the fields; and

Whereas, many hundreds of farmers, whose entire livelihoods depend upon the cultivation and timely harvest of these crops, face imminent and inevitable financial ruin as a direct result of this weather, and the repercussive economic hardships imposed upon this area alone will amount to hundreds of millions of dollars; and

Whereas, these circumstances have compelled an urgent appeal to the President of the United States of America for disaster relief funds on behalf of these many farmers who now face this most serious crisis; and

Whereas, the President has frozen funds appropriated by the Congress of the United States of America for the purpose of disaster relief in an attempt to curtail federal spending; and

Whereas, endeavors to minimize deficit spending whenever feasible are certainly un-

derstandable and highly commendable; however, the critical situation which compels these sentiments, the well-being of so many people and the backbone of the most important industry of this state, requires immediate reconsideration of the decision to withhold these disaster relief funds;

Now, therefore, be it resolved that the members of the Missouri House of Representatives of the Seventy-seventh General Assembly, First Regular Session, join in urgent appeal to the President of the United States of America, the Honorable Richard M. Nixon, to reinstate the desperately needed funds for the assistance of the farmers of Missouri, the victims of these tragic circumstances; and

Be it further resolved that the House of Representatives notify each member of the Congressional delegation of our state of our appeal, that those members so intimately acquainted with the magnitude of this crisis might join us in our plea; and

Be it further resolved that the Chief Clerk of the House of Representatives be instructed to send suitably inscribed copies of this resolution to the Honorable Richard M. Nixon, President of the United States of America, and to each Missouri member of the Congress of the United States of America.

DEVELOPMENTAL DISABILITIES SERVICES AND CONSTRUCTION ACT EXTENSION

Mr. WILLIAMS. Mr. President, I am pleased to join with other Members of the Senate in introducing legislation extending the Developmental Disabilities Services and Construction Act. In my estimation, this legislation is one of the most advanced vehicles for providing comprehensive services for handicapped individuals.

When this measure was first signed into law on October 30, 1970, it represented a significant expansion of the scope and purposes of the Mental Retardation Facilities and Construction Act of 1963. Developmental disabilities broadened the scope of this program to include not only the mentally retarded but also persons suffering from other developmental disabilities originating in childhood, including cerebral palsy, epilepsy, and other neurological handicapping conditions. The program was fashioned to include support for a full array of service programs, and new authority and responsibility was given to the States for the development of comprehensive planning and programing for services to persons with developmental disabilities.

It is important to understand the intent of this legislation. Developmental disabilities was intended by Congress to establish a partnership of Federal, State, and local government in order to create a broad continuum of community based programs and facilities for the developmentally disabled. It was the purpose of this act to provide a complete mechanism through which the States could pull together, at the level of service delivery, all of the fragmented programs needed to provide integrated care, training, and services for individuals with neurologically handicapping conditions. The goal was not to duplicate existing services, but to deploy funds in a catalytic manner for systematic planning, coordination, and integration of services. Funds under this act are only used to support service delivery when services do not exist or when necessary gaps must be filled to provide comprehensive programing.

I believe I speak for all of my colleagues in saying that there is strong support for this program in the Congress. As an outgrowth of the Mental Retardation Facilities and Construction Act, this legislation was aimed at a target group—those individuals with severe disabilites which originate before the age of 18, which severely affect their development, and which have continued or can be expected to continue indefinitely. Because of the chronic nature of the disability, and its occurrence early in life, individuals so impaired are more likely to have ongoing difficulties throughout the developmental years. Also, they are less likely to have the comfort and support of family, and an income adequate to their needs later in life. Estimates of this population indicate that there may be as many as 3.5 million adults, and 3 to 4 million children, suffering disabilities such as mental retardation, epilepsy, cerebral palsy, childhood psychoses, sensory disorders, infantile autism, and severe mental illness. More than a quarter of this population is institutionalized, and a much higher percentage is ill-served by existing service programs because of their failure to fit into neat categories.

The bill that we are introducing today is a simple extension of the act for 2 years. Hearings by the Subcommittee on the Handicapped will commence on this bill in the very near future, with recommendations to be made at that time for changes in the legislation and necessary additions. I expect that two of the more major changes which will be dwelt on during hearings will be a change in the definition of "developmental disabilities" so that the act may better serve the entire population of severely handicapped individuals at which it is aimed, and an emphasis on provisions which will enable such individuals to be served in the community through community-based programs as an alternative to institutionalization.

Events of the last year, including court cases involving institutionalization and right to treatment, demand strong action to find more normalized modes of care and treatment for this population, and I believe that the committee will focus its full attention on this desperately needed alternative.

WATER POLLUTION CONTROL

Mr. BAKER. Mr. President, late last year I had brought to my attention an article on the subject of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) written by R. Frank Frazier, president of American Agribusiness Associates, Inc. The article appeared in the October 2, 1972, issue of the journal Feedstuffs.

As a member of the Senate Subcommittee on Air and Water Pollution, I have grown used to widespread resistance from virtually every industrial sector to environmental regulation. It was for this reason that I found Mr. Frazier's article so extraordinary. Mr. Frazier seems to believe that the Congress acted wisely in enacting the 1972 FWPCA Amendments.

It is common for various industrial sectors to seek to persuade the public and the Congress that their contribution to the pollution problem is really not very substantial. Yet Mr. Frazier openly states that—

> Not only does agriculture contribute more waste than mineral, industrial or residential sources, but the problem is accentuated by the concentration of wastes that result from the adoption of modern, more efficient methods.

He goes on to accept the challenge to modern agriculture to do its share to assure a quality environment.

I invite the attention of Senators and the attention of industrial polluters to this article. It might well serve as an example to some who come before the Congress to cry wolf on environmental matters. I do not suggest that industries with legitimate problems should not be heard. I do suggest that Mr. Frazier's approach is a remarkable breath of fresh air and one more likely to win his industry a receptive ear in the Congress than is the more usual resistance of industrial polluters who have to be dragged kicking and screaming into modern corporate responsibility.

Mr. President, I ask unanimous consent that the article be printed in the RECORD, together with an associated feature from Feedstuffs magazine entitled "Why Congress Acted."

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

1972 FEDERAL WATER POLLUTION ACT: A NEW ECONOMIC PRESSURE ON PRODUCERS, PROCESSORS OF POULTRY AND MEAT

(By R. Frank Frazier, American Agribusiness Associates, Inc., Washington)

(EDITOR'S NOTE: R. Frank Frazier is president of American Agribusiness Associates, a company that provides government relations assistance to agribusiness companies and associations. Prior to his present position, he was president of the National Broiler Council and served as NBC's administrative director for its first 17 years. Mr. Frazier also has served as a marketing specialist for the U.S. Department of Agriculture and held executive positions with six other associations within the poultry industry and agribusiness.)

Tough new federal legislation to rid the nation's waters of pollution by 1985 is now moving rapidly with strong bipartisan support toward final approval by Congress. Reported favorably by a Senate-House conference committee on Sept. 14, it is expected to get quick floor action and, barring a veto by President Nixon, will be enacted prior to November.

Such a law will have tremendous impact on meat and poultry slaughter plants, cattle feedlots and many other phases of agricultural production and processing. For some it will open up exciting new opportunities, but for others it will create unbearable economic pressures. And it is entirely possible that long before 1985, poultry processing plants, for example, will be employing closed loop systems to purify and reuse the same water month after month, thus eliminating

the necessity to dispose of large quantities through municipal treatment facilities or directly into rivers or streams. Although such a change may seem farreaching, it is not farfetched. In fact, federal officials regard it as a goal that could become both economically sound and technically feasible.

To accelerate pollution abatement under the new law, Congress is expected to give the Environmental Protection Agency an authorization of $24 billion in federal funds, and in addition has delegated broad enforcement powers to the agency. The law not only spells out what has to be done, but it also sets up a timetable for complying, starting off in low gear with present efforts, accelerating through a series of actions to reach second gear by mid-1977, and moving on into more advanced actions to high gear by mid-1983, and then on into overdrive (maybe) by 1985 to reach the goal of pollution-free water.

As efforts to administer this law get underway, agriculture is certain to come in for priority attention. Not only does agriculture contribute more waste than mineral, industrial or residential sources, but the problem is accentuated by the concentration of wastes that result from the adoption of modern, more efficient methods. Today thousands of cattle are brought together in the relatively small area of a feedlot where runoff often creates serious problems. An up-to-date poultry processing plant, using 7–9 gal. of water per bird, will use a million gallons of potable water daily and about the same amount of waste water has to be disposed of in some manner.

In view of these circumstances, problems of water pollution were being experienced long before Congress became involved with the 1972 Federal Water Pollution Control Act. And a lot of effort and money had gone into correcting them. For example, in 1969 poultry processors spent private funds totalling $4.5 million for water pollution abatement measures and meat packers invested $20 million. While such efforts were helpful, they were hardly considered to be adequate on an industry-wide basis.

Nor had officials of government been asleep at the switch. Traditionally, water pollution came under the control of states and municipalities. Some have had excellent programs, but as public concern over environmental issues intensified in recent years, federal officials came into the picture more prominently. At first they looked upon water quality as a stepchild, and 25 years ago the federal program was hidden away in the basement of the U.S. Public Health Service. Over the years it became a victim of a series of reorganizations as the program was shifted to HEW, then the Department of Interior, later the Water Quality Administration and finally to EPA.

Inconceivable though it may appear today, Congressman Jim Wright of Texas, in comments to the House Public Works Committee in May 1971, said, "In 1956 most public officials had no more interest in this somewhat unglamorous and mundane subject than a hippie has in a barber shop. They avoided it like a flighty filly shying away from a rattlesnake . . . and all we were trying to provide was $50 million to assist hard-pressed communities in cleaning up their waste before it entered the streams of the country. It is ironic . . . the authorization now stands at $1.25 billion for the current fiscal year—25 times as much."

Thus the stage was being set for giving the green light to a tough new federal law backed up by a greatly expanded budget.

The new legislation has two features of paramount importance to agriculture:

One gives EPA the authority, after consultations with industry, to require point sources (firms discharging pollutants into rivers, streams or lakes) to meet certain water quality standards.

The second preempts the former right of states to set minimum standards on the amount of effluents a plant may discharge into the nation's waters. However, states retain the right to invoke standards more stringent than the federal minimum.

TWO-PHASE PROGRAM

The prudent use of effluent standards, as visualized by the architects of the new law, will enable EPA to gradually reduce the amount of pollution going into rivers, streams and lakes by increasingly tightening up on the standard. In this way, instead of trying to correct problems after they occur, as has been true so often in the past, EPA will move into action with a two-phase program to prevent them from ever occurring in the first place.

This would seem to be a common sense approach. But its successful application could have far reaching economic impact on those affected.

The first phase of the clean up effort calls for achieving the "best practical control technology" by July 1, 1977. For poultry processors not using a municipal treatment plant, this would probably mean reducing the quantity of BOD (biochemical oxygen demand—a measure of oxygen needed to decompose waste) in the untreated effluent from about 30 lb. per 1,000 broilers to somewhere in the neighborhood of 1.5 lb.

To evaluate the economic impact of such a standard, USDA in a recent survey of 386 poultry slaughter plants found the 44 plants with no treatment or only primary treatment would need to invest from $1.5 to $4.8 million to upgrade their effluent to the "best practical control technology" standard. The average investment per plant was estimated to range from $35,000 to $109,000. Of the 44 plants, 25 were small with less than 10 million pounds annual live weight slaughter. Their ability to survive might well depend on success in tapping low cost external capital, or their ability to tie into a municipal system. Since these plants represent only about 30% of the volume of federally inspected birds, they would likely be unable to increase their selling price enough to cover the cost of complying with an effluent standard calling for use of the "best practical control technology."

Now, how would the 245 plants included in the USDA survey be affected that dispose of effluent through municipal treatment operations?

Under the new law, the EPA Administrator would not be permitted to approve any grant for publicly-owned treatment works after June 30, 1973, unless assurance is given that industrial users will pay a user fee in proportion to their share of the operational, maintenance and expansion costs. Cities of North Carolina and other states have already invoked user charges ranging from $20 to $80 per 1,000 lb. of BOD, which could add up to nearly $1,000 per month for a medium size poultry plant. More cities can be expected to follow suit as grants are made under the new law. Some have imposed user fees so high that plant management is given an incentive to save money by installing their own treatment facilities. Even if they chose not to do so, they might find it pays to subject the effluent to primary treatment before it leaves the plant. And they may be required to do this anyhow if such effluent would interfere with the operation of the municipal treatment facilities.

Not to be overlooked, of course, is the fact the new law would require many cities to meet higher standards, in as much as secondary treatment becomes mandatory for all municipal wastes by mid-1977. So at that time, phase one of the new effort to clean up the nation's waters is to be completed and the water pollution control is to shift from low to second gear.

Before such a shift can occur, a gigantic task must be completed in less than five years. How will the federal government, in cooperation with states and cities, proceed toward this initial goal?

DEVELOPING GUIDELINES

EPA's first step will be the development of effluent guidelines. Much progress has already been made in this direction, but to make certain the guidelines recommended are realistic and reasonable, EPA within the next seven months will complete a new survey of poultry processors to gather effluent data to upgrade and validate previous technical data and cost information. Later the voluntary effluent guidelines are expected to become mandatory regulations. EPA officials emphasize the fact the effluent guidelines or limitations are to be considered a moving target, starting initially with primary treatment (removal of unsuspended solids), and then to secondary treatment (lagoons, for example) for those who meet the "best practical control" standard.

The second important step in the implementation of the new law requires that an EPA-approved permit be obtained by those discharging polluted water. In some instances these permits are to be obtained from states having EPA-approved programs, and in others directly from EPA. Until new federal effluent guidelines are issued, permits granted by state authorities are subject to a permit veto by EPA.

These permits are not to be on standardized forms, according to EPA officials, but instead are expected to spell out the steps each plant is required to take to comply with the new guidelines and/or regulations. Not only will the permit specify what is to be done, but it is to set forth a timetable for the completion of each step. In this way efforts can be launched promptly, and monitored continuously during the initial water clean-up phase. Consequently, it becomes apparent that those creating a problem of water pollution will not be able to "twiddle their thumbs" until 1977. They could be required under the new law to start immediate corrective action.

By mid-1983 the law would require EPA to initiate the second major phase of the clean up effort, i.e. shift from second into high gear. And plants discharging directly into the nation's waters must apply "the best available technology." Municipalities would be required to adopt more advanced disposal methods.

If we use today's "best available technology" as a criteria, it could become necessary to reduce the BOD level to 0.3 lb. per 1,000 broilers, in contrast to the 1.5 "best practical" level mentioned earlier, or the 30 lb. level for untreated waste water from poultry processing plants. The cost of complying with such a requirement, according to USDA estimates would range from $149,000 to $424,000 per plant, or about 0.64% of the sales dollar. A 1964 study revealed chicken processors had a net income on sales of 0.66% after taxes.

You might argue that what is now considered the "best available technology" could turn out to be quite different from what the EPA administrator would consider the "best available technology" by mid-1983. You may have a point, but the "best available technology" in 1983 will certainly not be less than it is today So an understanding of the tremendous magnitude of the minimum effort required to comply with the new law becomes apparent. Furthermore, new or remodeled plants are expected to be required to meet the "best available technology" standard before being granted a permit. So for some, this standard will be applied long before 1983.

However, before enforcing the 1983 "best available" regulation on the entire industry, a study would be required as to the environmental, technological, economic and social effects that would result. In charge of the study will be a 15-member commission, five

each to be appointed by the President, the House and the Senate.

GRANTS

To assist with the implementation of the new law, Congress has authorized $24 billion which is expected to be appropriated over the next 3 years. Of this amount $18 billion is for grants representing the 75% federal share to be made available through EPA to municipalities for the construction of waste treatment and sewage collection systems. Additional funds for constructing water and waste disposal systems are available through the Farmers Home Administration. In the past, federal funds for facilities to reduce water pollution have been available also from the Economic Development Administration and the Department of Housing & Urban Development.

To help hard pressed communities get the money needed for their 25% share of the construction cost of treatment and sewage collection systems, the new law would establish a financing mechanism with an initial authorization of $100 million over the next three years. An additional $800 million in 3% interest loans would be authorized to assist industries meet the new standards. Such loans are to be available to companies through the Small Business Administration And if more money is needed perhaps it can be obtained at the state level from funds provided under the new $30 billion Revenue Sharing Act.

Expenditures of such huge appropriations will rapidly accelerate efforts to rid the nation's waters of pollution. But further impetus in this direction would be given by strict enforcement of provisions of the new law. Before USDA inspectors are made available, a processor can expect to be required to be in compliance with his EPA permit, and the same would likely be true for those who sell products to the military, school lunch or under other federal contracts. As if this were not enough, a company, for a violation of the law, could be faced with citizen suits in addition to a $25,000 a day fine.

Even without these tough penalties, realizing the magnitude of water pollution problems, agribusiness leaders recognize and accept the challenge to put their shoulders to the wheel and play a vitally important role in the water pollution abatement effort.

The first step in this direction is to work with EPA and state officials to help clean up the nation's water. They are anxious to have such cooperation. They need this help to measure up to the new responsibility given them by Congress.

Involved are very able key officials who are reasonable, knowledgeable, dedicated, who are seeking the assistance of industry. It should be given generously, especially at the outset, so the goals of the American people, as reflected through their representatives in Congress, will get off to a good start and therefore become a reality much sooner.

Reference was made earlier to reusing water in processing plants to the point the effluent would be reduced to zero. Whether or not such a goal can be achieved is debatable, but one thing is certain: EPA has been authorized by Congress to increase research efforts on water pollution problems from the 1971 level of $5.7 to about $400 million over the next three years for research, training and information. This money is to be used to demonstrate the feasibility of abating pollution and reducing treatment costs through in-plant measures, by-product recovery, and waste water reuse.

The recent EPA-Gold Kist study at a poultry processing plant in Durham, N.C., pointed up the opportunity for progress. By making certain changes the amount of water used was reduced 30% (from 838,000 to 580,000 gal. daily) and waste discharged into the city sewage system was reduced 65% (from 4,000 to 1,400 lb. of BOD daily).

With research pointing the way, and with effective teamwork between government and industry, rapid progress can and will be made in cleaning up the nation's waters. The springboard to such an achievement may well be the 1972 Federal Water Pollution Act.

WHY CONGRESS ACTED

Water pollution is continuing to increase:

1. 29% of the U.S. stream and shoreline miles are now (1971 data) polluted. This is an increase over 1970 water pollution, when 27% of the shoreline miles were polluted (CEQ 1972).

2. One-half the nation's drinking supply systems do not meet federal standards. Eight million Americans (5%) served by community water systems drink water with a bacteria content higher than U.S. Public Health Service limits. (CEQ 1972).

3. 40,000 cases of water-borne illness occur every year in the U.S.

4. As of 1968, only 55% of the urban population was receiving adequate waste treatment services (i.e., primary and secondary treatment).

5. 41 million fish were killed by water pollution in 1969 or seven times the number in 1960. (CEQ 1970).

6. Over one-fifth of the nation's shellfish beds have been closed because of pollution (CEQ 1971).

7. The annual commercial harvest of shrimp from coastal areas dropped from over 6.3 million pounds before 1936 to only 10,000 pounds in 1965. (CEQ 1971).

8. 90% of the oil spilled into the earth's water is not spilled but comes from routine activities or oil tankers, refineries, and gasoline filling stations. (CEQ 1971).

9. Soil erosion is the largest single cause of water pollution, exceeding sewage by 500 to 1,000 times.

10. A 1970 Public Health Service report found that 30% of the nation's drinking water contains potentially hazardous amounts of chemicals.

11. Over 90% of U.S. watershed is more than moderately polluted. (CEQ 1971).

12. 34% of the nation's sewage goes untreated and over half of the existing water treatment plants are overloaded.

(Source: Congressional Record Sept 19, 1972, based on information from Sen. Edmund S. Muskie.)

FUEL OIL SHORTAGE

Mr. PELL. Mr. President, New England, including my own State of Rhode Island, is threatened by the most severe fuel oil shortage since the days of rationing during World War II.

The fuel shortage threatens to cripple Rhode Island's economic life and threatens the health and welfare of the people of the State.

According to newspaper reports, 1,500 persons are now out of work, laid off because of shortages of industrial fuels, including natural gas. Major fuel oil dealers serving Rhode Island have informed me their supplies could be exhausted within a week to 10 days unless prompt remedial action is taken.

Yesterday the executive branch gave belated recognition to the fuel crisis in New England and other parts of the country by lifting oil import restrictions through April 30 on home heating oil and increasing import quotas on crude oil for the next year.

The administration's action, however belated, is a welcome action. I hope it will help relieve the acute shortages in New England. However, the fact that this action was taken only after a crisis situation developed, despite the pleadings of many of us from New England, is an admission of the failure of the administration's fuel policies.

Mr. President, we all know from recent studies, reports, and predictions that the entire United States faces a long-term energy and fuel supply problem. We, in New England, are more than familiar with that problem. We have lived for 14 years, since the oil import quota system was imposed by executive order of President Eisenhower, with artificial shortages and high prices. The oil import quota system during these years has been justified by oil interests as the keystone of a national energy policy that would assure our country a continued supply of fuel. What we are seeing now is the total bankruptcy of that policy—a system designed to assure our country of an adequate supply of fuel has failed. The oil import quota system has proved that it is not a solution—but a major part of the problem—because it is the import quota system that is now denying to Rhode Islanders the fuel they need to heat their homes and schools, their offices and factories.

With the power to regulate supplies of fuel oil—a power exercised by the executive branch—goes the responsibility to see that fuel supplies are adequate. The executive branch has failed in that responsibility.

Several months ago, the administration announced a minor and clearly inadequate increase in the oil import quota for New England. At that time, I said I was tired of a system which required New England Members of Congress each year to beg for a few drops of oil and then express gratitude and thanks when the executive branch doled out a few spoonsful of oil.

It is clear to me that it is time for the Congress to act. The executive branch has demonstrably failed in its administration of the fuel supply for the Nation. If the executive branch does not have the fortitude or the will to make a basic change in the oil import system, then we in the Congress must do so.

That is why I have joined Senator RIBICOFF and other New England Senators in cosponsoring the New England States Fuel Act. This act would permit free importation of home heating oil into the New England States, eliminate the tariff on all oil product imports into the United States, and direct the Secretary of State to begin negotiations for creation of a Northeast regional oil area encompassing the six New England States and eastern Canada.

And today, I have joined with Senators KENNEDY and STEVENSON in sponsoring a joint resolution suspending for 90 days the import quotas on crude oil and for 1 year, until April 1, 1974, import quotas on home heating oil.

This proposal goes somewhat beyond the actions announced yesterday by the administration. More importantly, it makes it clear that the Congress will take an increased responsibility in determining the fuel policies of the country.

Mr. President, Rhode Island, New England, and the entire Nation is heavily dependent on reliable supplies of oil products for transportation, for heating, and for power. In establishing oil import restrictions, the Federal Government assumed a direct responsibility for adequate supplies. The people of Rhode Island now are paying the price for the failure of management by the executive branch of our Government. Whether the failure is the result of misjudgment, incompetence, or callousness makes little difference. We can no longer trust in the management of our fuel supplies by the executive branch. The Congress must act.

To indicate to the Senate the seriousness of the fuel situation, I ask unanimous consent that several of the urgent messages I have received from my constituents be printed in the RECORD.

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

PROVIDENCE, R.I.,
January 15, 1973.

Senator CLAIBORNE PELL,
Old Senate Office Building,
Washington, D.C.:

Warren Oil Co. of Providence, R.I., and affiliated company Saint Jean-Viti Oil Co. of West Warwick, R.I., have been curtailed by 30 percent of their normal number 2 fuel oil requirements by their principal supplier Texaco (Curran and Burton). Our company supplies 6,000 household and business accounts representating more than 24,000 individuals in the State of Rhode Island.

We were notified of the reduction of supply on Friday, January 12, 1973, we immediately contacted every known source of supply in the New England area and have been unable to find number 2 fuel oil at any price as of this writing. We are applying this week for an immediate import quota of number 2 fuel oil, hopefully to help solve this problem.

We estimate our companies will be out of oil by Wednesday, January 24th or Thursday, January 25th at the latest. The present inventory of number 2 fuel oil in the Providence Harbor area is critical and from what we can determine the Number 2 fuel oil scheduled to be delivered into this area will not ease the crisis. The inability of our company to deliver our customer's normal requirements would result in a disaster for 6,000 household and business accounts. We beg you to contact members of the Oil Import Board to lean weight to our plea. Our only thought was to ask you to contact the military to determine if they could make available any Number 2 fuel oil in order to alleviate this problem. Our customers and we are in a desperate situation and need your help.

WARREN ALPERT,
Chairman of the Board.

PAWTUCKET, R.I.,
January 15, 1973.

Senator CLAIBORNE PELL,
Old Senate Office Building,
Washington, D.C.:

Situation becoming critical concerning home heating oil in Rhode Island. Major oil companies cutting back on supply commitments and unless immediate steps taken expect actual run out at home and industry before month's end. Suggest immediate substantial increase in import quotas and permanent waiving of Western Hemisphere restrictions so that long term overseas contracts can be arranged only immediate action can save disasterous situation.

ROBERT E. DE BLOIS,
De Blois Oil Co.

TIVERTON, R.I.,
January 15, 1973.

Senator CLAIBORNE PELL,
Senate Office Building,
Washington, D.C.:

Subject fuel oil crisis, we as a prime supplier of several thousand heating oil customers will, within hours, be forced to cancel all schools, municipal and industrial heating oil contracts. This will lead to the closing down of many schools, municipal buildings, and factories. Our main supplier is Texaco. Please arrange for them to release additional number two heating oil at once. Please advise at once 401-624-6611.

WILLIAM W. HUMPHREY,
Vice President, P. D. Humphrey Oil Co.

WARWICK, R.I.,
January 16, 1973.

Hon. CLAIBORNE PELL,
Washington, D.C.:

My company, M. Erickson and Son, Inc., serves 1,875 retail home heating accounts in Rhode Island. We have been notified by our suppliers, Atlantic Refining Co. and North East Petroleum that our supply of number 2 heating oil is in jeopardy. We estimate this critical situation will leave thousands of homes without heat within several days. We request immediate relief.

MALCOLM ERICKSON,
M. Erickson and Son, Inc.

NEWPORT, R.I.,
January 16, 1973.

Senator CLAIBORNE PELL,
Old Senate Office Building,
Washington, D.C.:

My companies, Newport Oil Corporation and Peckham Oil Company serve 6,000 retail home heating accounts in Rhode Island. We have been notified by our supplier, Texaco that our supply of No. 2 heating oil will be cut back 50% beginning immediately. We estimate this critical situation will leave thoustands of homes without heat within a few days; we request immediate relief.

J. T. O'CONNELL.

COVENTRY, R.I.,
January 12, 1973.

Senator CLAIBORNE PELL,
Capitol Hill,
Washington, D.C.:

The lack of fuel in Coventry, Rhode Island, is forcing the Star City Glass Company to stop production, thereby causing the lay off of 300 employees. In addition the stoppage will cause financial losses which cannot be recuperated and will affect the production and work in the plant of our customers who are producers of food and beverages. This stoppage is forced on us despite the steps which we have already taken to substantially reduce and minimize the use of fuel this winter.

We request that you assist in all ways possible to make available natural gas, propane, and other fuels so that these losses to productive people and to our corporation can be avoided and so that economic base of your community can be preserved.

NED DRUCKER,
President.

PROVIDENCE, R.I.,
January 16, 1973.

Senator CLAIBORNE PELL,
Capitol Hill,
Washington, D.C.:

Warren Oil Co. of Providence, Rhode Island, has informed me their requirements of number 2 fuel oil have been reduced by Texaco by 30 percent for the month of January and until further notice. Unless this company can find a supply of oil they will be forced to cut off their customers by January 24th or 25th. This action would result in the loss of work for men I represent as Secretary-Treasurer of the International Brotherhood of Teamsters Local 251.

I urge you to do what you can to support this company's petition for assistance.

ALEXANDER J. HYLECK,
Secretary-Treasurer.

FREEDOM OF INFORMATION FOUNDATION PRAISED BY SENATOR SYMINGTON

Mr. SYMINGTON. Mr. President, at a time when many news reporters, editors, and broadcasters are expressing serious apprehensions about the actual freedom of the press, which the Constitution endeavors to preserve, I was gratified to learn of significant movements to expand and strengthen the University of Missouri's Freedom of Information Foundation.

The important objective of this foundation is the preservation of the free flow of information on behalf of the public's right to know. It was founded in 1959 and is the Nation's only agency working exclusively on behalf of that essential principle of a democratic government—a free press.

The appointment by the foundation of a new president—Dr. Dwight E. Sargent, curator of the Nieman Foundation at Harvard University for 8 years—accompanies the FOI expansion.

In addition, the foundation has just announced that a major expansion of the center's educational and research programs has been made possible by financial grants from the American Newspaper Publishers Association, the National Association of Broadcasters, and the three major broadcasting networks, ABC, CBS, and NBC.

The Freedom of Information center at the University of Missouri—Columbia is the world's largest clearing house for information on the public's right to know, and therefore is providing a vital service to the Congress and to the Nation.

STRIP MINING LEGISLATION

Mr. FANNIN. Mr. President, Senator JACKSON, chairman of the Interior and Insular Affairs Committee, is to be commended for his leadership and efforts to enact much needed strip mining legislation. His work in the last Congress put him on record as an advocate of early responsible action and I commend him. Senator JACKSON, as always, has approached this problem with clarity of mind and steadfast determination.

I know that Chairman JACKSON has explained that this bill is only a working draft and that this bill will require revision. I know also that the chairman has an open mind toward necessary changes and will want extensive input and analysis by all interested parties. I look forward to joining my colleague in this most important task of producing a responsible bill that will strike a balance between the essential necessity for production of mineral resources and our commitment to reverse environmental degradation.

It is with regret that I have concluded that I will be unable to endorse and cosponsor Senator JACKSON's proposed surface mining reclamation bill, at least in its present form. There is, I believe, an

imperative need for legislation to control strip mining for coal in a manner which will assure sound reclamation of the land and still permit our country to make economic use of this vitally important energy resource, and Senator JACKSON'S bill could meet this end.

This bill would be applied to mining for all minerals—not just coal—and to all forms of surface mining—not just strip mining. The bill was clearly written with coal strip mining foremost in mind, and even where different provisions have been inserted for other types of mining, this has apparently been done without full comprehension of the enormous differences which can, and generally do, exist between strip mining for coal and open pit mining for iron, copper and the other "hard rock" minerals. The unintended result would, if enacted into law, cause severe and needless hardship to our domestic metal mining industry, perhaps to the point of shutting much of it down. National security, the economy and the social welfare of our citizens mandate that this must not be permitted to happen.

Let me briefly explain what I conceive to be the fundamental differences between strip and pit mining; as you know, Arizona is one of the major copper producing States in the world, and a large part of its production comes from open pit mines. Strip mining for coal involves the removal of overburden to expose a coal bed which itself is relatively shallow, often not more than 5 feet thick, and the recovery of that coal, by mining equipment which steadily advances, in strips, across the bed or along the coal seam. This mining is a very temporary use of the land—the bed is exposed, the coal is removed, and the operations sequentially inch forward, finished with the land behind them. A great many acres of land are strip mined for coal each year and become almost immediately available for reclamation. Thus, the disturbance of strip-mined land need be only temporary.

Open pit mining for hard rock minerals seeks a much different target—in the case of copper, the massive, low-grade porphyry deposits which are rare in themselves and even rarer when located close enough to the earth's surface to be mined by open pits. Unlike coal beds, these deposits are thick—as much as 1,000 feet thick in some instances—and, accordingly, mining the deposits involves substantially the same acreage over many years—50 years is not unusual; 100 years is not unknown—creating great amphitheater-like exacavations. In the time frame of man, if not nature, such mines are more nearly permanent than temporary uses of land, and they do involve a permanent reshaping of the land they occupy.

In short, except that strip mines and the great open pits of the Southwest both recover needed resources from the earth, they could not be more dissimilar—and the dissimilarity pertains as well to the nature of reclamation that, when mining has ended, can reasonably be expected or required of them. The open pits cannot be restored to their original contours or use; nor should they be; nor is it, I believe, the intent of Senator JACKSON'S bill to try to impose such a requirement on them. However, there are reclamation measures which we can and must expect from open pit miners; stabilization of waste dumps, and in some instances their contouring to blend with natural scenery, vegetation cover, and freedom from air and water pollution.

Specifically, I am concerned with the draft, in its present form, because it raises serious constitutional questions of taking without due process of law. The draft would, for example, vest the regulatory authority with power to designate private land as unsuitable for surface mining operations even where surface mining operations are in existence at the time of passage of this bill. There are absolutely no procedural due process safeguards against such arbitrary and capricious acts.

Perhaps the most disturbing provision in the draft calls for the regulatory authority to be vested with the unchecked power to determine, in hard rock mineral production, whether there is sufficient supply of a mineral resource, such as copper. Based upon that determination, he could absolutely prevent the production of copper even on private lands with the claim that there is an "alternative source of the mineral resource." Unchecked and unbridled power of this nature would wreck our economic system and endanger our national security.

Chairman JACKSON, I know, has no desire or intention of allowing such consequences and neither do I. I again commend Senator JACKSON for his leadership in pressing for an early bill and I hope that revisions will allow me to join as a cosponsor. Let us get on with the serious responsibility before us.

BILL OF RIGHTS FOR THE MENTALLY RETARDED

Mr. WILLIAMS. Mr. President, last year the Nation was shocked by a WABC-TV program on Willowbrook State School, a residential facility for the mentally retarded. The filming of conditions at this institution provided documented evidence that while conditions in residential institutions have improved, they are still a den of horrors for the residents who must live out their lives there. And although Willowbrook was the only institution examined at the time, there is clear evidence coming out of numerous court cases around the country on right to treatment that conditions are no better in many other large residential facilities.

Most well known of these cases has been Wyatt versus Stickney in the State of Alabama, a case brought on behalf of the State's hospitalized mentally ill patients to receive adequate treatment originally and then broadened to include hospitalized emotionally ill and mentally retarded individuals. When lawyers first went into that case there were three psychiatrists and one psychologist for more than 5,000 patients. Total expenditure per patient per day was $6; total expenditure per patient per day for food was 50 cents. Many of the individuals institutionalized did not need full-time custodial care, but could have lived in half-way houses or with their families with the assistance of support services or vocational training. But such alternatives were not available. The families were thus confronted with keeping the child or adult at home with no support services or having them institutionalized. Despite the heavy psychological burden of this drastic action, many families continue to choose institutionalization as the only available alternative.

Beyond the obvious strain imposed on families by the necessity of this drastic action, the costs of institutionalization for the individual are extremely high. Experts have noted that institutionalization for longer than 6 months or a year without adequate treatment often results in the individual losing his ability to cope with the outside world, often withdrawing from reality, showing signs of deprivation, loss of normal social contact, and overall deterioration. Thus institutionalization for long periods of time ensures that it will become harder and harder to remove an individual from such a custodial environment. Yet, even the most profoundly or severely retarded individual is habilitable, if provided with appropriate services early in life.

Concluding that the conditions in Willowbrook and Wyatt are atypical is tantamount to burying our heads in the sand. Cases have been reported to me which would shock the sensitivities of all of us: in one institution, personnel considered a lobotomy for a boy of 16 who had been an institutional resident all his life because staff was having a difficult time managing the child. In another institution, infants were implanted with intestinal tubes because there were not enough personnel to personally feed these children every day. Largely these conditions exist because of inadequate budgets and personnel to provide full and appropriate services to residents. Yet if we continue to fail to provide the resources to improve these conditions, and unless we eliminate inhumane treatment, we might just as well completely abandon our commitment to serving the residents of these institutions.

There are an estimated 5.6 million individuals who are mentally retarded in this Nation today. Approximately 200,000 of these individuals live in residential institutions. For some of them, institutional and protective care is the only way to provide the constant and insulated treatment they need. It is statistically impossible, however, that all of those who are institutionalized require custodial care and are unable to care for themselves. In fact, the majority of the 200,000 institutional residents are there because there are no alternative methods available presently to provide them treatment.

It is my sincere hope that methods will be developed to return them to the community. Many could do so now, if our communities were equipped to provide them alternate programs of care. Yet whether the residents need protective care or can benefit from services designed to help them lead more independ-

ent lives, all have the right to hope. They have the right to the full range of services which will allow them to leave these institutions and return to the community, and they have the right to expect that everything possible will be done to help them do this.

In the Wyatt case, the Federal district court judge found that if the State has institutionalized residents, then it must provide appropriate treatment for those residents. To deny this treatment amounts to incarceration for a crime these residents have never committed. The judge therefore ordered the State of Alabama to hire 300 new employees within 60 days, and set down concrete, measurable standards for treatment of individuals within the institution. These standards include staff-patient ratios, record keeping, and specific standards defining a humane physical and psychological environment.

Once again, we have had to rely on the courts to force us to face up to responsibilities which we have for a long time avoided. Yet to rely entirely on the courts to pursue the rights of handicapped individuals is a derogation of our own responsibility as legislators.

Last year, Leo Lippman, director of services for the mentally retarded and physically handicapped in New York City, wrote in the Bergen County Record:

> We may be on the verge of a new era with respect to society's treatment of the mentally retarded. On the other hand, we may not. Senator Robert Kennedy visited Willowbrook State School in 1965. There was nationwide attention, and there were some ameliorative actions. And yet, when the State of New York faced budget stringencies, it was possible to allow a return of the conditions cited in the recent (Willowbrook) case. Is it possible to change the pattern of treatment of the mentally retarded in the United States to bring it to the level of adequacy and appropriateness exemplified in the Scandinavian countries?

Mr. Lippman concluded yes, but that it would not be easy. He said:

> The essence of changing this pattern is a respect for the dignity and potential of every individual in this society.

I believe that to bring about this change we will have to take drastic steps. It is for this reason that I join Senator JAVITS in reintroducing the bill of rights for the mentally retarded. Basically, this bill does four things. First, it authorizes $15 million per year through 1975 to assist the States in conducting a comprehensive survey of needs and to do an analysis of the cost of bringing institutions into compliance with standards established under this act; $15 million per year through 1975 to assist States in improving services provided by existing residential facilities for the mentally retarded, which is designed to cover costs of administering and operating demonstration facilities and training programs. Second, it authorizes such sums as may be necessary to assist States in bringing residential facilities into compliance with standards established under this act. States must submit a plan setting forth a schedule for compliance for each facility, designating how placement in residential facilities will be minimized through alternative regional and community programs and services, assuring State financial participation, establishing a State Planning and Advisory Council and setting forth a schedule of costs to achieve compliance. Five years later enactment of this act, a residential facility which is not in compliance with standards established under this act will be ineligible to receive any indirect or direct payments under any Federal law. Third, the bill authorizes such sums as may be necessary to assist nonprofit institutions develop, improve and expand community resources and community living situations for the mentally retarded as alternative programs of care. Finally, the bill sets forth "Standards for Residential Facilities for the Mentally Retarded." These standards have been developed by professional and consumer organizations concerned with the care of the mentally retarded, and provide inclusive standards for administrative policies and procedures, resident living, professional and special programs and services, records, research, safety and sanitation, and administrative support services.

In introducing this bill we do not intend to lock into concrete standards which cannot be improved or modified. However, there is a critical need for this Nation to insure that residents of institutions are protected and provided with services which will enable them to become more independent citizens. For those who express reluctance to write into law standards for services and conditions, the response is clear. Standards for facilities for the mentally retarded have existed for many years. Most States have not been able to comply with these standards because of inadequate appropriations for staffing, improvements and services. Last year in my own State of New Jersey, it was estimated that an additional 1,600 employees would have to be hired to bring institutions into compliance with their own standards. Failing to enact standards will not make the problem go away. The institutions will continue to exist, and will continue to provide whatever services they can. Yet past history has demonstrated that conditions will not much improve. I believe there is no other course of action.

I do not believe that large institutions for the mentally retarded provide the most appropriate form of services and treatment. I firmly believe we must create the conditions by which most or all of the residents may be returned to the community through alternate programs of care by providing community programs and services. This bill insures that this process will be undertaken. It stipulates that States in their State plans must designate how placement in residential facilities shall be minimized through alternative regional and community programs and services for the mentally retarded. It specifies in the standards requirements for admission, review and continuing evaluation of residents. It requires the States to develop strategies to minimize inappropriate placement in residential facilities which include implementation and monitoring mechanisms. It provides the necessary money to develop, improve, and expand alternative programs of care in community programs and through community services.

Let me also say to my colleagues that finding alternative programs of care which would enable the mentally retarded to reside in their communities and contribute to the life of this Nation would be less expensive in the long run. It costs 10 times as much to continue a resident in an institution than it would to provide appropriate health, educational, and training services in the community. I believe that these community based services are the goal we must commit ourselves to. I also believe that this bill will provide the mechanisms by which we will reach that goal by insuring that residential facilities meet strict standards for services and treatment, and setting up the necessary mechanisms for reduction of institutional admissions, the elimination of inappropriate admissions, and providing money for the expansion of alternative programs of care. I therefore join Senator JAVITS in reintroducing this bill, and in commending it to to our colleagues.

THE RIGHT OF THE PEOPLE TO KNOW

Mr. SYMINGTON. Mr. President, at a time when many news reporters, editors and broadcasters are expressing serious apprehensions about the actual freedom of the press, which the Constitution endeavors to preserve, I was gratified to read in a news release of significant movements to expand and strengthen the University of Missouri's Freedom of Information Foundation.

The important objective of this foundation is the preservation of the free flow of information on behalf of the public's right to know. It was founded in 1959 and is the Nation's only agency working exclusively on behalf of that essential principle of a democratic government—a free press.

Two events have occurred recently which prompted this news release. The foundation has appointed a new president, Mr. Dwight E. Sargent, curator of the Nieman Foundation at Harvard University for 8 years. At the same time a major expansion of the center's educational and research programs has been made possible by financial grants from the American Newspaper Publishers Association, the National Association of Broadcasters, and the three major broadcasting networks, ABC, CBS, and NBC.

So that the Congress will have available fuller information concerning the Freedom of Information Center at Columbia, the world's largest clearinghouse for information on the public's right to know, I ask unanimous consent that the news release from the University of Missouri at Columbia, be printed at this point in the RECORD.

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

SARGENT HEADS FOI FOUNDATION

COLUMBIA, MO.—Dwight E. Sargent, curator of the Nieman Foundation at Harvard University for eight years, has been appointed president of the Freedom of Information Foundation at the University of Missouri.

Columbia, Dean Roy M. Fisher announced today.

The appointment coincides with a major expansion of FoI Center and the educational and research programs of the Foundation made possible by financial grants from the American Newspaper Publishers Association, the National Association of Broadcasters, and the three major broadcasting networks, ABC, CBS and NBC.

"Since its founding in 1959, the FoI Center has been the nation's only agency working exclusively on a cause whose importance is only now becoming fully appreciated by the American public," Dean Fisher said. "With new financial support and with the leadership of a distinguished newspaper editor, its work on behalf of the public's right to know will enter a new era of even greater productivity and service.

"Nothing is more vital to the health of our democratic society than preserving the free flow of information," Sargent said. "Journalists who write for newspapers and report on radio and television networks are dedicated to this mission.

"In a critical period of journalistic history the Freedom of Information Foundation will use its resources to support a principle that has molded our nation's past and is essential to our nation's future."

Sargent, 55, headed the Nieman program from 1964 to 1972 and previously was editor of the editorial pages of the New York Herald-Tribune and editorial director of the Guy Gannett newspapers of Portland, Me., the Press Herald, the Express, and the Sunday Telegram. He is a former president of the National Conference of Editorial Writers and serves as a trustee of Colby College.

Sargent will hold appointment of associate professor of journalism, and will be responsible for courses in editorial writing and editorial page management.

Dean Fisher explained that the FoI Foundation, a non-profit corporation, will be governed by a national board of trustees composed of persons vitally interested in maintaining strong, independent mass media.

The Foundation will be responsible for research, educational, and public service activities to promote public access to information. The FoI Center, a division of the School of Journalism directed by Professor Paul L. Fisher, will serve as one of the academic and research resources available to the Foundation.

The FoI Foundation will be financed from four major sources: ANPA, NAB, the School of Journalism, and some 1,200 friends and subscribers of the various FoI publications.

Dean Fisher said individual newspapers and broadcasting stations and organizations, such as Sigma Delta Chi and the state and regional press associations, have traditionally helped to support the Center's activities. Such support, he said, will continue to be needed.

Through the years, the FoI Center has supplied some 2,000 persons and organizations annually with data and guidance pertaining to access to information. Its files include thousands of clippings, research reports and other documents on 1,000 subjects ranging from access to government data to the underground press. The Center is believed to be the world's largest clearing house for information on the public's right to know.

The staff of the Center clips materials from 18 major newspapers and more than 500 professional journals, periodicals, and confidential bulletins. Requests for the Center's information and guidance pour in daily by letter and phone from newspapermen, broadcasters, librarians, lawyers, legislators, public officials, students, teachers, business executives, community leaders, and private citizens.

In addition, the Center publishes the "FoI Digest," a bimonthly summary of government and press information policies and problems, the Center "Report," a periodic in-depth study of right-to-know issues, and various opinion and situation papers. Its various research programs are conducted with the help of master's and doctoral students of the School of Journalism.

The Center staff has supplied information to attorneys on many of the current press freedom cases, including litigation over publication of the Pentagon papers. On occasion, such information has been requested by, and supplied to, both sides of a controversy.

HEALTH CARE

Mr. HASKELL. Mr. President, Prof. R. D. Peterson of the department of economics at Colorado State University has written a thought-provoking article about our health care system. Since this is a matter of concern to many of us I ask unanimous consent that his comments be printed in the RECORD.

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

SOME MISCONCEPTIONS ABOUT MEDICAL-CARE DELIVERY

(By R. D. Peterson)

Our health system has been diagnosed as a crisis by some, a scandal by others. Medical-care prices have risen. Many communities are without a hospital or a physician. Several misconceptions exist about medical-care delivery which need to be examined. Facts rather than opinions are used to shed light on these myths.[1]

WHAT CAUSES HIGH MEDICAL PRICES?

Myth: 'The main reason why medical-care prices have risen in that high office fees are charged by physicians who are more concerned with income than with patient welfare.'

Reality: Average yearly physician income is $45,000. While many physicians are concerned about financial security, this concern is due partly to the increase in law suits for alleged wrongdoing. Malpractice insurance rates have doubled recently and are reflected in office-call fees. A few physicians may be interested in higher incomes, but most are hard-working, dedicated professionals who are interested in their patients' health needs. Physicians' fees have been relatively high, but recent increases are only slightly above other prices. The Hospital Daily Service Charges (HDSC) component of the Medical-Care Price Index has risen more than 300 percent since 1958, mostly for two reasons: (1) The minimum wage was applied to hospital employees in 1966 and they must be paid at least $1.60 an hour (rather than 80c as some kitchen help and nurses aids had received). (2) Medicare requires periodic cost justification, and cost-accounting has shown hospital operating costs to be higher than previously calculated. Administrators have increased HDSC to recoup these additional expenses.

PHYSICIANS' INCOMES TOO HIGH?

Myth: 'Although physicians receive more income per year than the ordinary wage earner, their earnings are not inappropriate considering the time and cost involved in going through medical school.'

Reality: Income comparisons between physicians and others are difficult because medical education is subsidized (e.g., low-interest, government loans for medical students and state-supported medical schools are both financed out of tax money). Past high school, the total real cost to become a medical doctor is near $90,000 ($30,000 for schooling and $60,000 in lost income while becoming trained), while a college graduate incurs a $28,000 real cost ($8,000 for school and $20,000 in lost income). Presently, average yearly earnings are $45,000 for a physician but only $12,000 for the bachelor's degree holder. For various occupations, economists have computed total life-time earnings (discounted to present-value terms) on a yearly average basis as a percent of the total real cost of education. The rate of return on 'investment in human capital' is nearly 14 percent for physicians but only 9 percent for college graduates. In a competitive economy, rates of return on investment tend to be equalized. If noncompetitive elements subvert the private enterprise market system, rates will vary among economic activities. Riskier ventures should earn higher rates of return than less risky ones. Yet, while the rate is nearly twice as high for physicians than for college graduates, the risk a physician faces in finding a job and earning income is less than the college graduate. Rates of return are higher for physicians than others due to economic power ('noncompetitive elements') in medicine because of (1) limited physician supply; (2) little or no price competition at minimum fee levels; (3) restricted entry based on specialization of hospital staffs; and (4) the fee-for-service physician's practice.

BEST CARE IN THE WORLD?

Myth: "Our superior medical technology provides U.S. citizens with the best quality medical care on earth."

Reality: Despite scientific advances, the health status for U.S. citizens is inferior to some countries. We pay more per person for health care than in other industrialized countries, and get less per dollar spent. Among industrialized nations, the U.S. ranks 14th in infant mortality, 12th in maternal mortality, 11th life expectancy for females, and 18th for males. We have fewer physicians per 1,000 persons than several other developed nations. England, Germany, New Zealand and Sweden rank above the U.S. healthwise, and all have had national health insurance for many years. Medical care is provided very unevenly to our population. Our social, legal and economic arrangements for distributing medical care neglect the poor, the aged (until Medicare), minority groups and rural persons. It exists partly because these groups receive low incomes and are priced out of the medical-care market. High and rising prices are due partly to the economic power of physicians' groups over the supply of physicians and the capacity pressures placed on hospitals by private health insurers. To alleviate these problems, health economists have suggested prepaid group-practices and national health insurance.

SOCIALIZED MEDICINE?

Myth: "England has 'socialized medicine' with its national health insurance, and so would the U.S. if we adopted a national health insurance program."

Reality: Insurance companies and physicians groups have used words such as "socialistic" to bias our citizens against national health insurance (NHI). Under a real system of socialism, manufacturing plants are owned and operated by the government. For medical care to be "socialized," hospitals and physicians' offices would have to be taken over by government; nurses, hospital administrators and physicians would then become government employees. This arrangement is *not*

[1] Information supporting this article was taken from U.S. Senate Testimony recorded in the eleven-volume, 2,700 page "Health Care Crisis in America, 1971" and economic research supported by Public Health Service grants.

suggested by current NHI legislation before Congress. Instead, NHI would create a government owned and operated insurance company. Under NHI, workers and employers would be levied payroll taxes, and most medical-care bills would be paid by NHI. If NHI is introduced in the U.S., the crucial problem will not be socialism, but whether three arrangements will continue: (1) fee-for-service physicians' practices; (2) the requirement of hospitalization before health insurance pays for treating an illness; and (3) the legal power held by the medical profession over hospital staff privileges. If these three arrangements persist, then NHI will probably work badly, and may cost more than now.

NATIONAL HEALTH INSURANCE COSTLY?

Myth: 'Proposed national health insurance (NHI) legislation, designed to pay for most medical bills for all U. S. residents, would add $75 billion to health spending and cause chaos for our overburdened medical-care system.'

Reality: The Griffiths-Corman-Kennedy NHI bill involves a comprehensive health-coverage plan to pay for most hospital, dental, physician, nursing home, psychiatrist, laboratory, drug, ambulance, X-ray and medical-appliance bills. It would be financed by federal payroll and unearned-income taxes (and general revenues), administered by the U.S. Department of HEW, and serve all residents regardless of contribution to the plan. Payment would not be required from patients when care is provided. NHI stresses prepaid group medical practice and nonprofit medical-service foundations (but physicians and patients wanting the present fee-for-service method could continue it). NHI would institute cost controls for medical-care providers, create health-manpower training programs, establish national medical quality standards and encoruage preventative health measures. NHI is *not* socialized medicine and does not specify injecting huge additional funds into the existing medical-care framework. In 1971, we spent nearly $75 billion on health (40 percent financed by government). NHI largely involves replacing existing expenditures. It is not a proposal to spend an additional $75 billion, only to spend approximately the same amount but through a more efficient framework. NHI could hopefully lead to better quality medical care, delivered to more people, in a less expensive way.

GROUP PRACTICES INEFFICIENT?

Myth: 'Compared to the fee-for-service one-or two-man physician's office, prepaid group practices (PPGP) are inefficient, destroy a patient's ability to choose his physician and do not provide adequate care.'

Reality: The 'fee-for-service' method is assumed to be the only proper economic arrangement for delivering medical care. To visit a one- or two-man physician's office, be diagnosed and treated for an illness, then be charged a fee for that office call is not the only mechanism for providing medical services. Studies indicate that PPGP plans are just as or more efficient than fee-for-service practices. Under PPGP, with federal government aid and advice, a group of citizens in a community can organize a clinic (perhaps with a hospital), employ physicians, nurses and paramedical technicians, and other health facilities. Families who join a PPGP pay a monthly subscription charge. They use all medical services without paying a fee each time they visit a physician or enter a hospital. Studies have shown that PPGP reduce risk and worry for subscribers (so people do not put off seeking medical care), encourage them to practice preventative medicine, and do not lead subscribers to waste physician time or unnecessarily burden a hospital. Physicians are paid a salary (an average of $40,000 for some existing PPGP plans). There would be general and specialist physicians in a PPGP clinic-hospital. Patients have freedom to join and leave a PPGP (in case they moved or found no physician they liked). Existing PPGP plans allow flexibility. A patient can see the same physician (for term conditions such as pregnancy) and preserve the physician-patient relationship.

A NURSING SHORTAGE?

Myth: 'There is a shortage of registered nurses (RNs) in the U.S. because it is so difficult to encourage young women to go into nurses training.'

Reality: A 'shortage' of RNs has been claimed for some time. The Federal government spent more than $100 million since 1955 to subsidize training RNs and many thousands were licensed. While U.S. hospitals have vacancies for more than 25,000 RNs which they cannot fill (mainly special duty nurses), approximately one-third of all RNs under sixty years of age (nearly 300,000 RNs) do not work as nurses. Some are married and do not wish to work; some are employed in other jobs which pay higher salaries. Those who charge a 'shortage of RNs' also suggest that 'the demand for RNs exceeds the supply of RNs.' But such a situation is improbable because, technically, demand equals supply at some price-quantity combination that will clear the market. What these persons really mean to say is that 'the demand for RNs *at the salary currently being paid* exceeds the supply of RNs *who are willing to work for that salary.*' By raising salaries, some inactive RNs would be back into nursing. The so-called 'nursing shortage' then, is not due to the inability to locate RNs who could work; it is due to the unwillingness of the medical industry to pay sufficient salaries, and its inability to induce RNs to remain active once licensed and hired. Low salaries and resulting high turnover for RNs (67 percent each year in an average U.S. hospital) can be understood in this setting. Communities having one hospital, and large cities with several, avoid competing for RNs salary-wise because 'professional ethics' among administrators discourage wage bargaining. Many RNs who want to work as nurses cannot find alternative nursing opportunities because they are immobile (viz., married to men employed in their community so that an RN is only able to accept employment near her home). Many a hospital becomes a 'monopsonist' (i.e., a large buyer of an input who has economic power similar to the control a single seller of a product—a monopolist—has over price) and sets salary levels low in this captive-labor market.

BLUE CROSS EFFICIENT?

Myth: 'Blue Cross health insurance plans distribute medical care equitably to the population, and also help to prevent medical-care costs and prices from rising so much.'

Reality: Blue Cross is a nonprofit organization for financing hospital care. Hospitals created it in the depression to ensure that their bills would be paid. There are 75 Blue Cross units in the U.S., each one independent in providing hospitalization insurance to a specific geographic area. Blue Cross employs 35,000 persons, and finances more than $7 billion in hospitalization each year for 86 million Americans (18 million over 65 who are served because Blue Cross handles Medicare and Medicaid). Through their operations, Blue Cross helps provide hospitals with stable incomes and hospital-supply and drug companies with a stable market. The success of Blue Cross has been challenged recently, however. Blue Cross is allegedly providing less to its subscribers, charging them more, and has priced many low-income persons out of the Blue Cross insurance market. Blue Cross finances only in-patient rather than out-patient hospital care. Since one must be hospitalized to receive Blue Cross benefits, an estimated 20 percent of patients now in hospitals could be treated through other means (such as home care). Some Blue Cross plans have reduced hospitalization coverage by eliminating several benefits previously included. It seems to have been unable to persuade hospitals to adopt stricter cost controls. Under the present arrangement, Blue Cross plans reimburse a hospital for 'reasonable' costs. Yet, such activities as hiring labor lawyers (to prevent unionization of hospital employees), employing public relations men (to create favorable images for bond issues), and purchasing certain medical devices (to enhance hospital prestige) have all been allowed as 'reasonable' cost items for reimbursement.

CONCLUDING REMARKS

Our health crisis results in part (or primarily?) from inefficient organization of the medical-care delivery system. The current system causes inefficiency, and monopoly-type power persists because people are intent on believing the mythology of the present medical syndrome. While this article examines only a few myths, many others exist. In order to deliver quality medical care into the hands of all citizens, rich and poor, black and brown and white, rural and urban, young and old, we must develop some workable means of health delivery, and be willing to organize our medical resources in different ways to be more efficient.

RISING COST OF FOOD

Mr. CURTIS. Mr. President, yesterday, January 16, the Washington, D.C., Evening Star and Daily News carried an editorial calling for a "direct check on prices at the farm level" in order to stem the rising cost of food.

The editorial says that the big trouble with food prices is that—

Raw farm products, as before, are completely exempt from any kind of guideline application.

It is too bad that in this day of sophisticated economic intelligence a newspaper such as the Evening Star shows such a lack of understanding about the agricultural economy, our food supply, and economic controls.

Certainly, one of the best antidotes to inflation is increased total production and increased productivity per person. The farmers of the country lead the Nation in their increasing productivity per person. If the rest of the economy were as productive as farmers, inflation would be well in hand.

This Nation stands alone in its ability to produce enough food to take care of the poor, feed all of us adequately, still be the world's No. 1 food exporter, and be able to rush to the aid of distressed hungry people in other lands.

Farm food prices have increased in the last year, but the income of farm people is still 20 percent less per person than for nonfarm people. Our citizens get their food for only 16 percent of their take-home pay—and still eat out more and get more built-in coveniences in their food than anywhere else in the world or any other point in time.

If we were to roll back farm food prices, we would be penalizing the most productive part of our economy that has done the most to counteract inflation, and we would be penalizing farm people, whose incomes are 20 percent less than the average for nonfarm people. But far worse, we would be creating scarcities for all consumers at a time when the price of food is sending up signals for farmers to produce still more plentiful supplies.

If we roll back food prices at the farm, then you must have something besides price to ration the available supply. That "something" is rationing. Rationing, short of war, would be one of the most irritating, nonmanageable, unpopular things that could be perpetrated upon the people. Beyond that, it would lead to less production of farm goods, not more.

Again, it is too bad that a newspaper such as the Evening Star does not understand these simple facts of life.

Someone who does understand them is Secretary of Agriculture Earl L. Butz. So that the people might be able to see and reflect on what he said so eloquently on the NBC "Today Show" last week, I wish to insert the following editorial followed by questions and answers from the "Today Show" programs:

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

THE FOOD GAP

Whatever the overall prospect of the "voluntary" Phase Three system to match the anti-inflation effects of the more bureaucratic Phase Two setup, there can be no optimism on one count. This is in the explosive area of food, which last month rose at a fantastic annual rate of 62 percent as a component of the wholesale price index.

It is little comfort that food processing and retailing, under the new phase of the stabilization program, are being kept under the mandatory controls that have been dropped for most of the economy. The big trouble remains that raw farm products, as before, are completely exempt from any kind of guideline application. Increases are just passed through the processing and distribution stages to appear as those horrendous price tags on the supermarket shelves.

The administration is at last showing some worry about the American consumer's runaway food budget, after many months when Agriculture Secretary Butz reacted belligerently to suggestions that some farm prices were getting out of hand. Several measures have been taken to soften the prices of raw farm products by increasing supplies. These involve the removal of import quotas, adjusting subsidy rules to get farmers to plant more acreage, putting stored grain on the market and opening set-aside land for livestock grazing.

These steps are welcome for possible future benefits, even though they are too little and too late to save the consumer from the beating he is taking now at the grocery counter. It will be months before such indirect measures can be expected to have any effect on retail prices. There could be a more immediate benefit from another Phase Three arrangement: The Cost of Living Council will review marketing orders issued by the Agriculture Department, which in the administration of government farm programs has shown its obliviousness to the anti-inflation fight.

President Nixon also has created two more committees—one from the COLC and the other a non-governmental advisory group—to study the food-price problem. With all that, he has not proven his claim that he can or will "check effectively the rising cost of food without damaging the growing prosperity of American farmers."

What is necessary is a direct check on prices at the farm level, despite the objections about complex market forces and fears of shortages, black markets and a need for rationing. The government interferes in the agricultural markets in plenty of other ways, mostly holding down production and propping up prices, and not bothering to coordinate production with its negotiations of massive grain sales to the Soviet Union. With farm income now at a peak, it is time to give the rest of us a break, and incidentally avoid the demolition of public confidence in the stabilization effort.

TRANSCRIPT: EARL L. BUTZ, SECRETARY OF AGRICULTURE, TODAY SHOW, NBC–TV, JANUARY 11, 1973

(Interviewed by Bill Monroe and Irving R. Levine)

We want to talk about food prices now with Secretary of Agriculture Earl Butz, who is also a member of what's being called in Washington the "Super Cabinet." He and a few other cabinet members have been given special status as presidential counselors with assignments that cut across the jurisdiction of other Departments. Secretary Butz is in our Washington Studio with TODAY's Washington editor, Bill Monroe, and NBC correspondent Irving R. Levine who specializes in economic matters. Gentlemen.

Question: Mr. Secretary, before the election you appeared to let out a cheer every time food prices went up on the basis that the farmer needed higher prices. But what about food prices going up more than 5 percent in one month? Are you still cheering?

Secy. Butz: Well, we are all concerned about this rapid increase in food prices last month, Bill, as you well know. I think it's not fair to say that I let out a cheer every time food prices went up. Every time farm prices improved or farm income improved, I cheered.

Question: There is some relationship, is there not?

Secy. Butz: There is some relationship, but let's make this point clear to start with, Bill, that even now farmers only get 40 cents of the consumer's food dollar. The 60 cents goes someplace else, and much of that is for services Mrs. Housewife wants and I think that we ought to chase that 60-cent rabbit sometimes instead of chasing the 40-cent rabbit so hard. We should chase both of them. But Bill, we are concerned about food prices. You know food is an important component in the cost of living index in America and everybody buys food two, three, or four times a week. And I want every food purchaser in America to be kindly disposed to farmers. Our job is to feed them well and feed them economically. And we have taken some overt actions just yesterday, as a matter of fact, after this index came out. We are freeing up the diverted acres for wheat producers; that is, some 15 million more acres that we are bringing back into production for wheat. That will be the spring wheat, and for feed grains, which ultimately are translated into meat and eggs in this country. We are permitting grazing on diverted acres. They will have to take a little reduction in their payment to get the grazing privileges but this is along the line of making more beef available. We are emptying our CCC bins—that's our Commodity Credit Corporation bins—where we have had some feed grains and some wheat stored and we are emptying that just as fast as the transportation situation will absorb it. There is, of course, a shortage of freight cars. We have got to take that into consideration.

Question: In the meantime, for the next several months, is it not a fact that housewives can expect food prices to rise steadily month by month?

Secy. Butz: Well, I don't think they can expect them to rise steadily. There is some indication that they may be a little higher next year than this last year, perhaps three or four percent for the year, and that's a little more than we like to see, of course. On the other hand, let's recognize that food prices are volatile. They don't always stay up as we have seen in the last year. Beef prices hit a high last May. Then they came down for four or five months. And they have gone back up again.

Question: Secretary Butz, the Administration spokesmen, yourself, and others have been saying, well, there are good months and bad months and you have just said that food prices go up and down and yet over the past 6 or 7 months, we have had increases of 5.2 percent, 1.4 percent, 1.8 percent. It has been a steady increase. The figures have been on the upside. Don't you feel that it's time something drastic be done about food prices?

Secy. Butz: Well, I think we have done something drastic here in doing our very best to increase supplies. Now it takes a little while to increase supplies. You can't get a two-year-old steer in much less time than 24 months. It takes about that long. We are trying to do that. But when you say something drastic, Irving, I presume you are talking about price ceilings. Is that what you refer to?

Question: Well, that's one of the things that we talked about.

Secy. Butz: Yes, a lot of people ask, "Why don't you have price ceilings on food products?" And I think there is a very, very valid reason for that. We did have price ceilings on food products in World War II. We had rationing. You had a little red fiber tickets you exchanged for a pound of meat or a pound of sugar as the case may be. We had black markets. We had empty counters. You see, food is a perishable product. When it's in the counter you have to sell it. You can't put it back in the warehouse like you can a refrigerator. Somebody said either you sell it or you smell it. It's a perishable product. And if you want more you can't get more suddenly. It takes another year to get a crop of wheat. We have ample food in this country. Nobody is going hungry. Take beef, as a case, and corn. Beef is a highly desirable food. We are eating twice as much beef per person in America today as we did 20 years ago. We have just so much more purchasing power and so many of us want more beef. This is the basic problem, and we are trying to get more beef.

Question: Well, Mr. Secretary, you speak about the need for increasing the supply. You are releasing certain acreage which the farmers have been paid previously for not using. At the same time we are selling great quantities of wheat and grain to the Soviet Union. Does that make sense?

Secy. Butz: Well, I think it does because, one, we are trying to encourage exports in Agriculture. We are making a contribution this year of nearly $3 billion on the plus side of our balance of payment situation in America, which is negative as you know and it's a serious problem. The feed grains that we are selling to Russia will not result in a shortage of feed grains in this country. We are going to come out of this year with a carryout of approximately 800 million bushels of corn, which is well above the safe side on carryout. In the case of wheat we are going to come out of this marketing year next June 30 with approximately 470 million bushels of wheat, which is just within gunshot of one year's domestic utilization of wheat. We have an adequate supply to safeguard our food supply.

Question: Well, does it make sense to try to improve our balance of payments, which has not, incidentally, improved? In fact, it went from a $2 billion deficit to $6 billion in 1972.

Secy. Butz: But Irving, if it had not been for the agricultural exports it might have gone to a deficit of $8 billion.

Question: But even so, is it worth it at the expense of the housewife, at the expense of the food budget?

Secy. Butz: Well, I don't think that this is at the expense of the housewife. After all, as I said, we do have adequate supplies, and we are trying to get to the point where we can bring these reserve acres in agriculture back into production. We have some 60 million acres in reserve and next year, prior to

yesterday's announcement, we had plans to bring approximately 20 million acres back into production. Yesterday's announcement brings some more back into production. So I am convinced that we are going to have adequate food supplies in the year ahead. And you say, Will that result in lower prices? It may result in lower unit prices, but I expect our income to our farmers to be improved because of the increased production.

Question: Mr. Secretary, what do you say to George Meany of the AFL/CIO who said yesterday or the day before that in his view the present control system straight-jackets wages but allows an essential part of living costs to go and profits to skyrocket? And he says that the whole thing ought to be made equitable or abandoned.

Secy. Butz: Yes, I read Mr. Meany's statement and I presume that's a valid point of view from where he sits. On the other hand, in the past year the real purchasing power of wages in America has increased. It's been the best increase in several years. And that means, on the average, wages have gone up faster than the cost of living, and we are all delighted to see that and I think that should be clearly put on the record.

Question: His point seems to be that the farmers and the people who make profits are going along faster than the people who make wages, even though they all might be going along at different rates.

Secy. Butz: Well, I presume that may be true, if you take the last two or three months when we had this big increase in farm prices. And let's remember now that much of this increase in farm prices this last month came because of weather conditions in the Midwest. We had this very, very wet fall out there and there are still corn and soybeans in the field. They are harvesting now on frozen ground. This has been a factor in this increase, it seems to me. But if you go back a little further, wages, of course, have gone up substantially faster than food prices have gone up. We started with food prices at a low level when the wage-price freeze came in August 1971, and since then the recovery has been relatively more, but farmers are still not making as much per person as nonfarmers make.

Question: Secretary Butz, aren't you in a sense trying to walk both sides of the road? By that I mean that as Bill Monroe pointed out, you have been telling your constituency, the farmers, that they deserve a higher farm income. At the same time you are part of an Administration that is trying to cut down on government expenditures and we have seen evidence in recent days of your department cutting down on certain programs. How can you reconcile these two attitudes?

Secy. Butz: Yes, this isn't inconsistent or anything even though some people may say it is. Ever since I became Secretary of Agriculture and long before that I have maintained that farmers should get more of their income from the marketplace and get less from government. I want to move American farmers away from dependence on government. Last year we increased the net income of our farmers in America by nearly $3 billion. It was an all-time high. And now the Administration is attempting to reduce the participation of government in agriculture. I think that this is a sound approach and it's supported by many people.

Question: Mr. Secretary, let's get to your "Super Cabinet" status.

Secy. Butz: Let's don't call that "Super Cabinet." We are counselors to the President.

Question: Well, some Cabinet members have been made at least more equal than other Cabinet members in the last few days.

Secy. Butz: I don't feel they are more equal. They have just been given additional responsibility.

Question: Well, you have been made counselor to the President and you have been put in charge of things like resource use, land and minerals, and environment, outdoor recreation, water control, parks and wildlife. Now why wouldn't the Secretary of Interior, who has got a lot to do with all of these things feel a little bit down-graded under these circumstances?

Secy. Butz: Well, I don't think he should because I, too, am a Cabinet member. The function of the Cabinet remains unchanged. We still run our departments. I'm still going to be in charge in Agriculture. The Secretary of Interior in charge there, the Administrator in the Environmental Protection Agency, for example, in charge there. I view these new positions as an attempt to have a focus for coordination, a focus for communication, a focus for decision making in cases of differences of opinion and interests in these various groups. That puts decision making as far back toward the departmental level and the agency level as you can possibly do it and relieves the President and top White House staff of as much responsibility for decision making as can be done.

Question. I gather the way it used to work, the Secretary of Interior, Mr. Morton, for example, if he had a problem and needed to go to the White House, he went to Mr. Erlichman and Mr. Erlichman might or might not go to the President. Under these circumstances there will be certain problems where Mr. Morton will have to go to you and then you will have to go to Mr. Erlichman and Mr. Erlichman would go to the President, so Mr. Morton is down-graded in terms of being farther away from the President.

Secy. Butz. Well, you make it sound complicated, Bill. I think previously we made substantial use of the Domestic Council, and the Domestic Council is still in existence. I view this simply as a mechanism to have a focus for decision making in areas of common interest.

Question. Truly, it gives you more responsibility, Mr. Secretary.

Secy. Butz. Well, I think it does that Irving, and——

Question. But isn't this at the very time that the agricultural situation and food prices require your full attention? You mentioned to me the other day that there are only 24 hours in a day for you to accomplish the things that you have to do and that you are working harder than you ever have before. How are you going to find the time to cope with this serious food problem, with these other responsibilities?

Secy. Butz. Irving, just like you do in the broadcasting business. I have seen you organize your staff when you are sent for a story and you tell your subordinates, "Look, you take care of this, and you take care of this, and report back to me." I have seen you do it.

Question. I have very few subordinates.

Secy. Butz. That's our job here, to organize the staff so you get good, efficient and effective staff work, and you are available for policy.

Question. Mr. Secretary, is Robert Long of the Bank of America in California going to become an Assistant Secretary of Agriculture?

Secy. Butz. Well, Robert Long has been a longtime friend of mine. I regard him very, very highly. He is an extremely capable man and a great agricultural leader.

Question. Has he been offered the job as Assistant Secretary of Agriculture?

Secy. Butz. I havn't seen the morning papers yet, Bill.

Question. Has he accetped the job?

Secy. Butz. I haven't seen what is in the morning papers yet.

Question. You are denying nothing?

Secy. Butz. I am simply saying I haven't read the morning papers yet. I will have a look.

Monroe. Thank you very much, Mr. Secretary, for being with us this morning. Thank you, Irving R. Levine. Now back to Frank in New York.

UKRAINIAN INDEPENDENCE DAY

Mr. WILLIAMS. Mr. President, I wish to join my colleagues in honoring January 22, the 55th anniversary of Ukrainian liberation from Russia and the beginning of a "free and sovereign" State.

Through the nearly 300 years of foreign dominance, the people of the Ukraine continually struggled to be free. When their oppressors became involved in their own revolution in 1918, the Ukrainian patriots seized the opportunity for freeing themselves from this suppression and proclaiming their independence. The Ukrainian people had long awaited this independence, and were well deserving of its advantages and benefits.

However, the next 3 years brought for these proud people great strife and suffering. In addition to the constant invasions by outside forces from all sides of this tiny nation, internal fighting and disorder prevented the anticipated calm and enjoyment of liberation. The Ukrainian National Republic struggled remarkably for peace and serenity, but by late 1920, lost the battle for survival, as the strong and more powerful Russian military forces captured the Republic and divided the nation between Soviet and Polish powers.

Today, Ukraine, the largest "non-Russian" nation in Eastern Europe, is still under Russian rule. For more than 50 years that country has been shut off from the rest of the world, forbidden self-determination and self-control. Her continued desire for independence has the sympathy of all free nations.

It is, therefore, especially appropriate that in honoring the 55th anniversary of Ukrainian independence, we, in the United States, honor the people of the Ukraine and their commitment to a democratic way of life.

SIX DAYS IN CCCP

Mr. HANSEN. Mr. President, it is noteworthy that more and more Americans are visiting Russia and that their visits are helping to educate our people about each other's system of government.

Mr. Byron Hirst, one of Wyoming's outstanding lawyers, visited Russia recently and has been good enough to present his observations in a number of talks in Cheyenne, his home city.

Because I think what Mr. Hirst has to say sheds significant light on the Russian system, I am using this means to call it to the attention of my colleagues and other interested persons.

Mr. President, I ask unanimous consent that Byron Hirst's speech entitled "Six Days in CCCP." be printed in the RECORD.

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

SIX DAYS IN CCCP

(By Byron Hirst)

The USSR now welcomes visitors from everywhere in the world to show that their materialistic and atheist system provides the greatest good for the greatest number. Ninety per cent of the Soviet Union in fact is closed to visitors, much of what is revealed may not

be especially attractive to a U.S. citizen, but, on the other hand, seem utopian to a native of a misgoverned, exploited, impoverished or undeveloped country.

When our plane from Vienna landed about 300 of us entered the Moscow Customs Building. About one-third were promptly processed as Holding Soviet passports or as a part of a pre-processed group. The rest of us eventually found a customs declaration in a language we could understand and formed a long queue. Officials compared us to the photographs on our visas. Magazines and printed matter, including sales brochures carried by businessmen, were inspected with particularity. Magazines even faintly resembling Playboy were confiscated on the spot as pornographic, It seeming to me that the inspectors found it necessary to jointly examine this type of literature before making this important decision. About fifteen minutes extra time were needed for the authorities to pass persons bringing any literature with them.

As this queue slowly moved, new planes arrived, most of them filled with group travelers. Led by an Intourist group leader, these groups immediately were admitted at the front of the line, they having been prescreened at or before arrival.

No Russian travels very far alone. He applies for a trip through his labor union and when a group expedition is organized, he travels under the supervision of an Intourist guide who makes all arrangements and who explains everything. Any Russian traveling alone is suspect and any foreigner who travels alone is a curiosity.

When my wife and I cleared customs, the examination of our own two hand bags being quite perfunctory, an Intourist agent met us, greeted us politely in English, told us we were assigned to the Russia Hotel, called a driver and instructed him in Russian, who then drove us down the same highway TV showed President Nixon traverse a few months ago.

We arrived while the Supreme Soviet was in session, a congress seating members from fifteen republics, 170 ethnic groups and speaking 200 different dialects. They came from 8.6 million square miles covering one-sixth of the earth's surface, an area about 3,000 miles by 6,000 miles and supporting 240 million people. A majority of these 1,500 Soviet members, plus tourists and businessmen holding deluxe reservations from all over the world were lodged at our 3,000 suite hotel, the Russia, located just across Red Square from the Kremlin. We were assigned a two room suite directly opposite the desk of the hall porter, a large smiling Ukrainian who spoke Russian and German and absolutely no English. When I asked her a question she would telephone someone in the lobby and I would tell that one and that one would tell her and I would get the message the same way. It is my conclusion that all Soviets assigned to Intourist and its hotels at least understood and probably spoke some English; however, the authorities were not sure enough of most of them to permit them to carry on conversations with foreigners and so they did not speak any English. Both of our rooms were quite obviously bugged electronically. The accommodations were new, modern and clean. There is one television broadcasting station in Moscow and we received its programs on a black and white set which rendered a barely adequate picture and sound. The programs I saw showed scenes of the countryside accompanied by good classical or traditional music, some showings of economic activities, sports and news.

Tourists have first choice of the best seats at eleven Moscow theaters and two circuses, each presenting a new performance every evening, such as Tchaikovsky's *Swan Lake*, Gounod's opera *Faust*, Chekov's play *The Three Sisters*, Shakespeare's *Anthony and Cleopatra*, Molnar's *Lilliam*, *My Fair Lady*, and, concerts by Russian and foreign artists and orchestras. Modern experimental music, four letter word plays, girly shows, public gambling, pornography, prostitution and other city vices are not permitted in Moscow.

We decided to see the Bolshoi version of *Madam Butterfly* one night and a ballet called *Asel* the next. We walked from our hotel along Red Square, thence past the Parisian style show windows of the GUM department store, thence along several broad avenues among thousands of workers walking to their homes or to the subways, and we to the Bolshoi theater, a beautiful example of paladio architecture, topped by four grand bronze horses and a chariot (the original of which was taken by Napoleon to top his triumph arch in the Louvre Gardens in Paris.) The performances seemed to me to be very good. Our seats were excellent.

At intermissions, champagne, scotch, vodka, caviar, sausages, cheese, bread, fruit and so forth were available in large quantities and at low prices. All theatre attendants were courteous and efficient and accommodating. Most of the crowd appeared to be local residents of Moscow.

When we walked the two miles back to our hotel from the Bolshoi it was late, dark, deserted, silent and absolutely safe.

We later saw throughout Moscow and Leningrad dozens of smaller theaters at which we were told performances by amateurs were in preparation and presentation constantly. These "amateur" theaters provide the talent which finally becomes a part of the professional theater. An amateur must limit his artistic activities to his spare time; when an amateur becomes a professional he is paid a salary as an artist full time. Athletes as well as artists are developed in Russia according to this system.

Intourist also advertised tasting of national food and wines at Moscow restaurants—which we declined, saving our palates for Denmark and Paris.

Intourist also advocated

"tours of Moscow and excursions to its museums and exhibitions.

A visit to the Lenin Museum affords a deep insight into the life and work of the founder of the world's first socialist state.

For closer acquaintance with the latest Soviet progress in industry, agriculture, science, education and public health visit the U.S.S.R. Economic Achievements Exhibition.

Magnificent collections of Russian and foreign representational art can be seen at the Kremlin, the Tretyakov Gallery, the Pushkin Museum of Fine Arts and the Andrei Rublev Museum."

We had been advised of the futility of becoming involved in political, ideological or economic matters in the Soviet because of irreconcileable points of view. So we let it be known that we sympathetically were interested in the arts and the improvement of the lot of the mass of Russians since 1917.

No Russian owns his residence. He is assigned a certain number of square feet of floor space based upon the number of people in his family and at a location assigned by the state. He cannot change his address without making an application to do so, and, he cannot travel very far without a permit. A traveler in Russia must have assigned to him beforehand a hotel or place of residence for every day that he will be in Russia. He must come when his Visa says that he will come and he must leave when his visa says that he will go and he must go by the routes specified ahead of time. Any traveler found without a hotel or without a visa is placed in an in-transit hotel with very limited facilities and he must stay there often for a week or more, until he has been deported or proper arrangements can be made.

Every public building provides a free check room and everyone is expected to use it. The checkroom people appeared to me to take careful note of everyone who checked in and who checked out of every restaurant, theater, museum or other public place.

Anyone who values time must have a car at his disposal at all times in Moscow. At dinner two West Germans trying to sell John Deere products and two Englishmen trying to sell Uniroyal products told us of their experience with transportation.

They had been dropped off at a distant restaurant by an Intourist car. They were told how to get a taxi to return and when they reported at the proper place they found a long queue waiting for assignment of a taxi cab. There were six taxi cabs at the curb but nothing was moving. They spotted a cab coming down the street and ran out and leaped in. The driver said something in Russian and they kept saying Hotel Russia, Hotel Russia and he started ahead. After a few feet, the police were there. It developed that regulations did not permit any taxi cab to leave this point until there were six more and up to that point there had only been five more. This particular cab was supposed to join the end of the queue of cabs. Finally the matter was settled by the policeman fining the cab driver two rubles for driving as far as he did after they got in; then the police walked away and the cab driver drove the foreigners off to the Hotel Russia. If they had shown a deluxe travel folder they could have gone to the head of the queue.

Only workers, urban and rural, populate Russia today. The traditional holders of special privileges, the bourgeoisie are no more. The Soviets try to treat everyone exactly the same. Everyone has the same personal rights and duties as carefully described, interpreted and enforced by the state.

An American must readjust his thinking to comprehend a country where everyone is a government employee. All property, except a few personal effects per individual, is owned by the state and controlled by the state bureaucracy. Every person is employed by government at a fixed salary and legally there can be no commissions, bonuses, profits, dividends or capital gains whatsoever. All workers are entitled to free public health services, paid vacations, sickness insurance and liberal pensions at 60 for men and 55 for women. 35,000,000 Russians are living on pensions. If a Russian plays ball with the state and does his job reasonably well, he has absolute security.

It appeared to me that the Russian bureaucracy enjoys itself, does not establish too high standards of performance for itself, and tolerates a good deal of gold bricking.

No one person makes independent decisions about anything. Policies and permissible commitments are decided by committees and instructions are issued and followed in accordance therewith. Any problem not covered is referred to the committee for instructions. The foreign businessman finds this especially frustrating.

Because of a letter by Stan Hathaway, we were invited by one of his friends to the American Embassy in Moscow. Some of the background in this paper was obtained there. During our conversation at lunch, a man sat behind our host's back making careful notes. By merest chance, we returned to the Russia *Hotel* in the super sized Mercedes of the American Embassy. Thereafter, our Intourist guide in Moscow was an extremely intelligent and personable young woman whose mother was a school teacher, whose husband was an engineer and whose father was an engineer. She was a student of English and hoping to become an official English interpreter. We believe that Intourist was convinced that we wanted to try to understand the Russian system of life and they assigned us this hardheaded young lady with the romantic name, Laura. She took us where we wanted to go and knew what there was to know.

Laura took us to an ancient monastery and fortress which at one time guarded the approaches to Moscow. Sophia's Convent Church obviously was conducting a service as we were leaving. When I indicated that it would be interesting Laura made other suggestions and it seemed that she would lose some brownie points if we went into a church with her so we didn't go. In answer to a direct question she repeated carefully Soviet religious ideology something to this effect. "The Russian state is dedicated to atheistic materialism. However, Soviet citizens have complete religious freedom. No records are kept any place of church membership or non-membership and religion is a matter for personal conviction. Although the exact number is not known, the government reliably estimates that 85% are dedicated atheists and perhaps 15% are not." We both dropped the discussion.

Laura took us through a grand palace made almost entirely of wood and finished by serfs to appear to be made of stone, marble and metal. There was a theater with many of the costumes, marvelous mechanical scenes and scene shifting devices still intact. The noble lord and his guests were seated below the stage to witness the performances and in boxes around the edge. After the performance, the entire platform was raised to make single ballroom floor. All of the actors, actresses, singers, stage hands and some of the audience were serfs trained by this nobleman. During performances, all of the serfs of the estate were permitted to watch from concealed galleries. These serfs became famous for their artistic abilities, their learning from the schooling provided by teachers at the estate and manner and costumes. When Alexander I signed the order freeing the serfs of all Russia, he came to this palace to do so and the desk now is shown where he performed this act. To Laura, I said, doesn't this show that not all of the aristocrats regarded serfs as sub-human? She said that this aristocrat was like all aristocrats and he hated serfs. I suggested that he certainly had their best interests in mind in educating them, and so forth. She responded "He trained them for his own satisfaction, as one trains animals. But he made a mistake, he educated his executioners." The Soviet system is not going to make the same mistake.

The revolution was made by dissident intellectuals. Such deviation now is not tolerated because its dangers have been proven.

The Soviet system of surveillence and spying is pervasive and obvious and includes everyone, natives, as well as foreigners. They want all to know that it is in effect and that it is working. There is no privacy in Russia and it isn't intended that there will be any. Not only Laura, but everyone else in Intourist seemed to have in mind when dealing with us exactly what the conversation was we had at the American Embassy with the people there and our subsequent conversations with Intourist people.

At the Embassy the U.S. tourists were estimated at 20,000 in 1970, 30,000 in 1971 and 50,000 in 1972. Laura brought up the subject and said their information was 80,000 U.S. tourists in 1972. For another example, at the Embassy I had inquired about the possibility of some of my White Russian friends returning to Russia. The Embassy said that they no doubt would be killed because six had suffered the death penalty in 1972 who had been foolhardy enough to return. The second night we were at the Bolshoi Theater a pleasant elderly lady sat next to my wife and engaged her in conversation to the effect that she was a White Russian educated in a Romanoff Imperial school. She said she was under an assumed name and had returned to visit her old school and hoped nobody caught her. When we left she tried to get us to join her in her motor vehicle to return us to our hotel. We walked alone. Obviously, if this woman's claims had been true, she certainly would not have said so to perfect strangers.

When we were in Leningrad I encountered Jack Pomeroy who was the contractor who built the steel plant at Atlantic City, Wyoming. We chatted several times about this and that. When I wanted to go to the circus in the evening and could not get a car a voice in the back of the Intourist Room said why don't you talk to your friend Mr. Pomeroy because he is going tonight and he has room enough in his car to take you, I am sure. How they knew I knew Pomeroy, I do not know. Our conversations had been at a snack bar on the fourth floor of the hotel.

On the fourth day, Intourist placed us on a day train to Leningrad. It was not a first class train and our seats were against a blank wall in a car which moved backwards all the way. The journey took nine hours and made eight or ten stops. The only person speaking English on that train that I could find was a member of the Burmese Embassy who was trying to find some Burmese dancers who were supposed to be dancing in Leningrad. I stood at the rear of the car and looked out both windows all the way except when I went on the platforms during stops. The roadway was smooth and this train functioned perfectly although it had a lot of use from being booked full as it was that day.

The passengers obviously were ordinary Russians going about their usual activities. They all recognized me immediately for what I was and they were kind, friendly and helpful to me in obtaining something to eat and showing how to use the facilities of this train. However, communication is elementary with people speaking only Russian. The countryside is as described in the Russian novels, a broad plain intermittently being birch and other forests and meadows and fields. The railroad right-of-way was neat and clean and grazed by various little groups of livestock in charge of persons living along the tracks in huts who also apparently were charged with the responsibility of picking up any litter. Miles and miles of former estates still were fenced in a peculiar sort of concrete precast fencing material. The fields seemed to have been well tilled and I saw a good deal of farm machinery of elementary design. During that entire nine hours I saw only one automobile and only one bus. There were some horses and other animals and about a dozen motorcycles. There really were not in fact any roads for vehicles to travel on, but only pathways that weren't graded and looked as if they would be slippery and impassable for vehicles when wet. In the distance I saw small factories and apparently the people walked several miles to their work and back. The people in the villages were warmly and comfortably dressed although certainly not fashionably. They seemed to be cheerful and looked at the train and the passengers and the loading and unloading with interest. In every village one could detect some attempts at modernization. On the whole, however, the villages, people and countryside seemed to me to be primitive and according to my concept of what the United States must have been early in the seventeenth century.

The food served on the platforms at the stations and at a snack bar in one car several down from ours was plentiful and cheap.

At the Embassy I had been told that they believed that most of Russia was closed to visitors because the Russians were unwilling that its primitive condition be observed generally, progress in many areas having only reached the point of preventing starvation during crop failure, providing education and organization of the population for useful work. Modernization and improvement beyond this simply has not progressed very far throughout most of Russia, and Russians just don't want people to know any more about this than necessary.

When our train stopped at the Leningrad railroad station, an Intourist representative came to my seat, introduced himself, produced a baggage handler and asked me to follow him. The baggage was placed in a car and we got in and were driven to the Leningrad Hotel. This is an ultra-modern building dramatically located on the Baltic and views the winter palace and the beautiful shore line for which Leningrad is famous. Our suite consisted of five or six rooms, all beautifully decorated in Swedish modern, having a view of the Baltic from every room and the activities thereon including the great hydrofoil. The public rooms were beautiful and well staffed. One of the downstairs wings was a nightclub where we spent several evenings listening to a good American style orchestra playing U.S. music in a style somewhere between Stan Kenton and Lawrence Welk. The Leningrad crowd was livelier and happier and included about five per cent young long-haired people. The long hairs were seated far from the dance floor but they were tolerated. The dancing was about what one would expect to witness in Los Angeles or London or Paris and was continuing when we left after midnight.

Vladimir, our Intourist guide in Leningrad was an intelligent young man, a student of English literature, who took up our education where Laura had left off. He seemed to speak and act with a bit more authority than our other Intourist contacts. He insisted to the caretakers of the various museums and places we attended that we were sympathetic Americans and we received the same treatment as anyone, but much sooner. He took us through back streets and old fashioned areas which are not generally on view, I would say, such as to the Dostoevski Museum located in a factory neighborhood where thousands of workers were crowded into ancient living quarters rather closely in juxtaposition.

The Heritage, the Romanoff winter palace in Leningrad, is one of the outstanding exhibitions of artistic achievement in the entire world. The Russian aristocrat spent money grandly and bought the finest paintings from all of Europe and they are now in the Heritage. There one sees dozens of the great masters hanging side by side whereas in the great museums of Paris, London, New York, Vienna one would be lucky to find two or three. There are more French impressionists hung in the Heritage than in all of Paris including the Orangerie; there are more Turners in the Heritage than there are in all of England; there are more of the great Dutch painters in the Heritage than there are in any museum in the world; and, the same applies to the renaissance, Italian and other artists.

Katherine's Palace and Prince Paul's Palace are astounding buildings constructed at enormous expense by foreign architects using the Russian serf as a builder. These two have been almost completely restored after the destruction by Napoleon, the revolution and Hitler. The Russians now feel they can be proud of these achievements because the builders actually were Russian serfs and because they presently have trained workers to imitate or restore what has been destroyed.

Russia is an open plain, without natural boundaries or defenses, which has invited invasion throughout history. By natural selection the Russian people are strong, independent and willful. They are survivors of centuries of intermittant but frequent starvation because of crop failures and occupations by dozens of foreign powers, the last occupation being by Ghengis Khan and his mongol successors for 400 years. Rebellious barons and bandit chiefs fought among themselves and raided their own people for

centuries until Ivan The Terrible made a nation. Not until 1721 was Peter The Great able to establish the empire and thereafter the Russian people suffered 300 years of Romanoff domination. People get the kind of government they deserve. The Soviet man is wild and unrestrained by nature and as a people they must be driven to consensus—it is contrary to their nature to seek it. So long as the Romanoffs were tough and ruthless, they ruled. The requirements for the prolitariat are the same and they know it. No signs were apparent to me of any serious threat to the entrenched position of the communist bureaucracy.

In closing, I tip my hat to a final display of the Russian system. We had cleared customs, changed our rubles and were in the center of a crowd of at least 100 standing shoulder to shoulder. A strange man came through the crowd to me, said "Mr. Hirst, please follow me," and led my wife and me alone through visa exit exam and out to the plane to Copenhagen.

PROPOSED CANCELLATION OF THE 1973 RURAL ENVIRONMENTAL ASSISTANCE PROGRAM

Mr. ROBERT C. BYRD. Mr. President, I want to voice my strong objections to the recently announced proposal of the Department of Agriculture to cancel the 1973 rural environmental assistance program—REAP.

Every year for the past several years, for reasons which I fail to understand, REAP or its forerunner, the agricultural conservation program—ACP—has been a favorite "whipping boy" of the Office of Management and Budget in annual efforts to curtail Federal expenditures. Last year, the budget proposed to reduce this program from its 1972 funding level of $195.5 million to $140 million. The House of Representatives passed an agricultural appropriations bill for fiscal year 1973 continuing the program at the $195.5 million level. However, in the Senate Appropriations Subcommittee on Agriculture, of which I am a member, we raised this program to the $225-million level which was the amount finally adopted by the conference committee and enacted into law.

Last fall, Department of Agriculture officials announced that they would only spend $140 million for this program. Then shortly thereafter the Department announced that the program would be discontinued altogether. I believe this was an unwise and shortsighted decision on the part of the Office of Management and Budget. And that, of course, is exactly where the proposal to discontinue this program has always originated. Officials testifying before the Appropriations Committee have confirmed that fact year after year.

The small farms in the State of West Virginia cannot participate in most federally sponsored agricultural programs to their advantage. REAP is the one program which they can and do use. REAP was first authorized in 1936, and since that time, it has made an important contribution toward the improvement of our natural environment by helping to protect million of acres from erosion damage, fostering improvements such as farm ponds, promoting better care of farm forests, and acting to reduce stream pollution from animal wastes, sediment, and other agricultural materials. This program has been the principal channel through which the Federal Government, in the national interest, shared with farmers and ranchers the cost of carrying out approved soil, water, woodland, and wildlife conservation and pollution abatement practices on their land.

Even though Congress has enacted many needed environmental bills in recent years, I feel that this program is the original environmental bill enacted by the Congress, and it has been quietly, but steadily, working to improve our environment since it was first authorized in 1936. I think that certain officials in the Office of Management and Budget, and perhaps even some of our urban public, should realize that this program originated as a national concern over man's relation to his environment and it has operated since its inception to improve it. Much of the interest in pollution, ecology, and preservation of the earth's resources is recent. However, to people who have followed and participated in the REAP and predecessor programs, it is "old stuff."

Despite the recent and deserved emphasis on America's industrial and sewage pollution, every study to date has shown that it is soil runoff, and not the other pollutants, which causes the most water pollution each year. Groundcovers and other plantings established under REAP sponsorship have contributed immeasurably toward preventing further pollution of this Nation's waterways and ocean basins by the world's worst pollutant: soil. It has been established that soil runoff causes a pollution of our streams which is 700 times greater than the worst of our sewage pollution.

While many of our Federal programs are eaten up by the high costs of administration, I think we should be aware that most of the funds appropriated for REAP go into conservation activities, and those funds are matched by the farmers themselves on a basis ranging from 30 to 70 percent. Additionally, the farmers contribute their labor and their time to implement the recommended practices and to subsequently manage them. Over 9,000 county committeemen and 100,000 community committeemen are elected by farmers nationwide in over 3,000 counties and they are the representatives who administer this program on the local level.

In my own State of West Virginia, 10,970 farmers participated in this program in 1971 and received Federal payments of $1,130,000. In 1972, 13,000 farmers participated and received payments of $1,456,000. In 1973 at the reduced level of $140 million which was announced, it is estimated that 10,000 West Virginia farmers would have participated in REAP; and they would have received payments totaling $1,043,000.

Mr. President, in the session of Congress which is now in session, I will do everything I can to have this important program reinstated and to urge the administration to release funds for the 1973 program. As a member of the Agricultural Appropriations Subcommittee, I shall also urge that the advance authorization for this program for 1974 is continued at the 1973 congressionally funded level of $225 million.

Toward this objective, I have sent a telegram to the President of the United States urging release of the 1973 funds. I ask unanimous consent that the text of that telegram be printed in the RECORD at this point.

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

The PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT: I wish to urge that the $225 million authorized for the 1973 Rural Environmental Assistance Program be released, and the authorization be included in your F.Y. 1974 Budget for continuation of REAP at the 1973 authorization level.

Since 1936, when this program was first authorized, it has proved to be one of the most effective anti-pollution programs of the Federal Government. It is cost shared and, on the average, matched by the farmer on a one-for-one basis.

Presently, REAP has a major role in meeting the Department of Agriculture's overall resource conservation and environmental responsibilities, and it has directly contributed to assuring that this nation has an adequate supply of clean water and an improved ecological balance.

This is one of the few federally sponsored agricultural programs in which the small farmers of West Virginia can participate. In view of the fact that past history has shown that small farmers in states like West Virginia are not financially able to carry out these important conservation and anti-pollution measures without federal assistance, I urge immediate restoration of REAP."

Sincerely yours,

ROBERT C. BYRD,
U.S. Senator.

Mr. ROBERT C. BYRD. Mr. President, the Pendleton Times of January 11, 1973, which is published in Pendleton County, W. Va., contained an excellent front page article entitled "Popular Farm Program is Canceled" and an editorial entitled "We Need REAP." I think that both of these articles are timely and include good reasons for continuation of this program. I ask that they be printed in the RECORD at this point.

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

POPULAR FARM PROGRAM IS CANCELED—WILL HURT MANY COUNTY FARMERS

Acting on orders from White House budget officials, the Agriculture Department has abruptly announced elimination of two popular conservation programs that Congress had earmarked for $235.5 million in spending in 1973.

The surprise cutoff was described as part of a governmentwide crackdown on federal programs that "can be reduced or eliminated without serious economic consequences," in a drive to hold total federal spending in the current budget year to $250 billion.

The major victim of the spending crackdown was the 36-year-old Rural Environmental Assistance Program, or REAP. Under the program, Congress had approved spending $225.5 million in 1973 and the Agriculture Department had allocated part of it—$140 million—for use.

In addition to REAP, officials said they also halted further contracting with farmers, as of December 29, under the year-old Water

Bank Program. New contracting up to $10 million had been planned for that program next year.

REAP, long popular with Congress and farmers, offers land owners annual payments covering part of the cost of installing approved conservation and pollution-control projects. The water bank offered 10-year contracts for protection of wetlands for migratory waterfowl.

Some of the practices included in the REAP program in Pendleton County are providing lime and fertilizer for pasture and meadow land, establishing and improving permanent vegetative cover, developing facilities for livestock water, water impoundment reservoirs, diversion ditches, field drain tile, animal waste storage and management practices, improving stand of forest trees, wildlife conservation practices, and others.

John D. Heavner, chairman of the Pendleton County ASCS county committee, said yesterday that approximately 225 farms participate in the REAP program each year.

Heavner said county farmers received $37,943 in REAP funds last year, and that $27,518 already had been set up for Pendleton County for 1973. A total of $1,043,000 had been earmarked for REAP practices in West Virginia in 1973 prior to the recent termination of the program.

Administration officials have frequently tried to curb REAP's spending, and had proposed complete elimination of the program in 1971. In all past cases, however, farm and congressional pressure had forced at least partial funding of the program.

The Agriculture Department said in a statement that farm income supplements provided by the two cancelled programs aren't necessary because farm income will reach a record level this year.

"In view of this, and because of the general acceptance and profitability of certain (conservation) practices, it is believed farmers will continue to implement a significant number of them without supplemental income from the federal government."

Heavner questioned this statement saying that many farmers likely will suspend the REAP practices and use their funds for more profitable practices.

Heavner said cancellation of the REAP program is a serious blow to the farmers of Pendleton County.

WE NEED REAP

In an effort to hold down government spending, President Nixon has cancelled one of the most popular and helpful agricultural programs available to the small farmer of this nation. On orders from the White House, the Rural Environmental Assistance Program (REAP) was cancelled by the Department of Agriculture two weeks ago.

This program, and its predecessor, the Agricultural Conservation Program (ACP), for 36 years has assisted farmers in projects to retard soil erosion and prevent water pollution through a cost sharing program administered by the Agricultural Stabilization and Conservation Service (ASCS). This is the program which has enabled Pendleton County farmers to build up their farms through the use of lime and fertilizer, the construction of farm ponds, field drain tile, diversion ditches and animal waste storage facilities and utilization of other conservation practices such as stripcropping and planting trees.

These practices have enabled small farmers to make their farms more productive and thus boost their income, and at the same time, they are helping conserve the soil and water for use by future generations.

The REAP program has been highly successful in accomplishing its purpose at minimum cost. Many government programs consume almost as much money in their administration as is used in the accomplishment of the purpose for which they were created. Not so with REAP. It is administered by the ASCS and committees of local farmers elected to direct the program. Almost all the money appropriated for REAP actually is used in the conservation practices which the program is intended to foster.

The announcement by the Agriculture Department that farmers no longer need the program because farm income is at an all-time high is highly misleading. Although farm income may be higher than in the past, it still is lagging far below income in other segments of the economy. If it is necessary to cut a farm program, it is unfortunate that a program like REAP which benefits the small, family size farm gets the axe rather than a program like the feed grain program which primarily benefits the large and wealthey farmers of the midwest.

We believe the REAP program means too much to the small farmer who is struggling to earn a livelihood to give it up without a fight. We suggest that those who agree with us write your congressmen and senators and tell them so. It will only be through the efforts of congress that the program now can be saved.

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 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.

LAWRENCE SPIVAK—25 YEARS OF "MEET THE PRESS"

Mr. ROBERT C. BYRD. Mr. President, last November, NBC's "Meet the Press," the longest-running program in the history of television, marked its 25th anniversary. And last evening I attended a reception that commemorated the program and honored its producer-regular panel member, Lawrence Spivak.

It is difficult—in fact, it is impossible—to separate the program from its producer. One cannot honor "Meet the Press" without paying a like honor to Mr. Spivak, for it was he who pioneered the press conference of the air.

Mr. Spivak brought "Meet the Press" to radio in 1945, and to television 2 years later. Since that time, it has continually brought public officials and the general public closer together through the broadcast media; and it has made significant contributions to the free flow of information and ideas in our society.

Both the program and its producer deserve all the accolades they have received over the past quarter-century, and Mr. Spivak deserves special praise for making certain that his program has always adhered to the highest principles of American journalism. He has proved to be a most worthy Keeper of the Gates in the field of communications—perhaps because he has spent his entire life in that field.

Before he pioneered the broadcast press conference, Lawrence Spivak pioneered the publishing of paperback books. Perhaps not everyone is aware of the fact that he was the founder and publisher of Ellery Queen's Mystery Magazine and Fantasy and Science Fiction. Of course, he is better known as the editor-publisher of American Mercury.

It was as a promotion for that last magazine that he originally began "Meet the Press." But the almost immediate success of the program convinced him of the news potential of the broadcast media. His work in developing that potential went a long way toward making television a serious news medium.

Mr. President, I very much enjoyed the opportunity last evening to congratulate Mr. Spivak on the 25th anniversary of "Meet the Press," and I want to take this opportunity to publicly extend my congratulations.

ORDER FOR RECOGNITION OF SENATOR ROBERT C. BYRD ON TUESDAY, JANUARY 23, 1973

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on Tuesday next, immediately following the remarks of the distinguished Senator from Georgia (Mr. TALMADGE), the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 15 minutes.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for Saturday is as follows:

The Senate will convene at 10:30 a.m. Following the recognition of the two leaders or their designees under the standing order, there will be a period for the transaction of routine morning business not to extend beyond 10:45 a.m., with statements limited therein to 3 minutes.

At the conclusion of the period for the transaction of routine morning business on Saturday—10:45 a.m.—the Senate will stand in adjournment until 12 o'clock meridian Tuesday next. At the conclusion of the period for the transaction of routine morning business and after adjournment on Saturday, the Senators will gather in a body and proceed to the ceremony marking the inauguration of the President and the Vice President of the United States. The Senate will not reconvene following the inauguration.

Mr. President, on Tuesday next, for the information of Senators, the Senate will convene at 12 o'clock meridian.

Following the remarks of the two leaders or their designees under the standing order, the distinguished Senior Senator from Maine (Mr. MUSKIE) will be recognized for not to exceed 15 minutes, to be followed by the distinguished senior Senator from Georgia (Mr. TALMADGE) for not to exceed 15 minutes, to be followed by the junior Senator from West Virginia (Mr. ROBERT C. BYRD) for not to exceed 15 minutes.

There will then be a period for the transaction of routine morning business

for not to exceed 45 minutes with statements limited therein to 5 minutes.

It is intended by the leadership on Tuesday next to call up nominations on the executive calendar, namely those of Mr. Elliot Richardson, Mr. William P. Clements, Jr., and Mr. James R. Schlesinger.

I would anticipate there will be some discussion and possibly a rollcall vote or rollcall votes on one or more of those nominations. I cannot say with absolute assurance that there will be such votes. However, I think it would be well to anticipate them and that Senators schedule their day accordingly.

ADJOURNMENT TO SATURDAY, JANUARY 20, 1973, AT 10:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10:30 a.m. Saturday next.

The motion was agreed to; and at 2:48 p.m. the Senate adjourned until Saturday, January 20, 1973, at 10:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 18, 1973:

DEPARTMENT OF COMMERCE

Frederick B. Dent, of South Carolina, to be Secretary of Commerce.

DEPARTMENT OF TRANSPORTATION

Claude S. Brinegar, of California, to be Secretary of Transportation.

Egil Krogh, Jr., of Washington, to be Under Secretary of Transportation.

DEPARTMENT OF THE INTERIOR

John C. Whitaker, of Maryland, to be Under Secretary of the Interior.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Frank C. Carlucci, of Pennsylvania, to be Under Secretary of Health, Education, and Welfare.

HOUSE OF REPRESENTATIVES—*Thursday, January 18, 1973*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

Unto Thee, O Lord, do I lift up my soul.—Psalm 25: 1.

O Thou eternal and gracious God, make us receptive to Thy spirit and responsive to Thy love as we seek diligently to find ways to lead our people in the paths of peace and justice and good will.

We acknowledge that at times our efforts to build a better order of life seem so futile and our endeavors so fruitless. Inspire these Representatives with Thy great spirit that they may now and always labor to do that which is good for our Nation, generous for our people, and genuine in establishing peace in our world.

Grant that amid the persistance of perplexing problems we may seek to make Thy will our will, Thy way our way, Thy love our love, and Thy life our life.

In the spirit of Him who is the way, the truth, and the life—we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the amendment of the House to an amendment of the Senate to a joint resolution of the House of the following title:

H.J. Res. 1. Joint resolution extending the time within which the President may transmit the budget message and the Economic Report to the Congress and extending the time within which the Joint Economic Committee shall file its report.

The message also announced that the Vice President, pursuant to Public Law 84-944, appointed Mr. BAKER and Mr. DOMENICI to the Senate Office Building Commission.

The message also announced that the Vice President, pursuant to section 1024 of title 15, United States Code, appointed Mr. SCHWEIKER as a member on the part of the Senate, of the Joint Economic Committee.

The message also announced that the Vice President, pursuant to Public Law 91-510, appointed Mr. TAFT and Mr. WEICKER as members of the Joint Committee on Congressional Operations in lieu of Mr. CASE and Mr. SCHWEIKER, resigned.

ADJOURNMENT UNTIL 10:30 A.M. SATURDAY, JANUARY 20, 1973, AND FROM SATURDAY UNTIL MONDAY, JANUARY 22, 1973

Mr. O'NEILL. Mr. Speaker, I offer a resolution (H. Res. 138) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 138

Resolved, That when the House adjourns on Thursday, January 18, 1973, it stand adjourned until 10:30 a.m., Saturday, January 20, 1973; that upon convening at that hour the House proceed to the east front of the Capitol for the purpose of attending the inaugural ceremonies of the President and Vice President of the United States; and that upon the conclusion of the ceremonies the House stand adjourned until Monday, January 22, 1973.

The resolution was agreed to.

A motion to reconsider was laid on the table.

AUTHORITY FOR SPEAKER TO DECLARE RECESS ON MONDAY, JANUARY 22, 1973, TO RECEIVE APOLLO 17 ASTRONAUTS

Mr. O'NEILL. Mr. Speaker, I ask unanimous consent that it may be in order at any time on Monday, January 22, 1973, for the Speaker to declare a recess for the purpose of receiving in this Chamber the Apollo 17 astronauts.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute, to revise and extend his remarks.)

Mr. GERALD R. FORD. Mr. Speaker, I ask unanimous consent to proceed for 1 minute for the purpose of asking the distinguished majority leader what the program for the rest of this week will be, if any, and the schedule for next week.

Mr. O'NEILL. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the distinguished majority leader, the gentleman from Massachusetts.

Mr. O'NEILL. Mr. Speaker, I have requested this time for the purpose of making a statement to my colleagues.

Mr. Speaker, I desire to alert my colleagues that when we adjourn today, we will meet on Saturday at 10:30 o'clock. I urge all the Members to be here promptly because the procession for Members of the House will leave in a body promptly at 10:35 a.m., so that the inaugural exercises on the platform at the east front might start precisely at 11 o'clock. There will be no opportunity for Members to join the procession after it leaves the House Chamber.

Members must display their official tickets in order to get a seat on the platform. There are no seats available for former Members on the platform. Therefore, former Members may not join the procession.

The seats to be occupied by Members of the Senate and House of Representatives have no cover and the area is unheated. Members are urged to dress appropriately for the weather.

No children will be allowed upon the platform, and there will be no seats except for Members actually holding tickets for their own seats.

So, if you expect to be in the procession and get a seat on the platform, you must be in the Chamber at 10:30 a.m., on Saturday.

The procession will be headed by the Speaker pro tempore, then the chairmen of committees, and then the other Members in order of seniority.

Following the inaugural ceremonies on the east front, shuttle buses will be available east of the Cannon House Office Building, at First Street and Independence Avenue SE., to take Members and their wives, who have purchased tickets for the inaugural parade, to the parade reviewing stands at the White House. The first buses will depart at 12:30 p.m. and the last will leave at 1:15 p.m., promptly. The buses will also be available