leges as Reserve midshipment in the U.S. Navy, and for other purposes; to the Committee on Armed Services.

By Mr. BIAGGI (for himself, Mr. BOB WILSON, Mr. CHARLES WILSON of Texas, Mr. CHARLES H. WILSON of California, and Mr. WRIGHT):

H.R. 9528. A bill to amend the Maritime Academy Act of 1958 in order to authorize the Secretary of the Navy to appoint students at State maritime academies and colleges as Reserve midshipmen in the U.S. Navy, and for other purposes; to the Committee on Armed Services.

By Mr. BIAGGI (for himself, Ms. ABZUG, Mr. ADDABBO, Mr. BINGHAM, Mr. BOLAND, Mr. BRASCO, Mr. BROOKS, Mr. BROWN of California, Mr. BURTON, Mr. CAREY of New York, Mrs. CHISHOLM, Mr. CONYERS, Mr. DULSKI, Mr. HAWKINS, Mrs. HECKLER of Massachusetts, Mr. HELSTOSKI, Mr. MOAKLEY, Mr. NEDZI, Mr. NIX, Mr. O'HARA, Mr. PEYSER, Mr. PICKLE, Mr. PIKE, Mr. RANGEL, and Mr. RONCALLO of New York):

H.R. 9529. A bill to increase the subsistence payments to students at the State marine schools; to the Committee on Merchant Marine and Fisheries.

By Mr. BIAGGI (for himself, Mr. ROYBAL, Mr. RYAN, Mr. STARK, Mr. STUDDS, Mr. TALCOTT, Mr THOMPSON of New Jersey, Mr. VAN DEERLIN, Mr. VEYSEY, Mr. CHARLES H. WILSON of California, Mr. WOLFF, and Mr. WRIGHT):

H.R. 9530. A bill to increase the subsistence payments to students at State marine schools; to the Committee on Merchant Marine and Fisheries.

By Mr. ASPIN (for himself, Mr. ASHLEY, Mrs. BURKE of California, Mrs. CHISHOLM, Mr. EDWARDS of California, Mr. FULTON, Mr. GIAIMO, Mrs. HANSEN of Washington, Mr. HOWARD, Mr. KOCH, Mr. MURPHY of New York, Mr. MURPHY of Illinois, Mr. NIX, Mr. OBEY, Mr. PEPPER, Mr. REES, Mr. ROSE, Mr. SARBANES, Mr. SHUSTER, and Mr. TOWELL of Nevada):

H.R. 9531. A bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize safety design standards for schoolbuses, to require certain safety standards be established for schoolbuses, to require the investigation of certain schoolbus accidents, and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. HARRINGTON:

H.R. 9532. A bill to amend title 28 of the United States Code to provide for the dissemination and use of criminal arrest records in a manner that insures their security and privacy; to the Committee on the Judiciary.

By Mr. KOCH (for himself, Mr. CONYERS, Mr. GIBBONS, Mr. MCCORMACK, Mr. WALDIE and Mr. CHARLES H. WILSON of California:

H.R. 9533. A bill to regulate expenditures of appropriated funds with respect to private property used as residences by individuals whom the Secret Service is authorized to protect; to the Committee on Public Works.

By Mr. METCALFE (for himself, Mr. BADILLO, Mr. WON PAT, Mr. PODELL, Mr. CLAY, Mr. MITCHELL of Maryland, Mr. FAUNTROY, Ms. ABZUG, Mr. EDWARDS of California, Mr. BURTON, Mr. ROONEY of Pennsylvania, Mr. HAWKINS, Mr. MURPHY of New York, Mrs. BURKE of California, Mrs. CHISHOLM, Mr. CARNEY of Ohio, Mr. GILMAN, and Mr CONYERS):

H.R. 9534. A bill to amend title 18 of the United States Code to establish an Office of the U.S. Correctional Ombudsman; to the Committee on the Judiciary.

By Mr. RUPPE:

H.R. 9535. A bill to establish a national program for research, development and demonstration in energy technologies and energy conservation and for the coordination and financial supplementation of Federal energy research and development; to conduct a thorough review and assessment of the current status of research and development in energy technologies and energy conservation in both the public and the private sector; to increase efficiencies of energy production and utilization, reduce environmental impacts, develop new sources of clean energy, demonstrate specific technologies and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. STAGGERS:

H.R. 9536. A bill to amend section 307 of the Communications Act of 1934 to prohibit blackouts of professional sports events which are sold out; to the Committee on Interstate and Foreign Commerce.

By Mr. VEYSEY (for himself, Mr. ZWACH, Mr. RIEGLE, Mr. DULSKI, Mr. ABDNOR, Mr. RONCALLO of New York, and Mr. SMITH of New York):

H.R. 9537. A bill to provide reduced retirement benefits for Members of Congress who remain in office after attaining 70 years of age; to the Committee on Post Office and Civil Service.

By Mr. WYMAN:

H.R. 9538. A bill to amend the Truth in Lending Act to protect consumers against inaccurate and unfair billing practices, and for other purposes; to the Committee on Banking and Currency.

By Mr. RIEGLE:

H.R. 9539. A bill to prohibit certain acts with respect to petroleum, petroleum products, and natural gas; to the Committee on Interstate and Foreign Commerce.

By Mr. DULSKI:

H.J. Res. 681. Joint resolution proposing an amendment to the Constitution to permit tax credits for the support of religious educational institutions; to the Committee on the Judiciary.

By Mr. MOAKLEY:

H.J. Res. 682. Joint resolution to designate the 9th day of October of each year as "National Firefighters' Day"; to the Committee on the Judiciary.

By Mr. HAMILTON:

H. Con. Res. 275. Concurrent resolution providing for the printing of 1,000 additional copies of the hearings before the Subcommittee on the Near East of the Committee on Foreign Affairs entitled "U.S. Interests in and Policy Toward the Persian Gulf"; to the Committee on House Administration.

By Mr. LOTT (for himself, Mr. BAFALIS, Mr. BROYHILL of Virginia, Mr. DENNIS, Mr. DICKINSON, Mr. DUNCAN, Mr. FISH, Mr. GOLDWATER, Mr. HINSHAW, Mr. HUDNUT, Mr. HUNT, Mr. HUTCHINSON, Mr. LANDGREBE, Mr. MOORHEAD of California, Mr. PRICE of Texas, Mr. SCHERLE, Mr. SMITH of New York, Mr. SNYDER, Mr. SPENCE, Mr. STEIGER of Arizona, Mr. TREEN, Mr. VEYSEY, and Mr. WHITEHURST):

H. Con. Res. 276. Concurrent resolution providing for continued close relations with the Republic of China; to the Committee on Foreign Affairs.

By Mr. BIESTER (for himself and Mr. MARAZITI):

H. Res. 507. A resolution for the creation of congressional senior citizen internships; to the Committee on House Administration.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

285. By the SPEAKER. A memorial of the Legislature of the State of New York, relative to mass transit services; to the Committee on Interstate and Foreign Commerce.

286. Also, memorial of the Senate of the State of West Virginia, relative to the benefits for disabled veterans; to the Committee on Veterans' Affairs.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

254. By the SPEAKER: Petition of Frank M. Meyer, Blandford, Mass., relative to a commission in the armed services; to the Committee on Armed Services.

255. Also, petition of the Board of Commissioners, Allegan County, Mich., relative to general revenue sharing; to the Committee on Ways and Means.

SENATE—*Tuesday, July 24, 1973*

The Senate met at 11 a.m. and was called to order by Hon. SAM NUNN, a Senator from the State of Georgia.

PRAYER

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

God of our fathers and our God, who in times past has watched over this Nation, grant to our leaders, in the crisis of our times, submission to Thy commandments and amenability to Thy will. Imprint upon our hearts the authority of the divine law, and such grateful remembrance of Thy goodness as may make us both ashamed and afraid to offend Thee. As a "nation under God" make us mindful that we live not only under Thy providence but also under Thy constant judgment—that our thoughts, words, and deeds are under divine scrutiny.

O Lord, grant to the whole Nation the spirit of forgiveness, magnanimity, and reconciliation. Bring that cleansing which releases that moral power without which a people cannot be good or great or strong. Shed Thy light upon our labors in this Chamber and imbue Thy servants with the wisdom and the will to live to Thy glory.

We pray in His name who came as Servant of all. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The second assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., July 24, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. SAM NUNN, a Senator from the State of Georgia, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the joint resolution (H.J. Res. 512) to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PATMAN, Mr. BARRETT, Mrs. SULLIVAN, Mr. ASHLEY, Mr. MOORHEAD of Pennsylvania, Mr. STEPHENS, Mr. ST GERMAIN, Mr. GONZALEZ, Mr. REUSS, Mr. WIDNALL, Mr. BROWN of Michigan, Mr. J. WILLIAM STANTON, Mr. BLACKBURN, Mrs. HECKLER of Massachusetts, and Mr. ROUSSELOT were appointed managers on the part of of the House at the conference.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Monday, July 23, 1973, be dispensed with.

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

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

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

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar, under New Reports.

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

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar, under New Reports, will be stated.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The second assistant legislative clerk read the nomination of Stanley B. Thomas, of New York, to be an Assistant Secretary of Health, Education, and Welfare.

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

DEPARTMENT OF THE TREASURY

The second assistant legislative clerk read the nomination of William L. Gifford, of New York, to be a Deputy Under Secretary of the Treasury.

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

LEGISLATIVE SESSION

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

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

WAIVER OF CERTAIN CLAIMS OF UNITED STATES FOR OVERPAYMENT OF PAY AND ALLOWANCES

Mr. MANSFIELD. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 322, S. 1803.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered, and the bill will be stated by title.

The legislative clerk read as follows:

S. 1803, to authorize the waiver of claims of the United States arising out of erroneous payments of pay and allowances to employees of the Government Printing Office.

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

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Rules and Administration with an amendment to strike out all after the enacting clause and insert:

That section 5584 of title 5, United States Code, is amended as follows:

(1) Strike out "executive" wherever it appears in such section.

(2) In subsection (b) (2)—

(A) immediately after "(2)" insert the following: "except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden"; and

(B) strike out "or" at the end thereof.

(3) In subsection (b) (3)—

(A) immediately after "(3)" insert the following: "except in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden,"; and

(B) strike out the period at the end thereof and insert in lieu thereof a semicolon and the word "or".

(4) At the end of subsection (b), add the following new clause:

"(4) in the case of employees of the Government Printing Office, the Library of Congress, the Office of the Architect of the Capitol, or the Botanic Garden, if application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay or allowances was discovered or 3 years following the date on which this clause (4) is enacted into law, whichever is later."

(5) At the end of the section, add the following new subsection:

"(g) For the purpose of this section, 'agency' means—

"(1) an Executive agency;

"(2) the Government Printing Office;

"(3) the Library of Congress;

"(4) the Office of the Architect of the Capitol; and

"(5) the Botanic Garden.".

SEC. 2. (a) A claim of the United States against a person arising out of an erroneous payment of any pay or allowances, other than travel and transportation expenses and allowances, on or after the date of enactment of this Act, to the Vice President, a Senator, or an officer or employee whose pay is disbursed by the Secretary of the Senate, the collection of which would be against equity and good conscience and not in the best interests of the United States, may be waived in whole or in part by the Secretary of the Senate, if the claim is not the subject of an exception made by the Comptroller General in the account of any accountable officer or official. Claims for waiver shall be investigated by the Financial Clerk of the Senate who shall submit a written report of his investigation to the Secretary of the Senate. Claims for waiver of amounts in excess of $500 shall also be investigated by the Comptroller General of the United States who shall submit a written report of his investigation to the Secretary of the Senate.

(b) The Secretary of the Senate may not exercise his authority under this section to waive any claim—

(1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the Vice President, the Senator, or such officer or employee or any other person having an interest in obtaining a waiver of the claim; or

(2) if the application for waiver is received in his office after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered.

(c) In the audit and settlement of accounts of any accountable officer or official, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

(d) An erroneous payment, the collection of which is waived under this section, is considered a valid payment for all purposes.

(e) This section does not affect any authority under any other law to litigate, settle, compromise, or waive any claim of the United States.

(f) The Secretary of the Senate shall promulgate rules and regulations to carry out the provisions of this section.

The committee amendment in the nature of a substitute was agreed to.

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

The title was amended, so as to read: "A bill to authorize the waiver of claims of the United States arising out of erroneous payments of pay and allowances to certain officers and employees of the legislative branch."

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. The distinguished minority leader is recognized at this time.

Mr. SCOTT of Pennsylvania. Mr. President, I yield back my time.

QUORUM CALL

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

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

The legislative clerk proceeded to call the roll.

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS

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

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the time that has elapsed for the quorum call be charged to the time for morning business. I was under a misapprehension and thought that the Senate was in the period for the transaction of morning business.

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

AMERICAN JOURNALIST BANISHED FROM SOUTH VIETNAM

Mr. TUNNEY. Mr. President, truth, all too often, has been trampled in the mud of Vietnam, and again it is a casualty. An outstanding young American journalist, Jacques Leslie of the Los Angeles Times, has been banished from South Vietnam.

The Saigon government does not challenge his accuracy, merely resents it. It lifted his visa and ordered him from the country, and thereby diminished by one talented reporter the ability of Americans to get the full truth on events in Southeast Asia.

The United States has sacrificed too many lives and too much treasure now to sacrifice the ability to get the truth from that troubled and bloody sector of the world.

More than 50,000 Americans died in Vietnam. Billions of American dollars were spent, and the point of all this sacrifice should be clear to Saigon: It cannot now start kicking the United States around.

South Vietnam's action against Mr. Leslie is a slap in the face of every American.

Clearly, it is an affront to our Government. Clearly it is an affront to the people's right to know.

When first informed that Mr. Leslie might be banished, I contacted Deputy Secretary of State Kenneth Rush, and the State Department went to work. It reached high into the Saigon government, but Saigon relentlessly pursued its vendetta against Mr. Leslie.

It specified no charge against him. It did not refute one of his stories.

It merely acted as dictatorial regimes invariably have acted against a free press. It tried to silence it.

The United States has many other fine reporters in Vietnam, but Mr. Leslie's ejection reminds each of them that his days may be numbered.

Mr. Leslie is a resourceful reporter and an excellent writer. He spent years studying in the Far East. He speaks Chinese fluently, and he worked for newspapers in Washington, D.C., New York, and Los Angeles before his current assignment for the Los Angeles Times.

He once did a profile on me, and I know the sting of his pen, but I also know his commitment to the truth. His expulsion from Vietnam is an outrage.

This is but the latest incident in a policy of contempt toward the United States, a policy that raises a number of serious questions:

Were our sacrifices in South Vietnam worth it?

Did we squander men and money simply to support a squalid dictatorship?

And, more immediately, should we continue to pour more billions to prop-up such a regime?

Frankly, I have serious doubts about the value of continued American support for a regime that has no regard whatever for untrammeled reporting.

Certainly, my misgivings, and those of other Senators, will be compounded if Saigon persists in a policy of harassment and intimidation against the American press.

A government that stifles a free press is asking the American people, in effect, to support aid based on a distorted and government-controlled picture of the real facts.

The United States made freedom of the press the first article of her Bill of Rights, and she is not about to let some far-away regime use her dollars to repeal it.

QUORUM CALL

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

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

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

The legislative clerk proceeded to call the roll.

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

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

ALASKA PIPELINE

Mr. STEVENS. Mr. President, when the Senate adopted the Alaska pipeline amendment the major considerations, in my opinion, were:

First. The issue of timing; that is, how much longer would it take to build an oil and gas pipeline to transport Alaska's North Slope oil and gas to the South 48 if the pipelines are both constructed through Canada as compared to how long it would take to build the trans-Alaska pipeline through Alaska and the gas pipeline through Canada.

Second. The second major issue was the effect of any delay on the delivery of Alaskan oil on our balance-of-payments problems.

Third. And, whether the issue of the necessity to use supermarkets in connection with the Alaska pipeline was an insoluble problem so far as the Senate was concerned.

All three of these issues were resolved in favor of the Alaska pipeline.

Mr. President, I note that our Canadian counterparts from the House of Commons have requested a meeting of the Canadian-American Interparliamentary Conference on the subject of the Alaska pipeline. News reports indicate that they feel the question of the extent of Canadian ownership of a pipeline through Canada was a significant consideration here in the Senate. While I welcome our Canadian neighbors and look forward to the meeting with them, it is my opinion that this issue was not a matter of concern here in the Senate.

Mr. President, I have prepared a short statement on the three issues I mentioned above for the benefit of the Senate. First, let me discuss the issue of timing.

America needs Alaskan oil now. This need makes the issue of timing one of the most important considerations in determining how Alaska's North Slope oil and gas should be transported to the lower 48 States.

The construction of the trans-Alaska pipeline will take approximately 3 years. Approval and construction of the trans-Canadian pipeline would take 9 to 10 years. The additional 6 to 7 years would be broken down as follows: probably 2 to 3 years for approval, legislation and litigation, plus 3 to 5 years for additional construction and engineering.

The delay would be the inevitable result of the need to prepare a detailed design and route analysis, longer construction time, and a desire on the part of the Canadian and Provincial Government to review proposals, to consider alternatives, and to determine stipulations for construction and operation. All these are the same kinds of reviews and analyses that have already been completed for the trans-Alaska route.

To cite only one roadblock to the early construction of a trans-Canadian pipeline, let me discuss very briefly the issue of the Canadian Native land claims. It is apparent that Canada's northern Natives have launched an all out drive to establish their right to land. A key element in this drive is Native opposition to government approval of construction of a MacKenzie Valley pipeline. With the cry of "no settlement, no pipeline" Canada's Natives have pursued this issue. We can expect considerable delay in resolving this matter; for instance, it took our national Congress 5 years to settle Alaska's Native claims.

What are the consequences of delaying construction of a pipeline to deliver North Slope oil and gas. Let me summarize them:

First. A continuing dependence on unreliable sources of imported oil, especially from the Middle East.

Second. The delay of North Slope gas deliveries to the Middle Western and Eastern parts of the United States.

Third. A continuing dollar drain to foreign countries for oil purchases.

Fourth. A continuation and magnification of Alaska's financial problems.

Fifth. A delay in reduction of the Alaska Native claims settlement.

Sixth. Continued delay of domestic oil and gas exploration, particularly in Alaska.

Seventh. A loss of jobs in Alaska for the construction and maintenance of the

pipeline coupled with a loss of jobs in the shipbuilding industry.

We cannot afford to wait for the construction of a trans-Canadian pipeline.

Balance of Payments. As America's dependence on Middle Eastern oil has increased and the willingness of the Arab oil producing states to increase their exports of oil to the United States has declined, America had no substantive alternative but to accelerate construction of the trans-Alaska pipeline.

Time is of the essence to America—not only in insuring the speedy delivery of oil to meet our growing needs, but also in insuring a stronger dollar abroad and a healthier economy at home.

It is important to realize that the United States is not facing simply an "energy crisis" but conversely the energy crisis has also created a balance of payments and economic crisis in the United States.

Last year the U.S. balance-of-payments deficit—our first deficit in nearly 100 years was about $6.2 billion. Of this tremendous deficit, the surging outflow of U.S. dollars into the pockets of the Middle Eastern states accounted for a significant share of this deleterious imbalance.

If the United States did not act forthrightly and promptly our already unfavorable balance-of-payments position was sure to grow worse with the outlook for the value of the dollar on foreign exchange markets becoming increasingly vulnerable to manipulation and atrophy.

Indeed, if the United States did not act promptly—as it had to—estimates by the U.S. Government and the banking community project a U.S. balance-of-payments deficit of $25 billion to $30 billion by 1985.

This would have been unacceptable for the United States. It would spell economic disaster.

Obviously, it would be silly for the United States to sit back idly watching our balance-of-payments position and the value of the dollar deteriorate when we could correct the situation.

The U.S. Senate, after contemplating what inaction would mean to the U.S. economy, our balance-of-payments position as well as other factors, concluded that America could not vacillate any longer—it was time for action.

Because of the delicate and fickle atmosphere that surrounds the international petroleum industry it is only proper and prudent for the United States to attempt to stabilize our position if possible. We had this opportunity and we made the effort to reduce our sailing time on rougher seas for more tranquil waters.

The Senate's decision to go forward with the trans-Alaska pipeline was simultaneously a decision to move toward a more favorable balance of-payments position, insure a stronger economy and alleviate our dependence on Middle Eastern oil producing states who have told us they may not be willing to increase exports to meet our needs.

I believe the decision taken in the Senate was a positive one. A decision that substituted action for immobility and one that will at least put us on the path toward stability instead of allowing America to flounder aimlessly in instability.

Supertankers. On July 9, the Senate adopted amendment 298 to the trans-Alaska pipeline bill. This amendment will move up the effective date of Coast Guard regulations 1½ years from January 1, 1976 to June 30, 1974, for the construction of ships in the coastwise trade. In passing the Ports and Waterways Safety Act of 1972, Congress recognized the need for additional safety features in American vessels. Because we also believe American North Slope oil can and must be carried in vessels constructed as safely as possible, Senator MAGNUSON and I proposed amendment 298.

This will insure that the supertankers will be built with double bottoms and will also be compartmentalized. It will also insure a significant reduction in the number of tankers coming into west coast ports. Because the risk of oil spillage decreases as the number of tankers decrease—even though the size of each tanker may increase—the risk is significantly lessened by the use of supertankers. By requiring double bottoms and compartmentalization, the risk is still further minimized. The trans-Alaska pipeline will thus actually reduce the present risk of oil spills.

DEEPWATER PORTS

Mr. STEVENS. Mr. President, yesterday, before the ad hoc joint subcommittee on the superport problem, the Honorable Russell E. Train, Chairman of the Council on Environmental Quality, presented a statement on S. 1751, the Deepwater Port Facilities Act of 1973. This statement is extremely comprehensive. It sets forth the tanker oil spill probabilities and the effects of the studies that have been made on the problems concerning the tanker traffic that must come to this country if we are to increase our imports of crude oil.

I should like to share with Members of the Senate and those who read the RECORD the detailed statement that was presented by Mr. Train, and I commend him for the depth of his statement. I ask unanimous consent to have the statement printed in the RECORD.

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

STATEMENT OF THE HONORABLE RUSSELL E. TRAIN

Mr. Chairman and members of the Subcommittee:

I appreciate the opportunity to appear before you on behalf of the Council on Environmental Quality to discuss S. 1751, "The Deepwater Port Facilities Act of 1973."

Mr. Chairman, the Administration supports the need for new legislation providing for the establishment and regulation of deepwater ports and other offshore facilities. Furthermore, we recognize that these facilities must be located, constructed, and operated in a manner which would minimize or avoid adverse environmental impacts.

NEED FOR LEGISLATION

The need for such legislation is the result of the recent confluence of two major trends. First, of course, is the trend toward greater oil imports. A second major trend is the shift in oil transport to very large vessels called supertankers.

The draft of these supertankers can range, for example, from 67 feet for a 250 thousand dead weight ton tanker to 94 feet for a 540 thousand dead weight ton version. Yet the deepest channel to a conventional port on the East and Gulf Coast presently is only 45 feet. Deep inshore locations which could handle the deepest draft supertankers, exist naturally at several places in Maine. Elsewhere on the East and Gulf Coasts, inshore deepwater port facilities would have to be created by dredging existing harbors and channels. One West Coast port, Seattle, can accommodate very deep drafts but Los Angeles/Long Beach, is only deep enough to handle tankers in the 100–150,000 DWT range and San Fracisco is even less deep. Thus, at the present time almost no U.S. harbor has the capacity to receive and unload the larger supertankers. The attention of industry, government, and citizen environmentalists has turned, therefore, to the question of how to create facilities to bring the needed oil into the U.S. while, at the same time, protecting against the hazard of oil spills and controlling other environmental impacts of port development.

DEEPWATER PORT FACILITIES ACT OF 1973

The Administration's Deepwater Port Facilities Act of 1973, proposed in the President's Energy Message of April 18 addresses this question. It recognizes that today there exists no comprehensive institutional or legal framework for dealing with the many issues and problems involved in deepwater port development. The Administration's proposal would provide such a comprehensive system.

The Administration bill would authorize the Secretary of the Interior to license and regulate the construction and operation of deepwater port facilities beyond the three mile territorial sea. The bill prohibits the construction and operation of such a facility without such a license. Applicants for a deepwater port license must demonstrate that the port will not interfere with international navigation or other reasonable uses of the high seas. The Secretary cannot issue such a license until he determines that the siting and building of the port, and its subsequent operation, will minimize or prevent significant adverse environmental effects. S. 1751 recognizes the impact that port location would have on shoreside development and requires the Secretary to consult with Governors of potentially affected states to insure that port induced activities are consistent with state land use programs.

S. 1751 would establish a uniform, coordinated procedure for licensing and regulating deepwater ports. The Secretary of the Interior will have prime responsibility and applicants will have only one place in the Federal Government to go for a decision. As you know, authority for such a decision is currently fragmented among several Federal agencies. In his coordinating role, the Secretary will consult with every interested agency on specific applicants, as well as on the development of regulations for the licensing program.

S. 1751 would require the Secretary to prescribe conditions for operating under the license—including conditions to prevent or minimize pollution of the surrounding waters—and establishes stiff civil and criminal penalties for violation of the conditions of the license. The Administration bill also provides for revocation or suspension of a deepwater port facility license, including suspension forthwith in the case of a serious threat to the environment.

In determining that the proposed deepwater port facility will be located, constructed, or operated so as to prevent significant adverse environmental effects, the Secretary is also required by S. 1751 to consider the effects of the pipelines that would bring oil ashore.

I want to emphasize that the Administration bill does not modify or reverse existing law covering the safety of navigation or the protection of the marine environment. On

the contrary the bill specifically extends important existing U.S. laws, such as the Federal Water Pollution Control Act, as amended in 1972, and the Ports and Waterways Safety Act of 1972, to the deepwater port facility just as if that facility were located in U.S. navigable waters. A NEPA statement would precede any decision on a license application.

ENVIRONMENTAL IMPACTS

Mr. Chairman, as you may know the Council has been conducting a major interagency study of these environmental impacts of deepwater ports. Parts of this study are complete and available to the public.[1] The remainder of our study should be available by summer's end.

The environmental effects of deepwater port development can be divided into two broad categories: the primary effects of the construction of the port and of oil spills once the port becomes operational, and the secondary effects of industrialization and development on the shore which would be induced by the location of a deepwater port.

PRIMARY EFFECTS

One of the major environmental risks associated with marine oil transportation is the potential for oil spills resulting from tanker accidents and operations. Other risks stem from the effects of port construction and maintenance, particularly if significant dredging is necessary.

Potential environmental impacts from these activities are a function of several factors: the probability of damage occurring in the first place (for example, the need to dredge or the likelihood of an oil spill); the effectiveness of measures to prevent or control the damage; and the vulnerability of any specific port location to whatever damage may occur. The overall risk of environmental damage will in large measure be related to the type of deepwater port facility and its location with respect to critical coastal environmental features.

EFFECTS FROM CONSTRUCTION

The impacts of port construction on the environment are closely related to the amount of dredging or other disturbance of the sea bottom that takes place. For example, creation of a deepwater port in the Raritan Bay of northern New Jersey, would require dredging eight miles of channel, 90 feet deep and 1,000 feet wide, and another two square miles of berthing and maneuvering area. Dredge spoil would total 321 million cubic yards. The environmental effects of such dredging could include destruction of sea bottom habitat, damage to estuarine marine life caused by increases in turbidity and salinity and intrusion of sea-water into fresh water aquifers. Disposal of dredge spoil would present another environmental problem, particularly if the spoils are polluted. Further, once dredged, deep channels must be periodically cleared of silt and sand by re-dredging, a process which is likely to repeat many of the environmental damages just described.

The construction of large artificial islands or breakwaters would also require some dredging. By interfering with normal wave and current patterns, these structures could cause shore erosion under certain conditions, particularly in estuarine or other near shore locations. Miles out at sea, however, the force such facilities might impose on ocean movements should not influence shoreline processes significantly, if at all.

The construction effects of far offshore type facilities—such as single point moorings or single anchor leg moorings—are likely to be negligible. Pipelines from such facilities—particularly if buried to protect against breaks—will require some dredging that would disturb the sea bottom and coastal areas where the pipelines come ashore. The amount of this dredging would be insignificant compared with dredging deep channels to existing ports.

OIL SPILL EFFECTS

Oil spills can be caused by casualties such as collisions, groundings, and rammings, by operational mishaps (often due to human failure) during the transfer of oil from tankers to port facilities, and by pipeline breaks or leaks.

Regardless of the source and size of an oil spill, several biological effects can occur: organisms can be killed outright by toxic components of the oil; they can die or be harmed by direct coating with oil; oil concentrations in the water can inhibit normal feeding or reproductive behavior; certain oil components, especially those suspected of causing cancer, can be incorporated into the food chain; and the covering of rocks, marshes, and similar areas with oil can destroy habitats.

The actual effect of any particular spill will depend upon a series of other factors, including the chemical composition and amount of oil, winds and currents in the region of the spill, the type of marine life in the region of the spill; the season of the year; and previous exposure to oil.

Furthermore time is an overriding factor in predicting and assessing biological impacts. Over time, as a result of wind and current movement, spilled oil "weathers"—that is, the toxic fractions will dissipate. A dynamic interaction of the wind, currents, and tides, in conjunction with biological and chemical degradation, determines where the oil will go and what effects it will have enroute and when it arrives.

Estuaries and nearshore coastal wetlands are the most biologically productive areas of the marine ecosystem and also the most sensitive to damage from either construction or oil spill effects. At shallow nearshore sites, such damage would be unavoidable. At far offshore locations, however, the probability that spilled oil will enter sensitive estuarine areas is much reduced. In addition, should a spill occur far offshore, and should wind and current move it toward coastal areas "weathering" of the oil enroute will tend to remove its most immediately toxic and lethal fractions. Not only will it take the oil longer to reach sensitive wetland and estuarine areas and recreational beaches, but, under certain wind and current conditions, the oil could move out to sea and never reach the shore as a slick.

PREVENTIVE MEASURES

There are a number of ways to prevent oil spills or to minimize their damage. I have already mentioned the different characteristics of different types of port facilities.

Ports that must be carved out of shallow estuaries or nearshore areas which require tankers to thread their way through narrow channels—often in waters congested with other ships—present risks of collision or grounding. Mandatory radar-guided vessel traffic controls could reduce those risks. Single point moorings permit the construction of ports far offshore in very deep water without expensive dredging or breakwaters. Such facilities can be located away from congested ports, harbor entranceways, and coastal shipping lanes, thus significantly limiting the probability that collisions will occur. In naturally deep water the probability of groundings is also reduced. If supertankers are constructed with double-bottoms (thus providing a void between the outside hull and cargo tanks) the amount of oil spilled should a grounding occur is significantly reduced. Finally, the use of pipelines—as opposed to barges or smaller tankers—to transship oil to shore, cuts the number of handling operations and the potential for accidents.

The major environmental disadvantage of single point mooring type facilities as opposed to fixed berth facilities is that, with present technology, little can be done to contain spills during unloading operations. In a fixed berth a floating apron can be installed around the stationary tanger to contain any oil that might be spilled.

Since tankers are constantly in motion around single point moorings, aprons are not feasible. Further development and experience with single point mooring technologies will be necessary to alleviate this problem before these facilities come into general use in the U.S.

SECONDARY EFFECTS

In the U.S., the location of a superport will tend to induce new industries, particularly refineries and petrochemical complexes in the immediate area serving the port and in the surrounding region.

The creation of new petroleum-related industries would induce associated commercial and economic activities. An overall increase in economic development will cause population concentration and needs for new housing and added public services such as sewage treatment, transportation, schools, electric power, and recreational facilities. Each of the activities in turn will result in a range of environmental impacts beyond what would normally be expected without a deepwater port. The impacts include demands for land and water supply; increased air and water pollution; and a burden on public services. Depending upon the nature of a given area, induced effects could cause it to change from undeveloped to industrialized or from developed to highly industrialized.

A framework of existing Federal legislation can help in planning and controlling superport-related development. Under the Federal air and water pollution laws, new industrial development generated by increases in petroleum refining and processing will be subject to stringent standards, reflecting the best available pollution control technology, covering the emission and discharge of pollutants to the air and water. In addition, these laws require that new facilities be compatible with ambient air and water quality standards. These ambient standards may, in some cases, require more stringent emission and effluent controls than the basic "best available technology" requirements. This framework of controls should assure that deepwater port related industrial development will occur within the limits of environmental acceptability.

The recently enacted Coastal Zone Management Act and the pending National Land Use Policy Act also provide a framework within which states can control the effects of industrial development upon land use. Two basic objectives of the President's National Land Use Policy Act are to encourage state control of large scale development of "more than local significance," and to protect areas of "critical environmental concern," such as coastal wetlands. The Coastal Zone Management Act, which encourages states to plan and control land use in the coastal zone, is especially applicable because secondary development associated with superports will affect coastal areas in every case.

CONCLUSION

Given the favorable economics of deepwater ports, continuing to receive oil direct from overseas sources in smaller tankers is economically unrealistic. For example, it costs approximately $9 per ton to bring crude oil direct to the U.S. East Coast in a 50-70 thousand dead weight ton tanker. That same ton would cost only $6.55 if carried direct in a 250 thousand dead weight ton supertanker.

Therefore, the United States is faced with two basic alternatives. Either it can develop its own deepwater ports or it can transship oil from non-U.S. Western Hemisphere deep-

[1] See order list, Attachment C.

water ports in the Caribbean or in the Canadian Maritime Provinces. From an economic point of view, the choice lies between the cost of $6.55 per ton, for example, if the oil is delivered to the U.S. by supertankers directly, and from $7.05 to $7.25 per ton if the supertanker delivers its cargo to neighboring foreign points for transshipment to the U.S. in smaller tankers.

In making this choice, the environmental implications are as important as the economic ones. Based on studies conducted for the Council by the U.S. Coast Guard, it appears that creating superports in the U.S. carries a lesser risk of oil spill damage than does transshipping oil from foreign ports.

For example, over a twenty year period, at an import level of 2 million barrels per day we can statistically project approximately 37 vessel casualties resulting in spillage of over 29 thousand tons of oil, assuming small tankers averaging 50,000 DWT transshipped oil from Canadian or Caribbean terminals to conventional U.S. ports. On the other hand, if the same oil were transported direct to U.S. offshore terminals in supertankers averaging 250,000 DWT, we can project about four casualties totalling only 25 *hundred* tons of oil spilled.[2] The supertanker example assumes that transshipment to shore would be via pipelines. Transshipment via small tankers or barges would, of course, increase the casualty potential and tend to negate the advantage of the superport over conventional systems.

In sum, then, the U.S. is going to need increasing amounts of imported oil. This oil will be imported in small ships—at greater risk of oil spills—if deepwater ports are not available to serve supertankers. The environmental impacts associated with port construction and oil spills can be significantly reduced by the development of far offshore deepwater ports which will be served by supertankers at locations distant from congested harbors and coastal areas. The environmental impacts associated with the development of petroleum refining and processing industries would occur to some extent if the same amounts of oil were imported in conventional tankers. To the extent that these impacts might be focused on areas served by deepwater ports, state and local governments can plan for and control them using their traditional powers within a framework of current and pending Federal pollution abatement and land use management laws.

S. 1751 would provide a comprehensive and effective legislative mechanism to assure that both primary and secondary environmental effects are fully considered in the Federal decisionmaking process.

Thank you, Mr. Chairman, I will be happy to answer your questions.

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[2] See attachment A for a more detailed presentation; Attachment B describes the general spill probability methodology.

[Attachment A]

COMPARATIVE TANKERS CASUALTIES OVER 20 YEARS[1]

ASSUMPTIONS

Throughput of 2 million barrels per day in both cases.

Case 1—Oil transported to conventional ports in tankers averaging 50,000 dead weight tons (DWT).

Case 2—Oil transported to offshore terminals in supertankers averaging 250,000 DWT; transshipment to shore via pipelines.

Range of spills (in long tons)	Number of incidents		Number of tons of oil spilled	
	Case 1	Case 2	Case 1	Case 2
1 to 150	24.0	3.0	1,680.0	186.0
151 to 500	8.5	.65	3,306.5	250.3
501 to 3,000	3.8	.44	4,674.0	514.8
3,001 to 14,000	1.4	.21	11,144.0	1,577.1
14,000 plus	.17	.....	8,364.0	.....
Total	37.87	4.3	29,168.5	2,528.2

[1] Derived from Table 3 and Figures 1 and 6 of Attachment B, "Tanker Oil Spill Probabilities."

[Attachment B]

TANKER OIL SPILL PROBABILITIES

INTRODUCTION

This paper presents a detailed methodology by which to project the frequency and magnitude of oil spills from tanker casualties. It was prepared for the Council on Environmental Quality by the U.S. Coast Guard.

TANKER CASUALTY SPILLS

Before a tanker casualty was considered in this analysis, the following criteria had to be met:

The oil spill had to be a direct result of a rupture in a tank, and

It had to be known positively that oil escaped into the water.

A list was compiled from various sources that gave details of tanker casualties worldwide during 1969 and 1970.[1] In those instances where the spilled oil could not be quantified, a magnitude equal to the average magnitude for similar spills of less than 500 tons was assigned; i.e., no catastrophic casualties were assumed to have taken place in these cases. Instances where the casualty occurred at sea more than 50 miles from shore were excluded from the list as not being applicable in a study of supertanker facilities, which will be located less than 50 miles from shore.

Spill data for a supertanker facility alternative at a given port location are presented in terms of frequency and magnitude. The magnitudes are not given as discrete values but rather in five ranges; specifically:

To 150 long tons;
151 to 500 long tons;
501 to 3000 long tons;
3001 to 14,000 long tons; and
Greater than 14,000 long tons.

The ranges were selected by plotting the number of incidents within a selected range versus the midpoint outflow magnitude of the range. The ranges were adjusted until their plot yielded a straight line on a log-log graph. (The straight line or hyperbolic function would indicate a fair distribution of the data and a statistically valid selection of ranges). For presentation purposes the ranges were rounded off to the nearest 50 long tons. The data are presented in Table 1.

TABLE 1

Range (tons)	Incidents: Number	Incidents: Percent	Oil outflow	Percent of total oil outflow
To 150	139	63.47	9,695	5.75
151 to 500	49	22.37	19,050	11.29
501 to 3,000	22	10.05	27,120	16.07
3,001 to 14,000	8	3.65	63,690	37.74
Greater than 14,000	1	.46	49,200	29.15
Total	219	100	168,755	100

The data illustrate that the majority of the incidents (188 or 85.84%) are less than 500 long tons and contribute only 17.04% of the total pollution; whereas in a higher range (3001–14000 tons) the 8 incidents constitute 3.65% of the total incidents but 37.74% of the total pollution.

The frequency of occurrence for a spill within one of the ranges is a direct function of the number of such incidents which occurred during the 1969–1970 sampling period. The detailed two-year spill data base was further compared to data compiled by the International Chamber of Shipping (ICS) and the Secretariat General a la Marine Marchande of the Ministere des Transports, France, for the period 1960–1970. While these data were not detailed enough to incorporate in the data base, they clearly reaffirmed the 1969–1970 data; and it therefore can be said that the two-year period is representative of a ten-year period. By extrapolating these figures by statistical inference to a 20-year period, all data are presented as spills of a given range occurring within a number of ship years.

The midpoint of the 1969–1970 sampling period represented 12,206 ship years of tanker traffic.[2] Thus, the expected time for an incident within a given magnitude range to occur can be computed directly from the data.

Ship years can be converted to calendar years for any given entry location by knowing: (1) the number of tankers transiting its coastal, entranceway, and harbor (CEH) zones and (2) the average number of days that tankers require to make any CEH zone transit. This also requires the knowledge of the average number of days per year that all tankers spend in CEH zone transits. This number is relatively simple to compute once one knows:

The average number of round trips that tankers make each year; and

The average number of days that a tanker spends in transit upon arrival or exit from a port

In the 1969–1970 period there were 6,103 tankers, according to Lloyd's Register of Shipping, with 497 of these tankers greater than 80,000 deadweight tons. Assuming that each vessel on the average spends 2 days on each end of a round trip in CEH zone transit, one can equate the following:

A tanker is in the CEH transit mode 39 days per year; or,

39 days per year equals one ship year of tanker transits.

The projected spill estimations in terms of magnitude and frequency are plotted for each port facility alternative on a log-log scale as the number of incidents within one of the given outflow ranges versus ship years of operations.

An analysis was conducted comparing polluting incident frequency and attendant oil outflow magnitudes. In conducting this analysis tankers were broken into two general deadweight categories, namely:

Those less than 80,000 deadweight tons; and

Those 80,000 deadweight tons and greater.

The intent here was to show whether a relationship does in fact exist between tanker polluting incidents and tanker size. Table 2 depicts the results of this analysis.

These data say that in consideration of the frequency of all types of casualties, as a function of number of tankers, the larger vessels, as presently operating, have a higher probability of being involved. They also say that oil outflow magnitudes are independent of tanker size. One must point out that the data does not contain a single catastrophic accident with a loaded tanker greater than 80,000 deadweight tons. One such incident would seriously alter that result.

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[1] "An Analysis of Oil Outflows Due to Tanker Accidents—A Note by the U.S.A. to the Intergovernmental Maritime Consultative Organization," November 1972, U.S. Coast Guard; and, "Tankers and the Ecology," Porricelli, et al, *Transactions*, Vol. 79 1971, The Society of Naval Architects and Marine Engineers.

[2] Source: Lloyd's Register of Shipping, Statistical Tables, 1969 and 1970.

TABLE 2

	TANKERS 80,000 DWT AND GREATER [1]				TANKERS LESS THAN 80,000 DWT [1]			
	Percent of total incidents (A)	Percent of world tank fleet (B)	Percent of world tanker tonnage (C)	Percent of total outflow (D)	Percent of total incidents (A)	Percent of world tank fleet (B)	Percent of world tanker tonnage (C)	Percent of total outflow (D)
All polluting incidents	7.89	6.04	30.3	6.38	92.11	93.96	69.7	93.62
All polluting incidents less explosions	6.37	6.04	30.3	2.94	93.63	93.96	69.7	97.06
	A/B	A/C	D/B	D/C	A/B	A/C	D/B	D/C
With explosions	1.30	.26	1.06	.21	.98	1.32	.99	1.32
Without explosions	1.06	.21	.49	.097	.99	1.32	1.03	1.39

[1] Tankers 80,000 dwt and greater had 21 polluting incidents, including 5 explosions, during the 1969–70 reporting period with an associated oil outflow of 27,465 long tons. Tankers less than 80,000 dwt had 245 polluting incidents, including 10 explosions, during the same reporting period with an associated oil outflow of 403,254 long tons.

It should also be noted that the case with tanker explosions discounted significantly changes the results. Here, frequency probabilities are also independent of tanker size; i.e., the incident rate is the same for both large and small tankers. It is interesting to note the marked drop in oil outflow magnitudes with an increase in size. Again, however, the cautionary remark concerning the effect of one large laden tanker's involvement in a catastrophic incident will apply.

The reason the data have been presented with explosions segregated is to show their effect on the supertanker frequency and magnitude oil spill spectrum and how the case may be made either way for or against supertankers as has been done in the past. It is also noteworthy that primary explosions occur in two modes of tanker operation:

While the tanker is in ballast and probably tank cleaning at sea; and

While transferring cargo and more often during the unloading phase.

Another approach compared incident frequency and outflow to the total amount of deadweight tons in the two categories above and below 80,000 tons deadweight. Due to the greater proportion of deadweight (30.7%) in the supertanker category as opposed to the actual number of vessels (6.04%) the results are significantly altered; i.e., the supertanker shows smaller oil outflows in proportion to its representative deadweight.

The baseline port facility alternatives can then be modified for:

Improved tanker construction technology, i.e. double bottoms;

Implementation of traffic control; and

The use of an offshore terminal.

Data showing the effectiveness of any of these three modifications are either sparse or non-existent. However, reasonable estimates can be made for them; the effectiveness of double bottoms in terms of grounding protection was estimated to be 75 percent; the effectiveness of a traffic control system was estimated to reduce all grounding and collision polluting incidents which could occur in harbors and harbor entranceways by 50%; the effectiveness of an offshore terminal has been qualitatively taken to reduce in two cases, 40 and 90 percent of all casualties which would occur within the harbors and entranceways—40 percent for a deep water terminal but not necessarily far offshore or out of the heavy traffic density, 90 percent for a true deep water offshore terminal without the traffic density and proximity of the shoreline.

Double-bottom construction is just what it sounds like. It uses an outer wall for the hull structure of a vessel and an inner wall for the structure of the oil storage tanks. The resulting space between the two provides additional insurance against oil spillage because it permits damage to the outer hull without necessarily affecting the oil storage systems. In this analysis, we assume a double bottom height on the order of 0.08 percent of the tanker's molded beam and a segregated ballast capacity sufficient to attain 45 percent of the tanker's full load displacement.

Various sources have placed the effectiveness of double bottoms in terms of grounding protection between 62 and 92 percent. A grounding study conducted by the International Maritime Consultative Organization (IMCO) Maritime Safety Committee on Ship Design and Equipment stated that effectiveness is on the order of 73 percent.[3] In this study, an effectiveness of 75 percent is used.

Traffic controls in this analysis are defined as mandatory, radar-guided, computer assisted systems for positive control and coordination of shipping movements at superport facility locations. The effectiveness of such a traffic control system is estimated to reduce by 50 percent all groundings and collisions which cause oil spills and which could occur in harbors and harbor entranceways. This figure is considered more qualitative than quantitative because no real data exists on a maritime traffic control system. Some data do exist regarding traffic separation routes, which are strictly advisory and not fully comparable to positive traffic control systems. For example, the average accident rate in the Straits of Dover for the 3 years after traffic routing was established improved by 21 percent over the 4 years prior to routing, despite an increase in traffic and despite the fact that only 75 percent of the vessels transiting the Straits of Dover comply with the routes.[4] Harbor advisory systems such as the one in Teesport,[5] have also shown considerably lower accident rates. In the port of Rotterdam, where more ship tonnage is handled than in any other port in the world, there has not been a single major accident since a harbor control system was instituted several years ago. Thus, the 50 percent effectiveness value used here for traffic control systems, though unquantified, is considered minimal.

The location of a superport can greatly affect the probability of casualties and consequently the magnitude of oil spills. One of the key variables is distance from shore. As distance increases, traffic congestion and therefore casualties from collision are reduced. Far offshore facilities are also in deeper water—reducing the probabilities of groundings. The effectiveness in terms of reduced vessel casualties is not readily quantifiable. However, a detailed casualty analysis by the Coast Guard indicated that approximately 40% of the polluting incidents occur within harbors and entranceways. Of the incidents occurring within harbors and entranceways, approximately 80% are due to collisions and groundings. Two values of effectiveness are used. For offshore locations between 5 and 15 miles from shore, but still exposed to shallow water and to coastal traffic, a 40% reduction of collisions and groundings is assumed. If the site is far offshore, beyond 15 miles, a 90% reduction is estimated.

It is important to realize the limitations of the results; especially when one considers the absence of quantitative data regarding the effectiveness of double bottom, traffic control systems, etc., and perhaps more important the sensitivity of the results to the values of effectiveness. A sensitivity analysis was conducted by varying the value of the effectiveness of the three parameters by 10 percent. The effect of varying this value by 10 percent can change the quantity of oil outflow from 0.1 to a maximum of 10 percent. This same 10 percent variation will alter the frequency of occurrence from 1 to a maximum of 10 percent. These results say that the oil outflow magnitude-frequency spectrum will vary in direct proportion with the effectiveness of the super-imposed parameters.

TABLE 3.—CONVERSION OF SHIP YEARS TO CALENDAR YEARS FOR FIGURES 1–6 [1]

A	B	C
Percent of throughput transshipped	Incoming tanker 250,000 DWT ship yr/(U.S. superport) 20 calendar years	Incoming tankers 50,000 DWT ship yr/(no U.S. superport) 20 calendar years
0	208	1,043
5	273	----
10	339	----
15	404	----
20	469	----
25	534	----
30	600	----
35	665	----
40	730	----
45	795	----
50	860	----
55	926	----
60	991	----
65	1,056	----
70	1,121	----
75	1,187	----
80	1,252	----
85	1,317	----
90	1,382	----
95	1,447	----
100	1,513	----

[1] For throughputs other than 1,000,000 barrels per day, multiply the value in either columns B or C by the ratio of actual throughput to 1,000,000.

Any value in column B is the number of ship years accumulated in twenty calendar years as a function of 250,000 DWT incoming supertankers, the amount of the incoming throughout which is then transshipped in 40,000 DWT tankers (shown as a percent of the total throughput), and a 1,000,000 barrels per day throughput.

Column C is the number of ship years accumulated in 20 calendar years as a function of 50,000 DWT incoming regular tankers, assuming a 1,000,000 BPD throughput and no further transshipment.

[3] D. M. Bovet, "Groundings: A Brief Analysis," U.S. Coast Guard, Office of Research and Development, December 1970.

[4] J. M. Beattie, "Safer, Saner Seaways," U.S. Naval Institution proceedings, December 1970.

[5] "Improving Safety of Navigation in the Oil Ports," Europe and Oil, Ferranti Ltd., May 1970.

EXAMPLES FOR USING TABLE 3 AND FIGURES 1 THROUGH 6

1. Case with transshipment

a. Given:
throughput equals 1,900,000 BBl/day.
incoming tanker equals 250,000 DWT.
65 percent transshipped in 40,000 DWT tankers
double bottom and traffic control.

b. From Column B, Table 3—1056 ship years/20 calendar years.

Multiply by 1.9 to adjust for throughput equals 2006.4 ship yr/20 cal yr.

c. From Figure 4 find 2006.4 yr. along horizontal axis and read from various outflow ranges as follows: 0.6 incidents at 3001 to 14,000 tons; 1.7 incidents at 501 to 3000 tons; 2.2 incidents at 151 to 500 tons; 15 incidents at less than 150 tons.

d. Compute total outflow by multiplying number of incidents times average spill figures in box:

0.6	× 8,260	= 4,956
1.7	× 1,240	= 2,108
2.2	× 374	= 823
15	× 69	= 1,035
		8,922 tons/20 cal yrs.
		= 66,915 Bbls/cal yrs.
		(7.5 Bbls/ton)
		= 3,345 Bbls/cal yr.

2. Same case with no transshipment

a. From column B, Table 3 — 208 ship yr/20 cal yr.; 208 times 1.9 equals 395 ship yr/20 cal yr.

b. Incidents at various outflow ranges from Figure 4: 0.12 incidents at 3001 to 14,000 tons; 0.34 incidents at 501 to 3000 tons; 0.41 incidents at 151 to 500 tons; 3.0 icidents at less than 150 tons.

c. Compute total outflow:

0.12	× 8,260	= 991
0.34	× 1,240	= 422
0.41	× 374	= 153
3	× 69	= 207
		1,773 tons/20 cal yrs.
		= 13,297 Bbls/20 cal yrs.
		= 665 Bbls/cal yr.

(Figures 1 through 6 mentioned by Train were omitted because they could not readily be reproduced.)

QUORUM CALL

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I ask unanimous consent that during the consideration of the Endangered Species Act of 1973, my legislative assistant, Max Gruenberg, have the privilege of the floor.

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

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

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

The legislative clerk proceeded to call the role.

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

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

ENROLLED BILL SIGNED

The PRESIDENT pro tempore on today, July 24, 1973, signed the enrolled bill (H.R. 9172) to provide for emergency allotment lease and transfer of tobacco allotments or quotas for 1973 in certain disaster areas in Georgia and South Carolina, which had previously been signed by the Speaker of the House of Representatives.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on July 23, 1973, he presented to the President of the United States the enrolled bill (S. 59) to amend title 38 of the U.S. Code to provide improved and expanded medical and nursing home care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to provide for improved structural safety of Veterans' Administration facilities; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery; and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. PASTORE, from the Joint Committee on Atomic Energy, without amendment:

S. 1993. A bill to amend the EURATOM Cooperation Act of 1958, as amended (Rept. No. 93-341).

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

S. 2075. A bill to authorize the Secretary of the Interior to undertake a feasibility investigation of McGee Creek Reservoir, Okla. (Rept. No. 93-342).

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

S. 2239. An original bill relating to intervening in and influencing the political affairs of foreign countries or political subdivisions thereof (Rept. No. 93-343). Placed on the calendar.

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

S. 2060. A bill to authorize the Secretary of Transportation to act to assure the continuance of rail services in the northeastern United States, and for other purposes (Rept. No. 93-344).

EXECUTIVE REPORTS OF COMMITTEES

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

By Mr. WILLIAMS, from the Committee on Labor and Public Welfare:

John R. Ottina, of California, to be Commissioner of Education; and

Julius Shiskin, of Maryland, to be Commissioner of Labor Statistics, U.S. Department of Labor.

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

ORDER FOR STAR PRINT OF S. 1964

Mr. TUNNEY. Mr. President, I ask unanimous consent to correct an omission in my bill, S. 1964, to establish the Tijuana National Wildlife Refuge.

On page 3, line 3, after the phrase "with the operation of the" insert "U.S. Naval Air Station, Imperial Beach, California. In addition the", and continue with "Secretary may utilize".

I request that a star printing be authorized to enable this correction to be printed in the bill.

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

ORDER FOR STAR PRINT OF SENATE JOINT RESOLUTION 135

Mr. MOSS. Mr. President, on July 19, 1973, Senate Joint Resolution 135, regarding the termination of hostilities in Indochina, was introduced and a technical error was made in the printing. I ask unanimous consent that a star print be made of the joint resolution.

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

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. DOMINICK:

S. 2236. A bill to amend the Clean Air Act in order to provide for revised standards pursuant to such Act for motor vehicles and engines to be sold or used in high elevation areas, and for other purposes. Referred to the Committee on Public Works.

By Mr. THURMOND:

S. 2237. A bill to remove statutory limitations upon the application of the Sherman Act to labor organizations and their activities, and for other purposes. Referred to the Committee on the Judiciary.

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

S. 2238. A bill to amend the Internal Revenue Code of 1954 to increase the maximum credit and deduction allowable with respect to contributions to candidates for public office, to make certain changes in subtitle H of such code with respect to the financing of presidential election campaigns, and for other purposes. Referred to the Committee on Finance.

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

S. 2239. An original bill relating to intervening in and influencing the political affairs of foreign countries or political subdivisions thereof. Placed on the calendar.

By Mr. CURTIS:

S. 2240. A bill to amend title II of the Social Security Act and appropriate provisions of the Internal Revenue Code of 1954 so as to make clear that income received by a farm owner for the use of land by a farm management concern will not be treated as earnings from self-employment. Referred to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DOMINICK:

S. 2235. A bill to amend the Clean Air Act in order to provide for revised standards pursuant to such act for motor vehicles and engines to be sold or used in high elevation areas, and for other purposes. Referred to the Committee on Public Works.

Mr. DOMINICK. Mr. President, under section 206 of the Clean Air Act, the Administrator of the Environmental Protection Agency is required to test new automobiles and to certify them if they pass these tests. EPA has promulgated extensive and detailed guidelines pursuant to the Clean Air Act of 1970 for the purpose of testing the emissions of new automobiles. This entire testing and certification process, as it now exists, is conducted at elevations below 1,000 feet, in and around Detroit at the surrounding automobile manufacturing plants. It has now been shown, however, that these motor vehicles which are certified emit significantly greater amounts of pollutants at higher elevations than they do at the level where the tests are conducted. The reason for this is quite simple, since, as everyone knows, carburetors are designed to mix gasoline with air depending on the volumes of the gasoline and the air. So, when the air is thinner, as in higher altitudes, the amount or mass of oxygen in the air is lower even though the volume the carburetor takes in remains the same. This out-of-proportion mixture results in less efficient and higher polluting engines in the high elevations.

The purpose of the Clean Air Act is stated to be the protection and enhancement of the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. Yet, both an unwillingness on the part of EPA to acknowledge and fulfill the need for stronger standards in high elevations and certain defects in the act itself have meant that the mandated purpose of improving the Nation's air quality will continue to remain unrealized in those urban areas which are located at higher elevations. Further, these areas are nevertheless required to meet the same primary ambient air quality standards under the same time schedule as are urban areas at low elevations.

Mr. President, the legislation which I introduce today is prompted by results of a number of studies and surveys which have been conducted over the last few years. For example, the Air Pollution Control Commission in Colorado and EPA monitored exhaust emissions from thousands of motor vehicles at elevations ranging from 3,400 to 10,500 feet. Results show that motor vehicles emit 150 to 210 percent the amount of hydrocarbons and carbon monoxides at these elevations than they do at the elevations in Detroit where they are tested and certified under the Clean Air Act regulations. Mobile air pollutant sources in the Denver metropolitan areas account for roughly 90 percent of the carbon monoxide emissions and 60 percent of both hydrocarbons and photochemical oxidants formed by atmospheric reactions of hydrocarbons and nitrogen oxides.

The technological feasibility of various carburetors and auto emission control devices is a subject on which there remains much disagreement. This was seen in the recent negotiations between the Environmental Protection Agency and the major automobile manufacturers which resulted in the granting of an extension for meeting the hydrocarbon and carbon monoxide standards. There is no disagreement, however, that the Clean Air Act precludes interim tampering of motor vehicle engines. Sections 203 and 205 state that a $10,000 civil penalty will result and that the act prohibits the following:

For any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this part prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

The obvious intent of these sections was to prevent any tampering that would reduce the effectiveness of the pollution control devices in the new automobiles. Yet, the prohibition as written applies to all tampering whether it reduces or increases effectiveness. In response to the many complaints relating to this problem, EPA issued an "Interim Tampering Enforcement Policy" on June 8, 1972. It has, however, proven ineffective since in the absence of an amendment, the Clean Air Act appears to prohibit any tampering whatsoever.

Mr. President, thus the problems which threaten the success of the Clean Air Act are now well defined and an amendment to the act is necessary to insure that:

First, motor vehicles intended for sale or substantial use in higher elevations meet the same standards as those required at sea level; and

Second, modifications are allowed which will increase the effectiveness of pollution control devices on new and used cars in higher elevations and which are otherwise in accordance with the policy of the act.

Mr. President, we are introducing this bill to accomplish exactly these goals. The bill embodies an extremely simple approach to this problem and involves no great bureaucratic framework. It is merely designed to alleviate an apparent oversight either in the act or the Environmental Protection Agency's regulations, namely, that a distinction must be made between operating a motor vehicle at sea level and operating one in or near any of the Nation's mountainous areas.

Accordingly, Mr. President, I urge the appropriate committee to take up this matter immediately. If the Congress were to pass this measure in the near future, the proper adjustments in procedure could be made by the Environmental Protection Agency, the States and the automobile manufacturers so as to coincide with the time frame of the Clean Air Act as it now exists.

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

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

S. 2236

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Section 104 of the Clean Air Act is amended by inserting at the end thereof the following:

"(d) The Administrator shall carry out a research program pursuant to this section to determine special requirements for motor vehicle emission control devices and systems in high elevation States and the maintenance thereof and direct manufacturers of motor vehicles and engines to meet standards established pursuant to this Act in high elevation as well as other States."

SEC. 2. Section 202(b)(3) of the Clean Air Act is amended by inserting at the end thereof the following:

"(C) The term 'high elevation State' means a State with a Standard Metropolitan Statistical Area which has an average elevation of at least three thousand feet above sea level.

"(D) The term 'high elevation motor vehicle or engine' means any motor vehicle or engine which is intended for sale in a high elevation State."

SEC. 3. (a) Section 206(b)(1) of the Clean Air Act is amended by inserting the following after the "(1)" and preceding "In": "(A)".

(b) Section 206(b)(1) of the Clean Air Act is further amended by inserting at the end thereof the following:

"(B) The Administrator shall, not later than 120 days after the date of enactment of this subsection, prescribe such amendments to tests and standards pursuant to this section with respect to high elevation motor vehicles and engines such that the standards established pursuant to section 202 are complied with when such motor vehicle or engine is operated in a high elevation State.

"(C) Regulations and amendments to existing regulations prescribed pursuant to subsection (b)(1)(B) shall be applicable to high elevation motor vehicles and engines manufactured during and after model year 1976."

SEC. 4. (a) Section 209 of the Clean Air Act is amended by inserting at the end thereof the following:

"(d) Nothing in this Act shall preclude or deny to any State or political subdivision thereof the right to require that motor vehicles and engines which are licensed for use in that high elevation State be in conformity with standards prescribed pursuant to section 202."

(b) Section 203(a)(3) of the Clean Air Act is amended by inserting the following after "(3)":

"except as provided in section 209(d)."

By Mr. THURMOND:

S. 2237. A bill to remove statutory limitations upon the application of the Sherman Act to labor organizations and their activities, and for other purposes. Referred to the Committee on the Judiciary.

Mr. THURMOND. Mr. President, many years ago Congress concluded that in order to protect the public interest, antitrust legislation should be enacted to prevent large business enterprises from engaging in monopolistic practices that would eliminate competition and restrain trade and commerce.

Through court interpretation and subsequent action by Congress, labor unions were made exempt from the application of the antitrust laws. The rationale for this was that unions were weak and struggling organizations, and that only by being given special privileges and protections not accorded other economic interests could they successfully stand up to the business giants of that day.

Today labor unions have gained such tremendous power that the question must be raised as to whether the exemption of

labor unions from the antitrust laws was a serious mistake at the time when the exemption was granted. The evidence is overwhelming that this special protection given to unions so that they could advance their own self-interest certainly is not justified today.

The labor-management area has been viewed in the past as a power struggle between worker welfare and business gains. But now the struggle is not so much between unions and big business as it is between big unions and the public.

While there has been a great deal of concern shown about the relative power of labor unions and employers, there has been far too little concern shown over the effects of labor union power on the public interest. Union monopoly power aids and abets the development of the monopoly power of business enterprises which the antitrust laws were enacted to prevent. It has produced wage rates and fringe benefits in excess of those justified by increased productivity or competitive levels, work rules that require payments for unneeded work, and boycotts which penalize third parties not involved in labor disputes. It has resulted in wastage of labor resources, distortions in the allocation of productive resources, inflation, balance-of-payments deficits and the associated deterioration of the U.S. position in world markets. The American public is the real victim in all instances.

Labor union monopoly power is not compatible with a free market economy. There are really only two choices facing us. Either the power of unions must be reduced to an extent sufficient that market forces will once again be broadly effective or unions will have to be totally regulated like public utilities, the government controlling wages and work standards and allocating labor. The latter would deal a near fatal blow to our private enterprise economy.

There are some who see as an alternative the acceptance of "social responsibility" by unions and the sacrificing of some of their self-interest. That is unrealistic. In the absence of legal restraints on union power, unions can logically be expected to continually strive to increase that power. Competition from the nonunion sector of the labor force does not deter this drive for more power rather the effort to unionize the nonunion sector is used by the unions as a reason why they need more power. Furthermore, employer resistance cannot be relied upon to restrain the unions, for with the tremendous power already existing on the union side, employers are increasingly willing to give in to the unions in exchange for labor peace and uninterrupted operation. Wages go up, prices go up and the consumer has to absorb the higher costs that are the inevitable product of union monopoly power. Nor has competition from foreign industry restrained the growth of union power and union demands. In this competition, what has given way has not been foreign competitors or U.S. unions but our balance of payments and our gold reserves.

It is necessary, therefore, that the Congress take action now to amend the antitrust laws so that labor unions will have to abide by the same regulations as employers of labor. They must be prohibited from taking actions which will unreasonably restrain trade and commerce or eliminate competition in product markets.

Making unions subject to the antitrust laws will not destroy them. Nor will properly drawn legislation interfere with their function as collective bargaining representatives of employees so long as their actions are not in restraint of trade and they do not conspire to restrain trade.

This would be exactly the same as it now is with business organizations. They violate the antitrust laws only when they are large enough to monopolize or when they collude with others to restrain trade.

Speaking before the Joint Economic Committee back in January, Chairman Arthur F. Burns of the Federal Reserve Board of Governors said:

> Not a few of our corporations and trade unions now have the power to exact rewards that exceed what could be achieved under conditions of active competition." Chairman Burns declared that genuine progress toward solving the problem of inflation would require that we "undertake to curb abuses of economic power by both business firms and trade unions, besides reappraising a host of laws and governmental regulations that interfere with the competitive process.

He said both structural reforms of the antitrust laws and stricter enforcement are needed.

Since 1932 public policy toward unions has disregarded both the economic laws governing the operations of a free market and the interests of consumers. The Norris-La Guardia Act of 1932 denied relief in the courts for business firms injured by unions. It freed labor unions to increase their monopoly powers and restrain commerce without regard to the damage inflicted on the public. Then in 1935 the Wagner Act conferred more rights and privileges on unions without corresponding obligations. In 1947 the Taft-Hartley Act preserved the unions' privileges and immunities but attempted to prevent certain "bad" labor practices. It did not, however, place any effective restraints on the further extension of union power. In 1959 the Landrum-Griffin Act added more forbidden "bad" practices with the avowed intent of protecting union members from harmful action by union leadership. It also left intact the structure of union monopoly power. Neither Taft-Hartley or Landrum-Griffin, therefore, have effectively dealt with the problems created by labor unions nor achieved real labor "reform." Rather they have added to the confusing tangle of rules and regulations which leave the power of unions to inflict damage untouched but have fostered increasing government interference in market processes.

Moreover, the body of "administrative law" which has developed around our labor statutes is subject to the shifting interpretations of the National Labor Relations Board, whose members are governed more by their ideological proclivities than by the canons of the judicial process. Thus, while Taft-Hartley outlays the closed shop, interpretations of the NLRB have weakened the effectiveness of this prohibition. Taft-Hartley also prohibits some types of featherbedding and secondary boycotts, but these limited restraints have been largely circumvented by rulings of the NLRB. Congress' lack of success in formulating effective remedies for labor evils is due to its concentration on legislative attempts to stop the bad practices while neglecting the source from which these practices have emerged—excessive union power.

The severest damage inflicted by unions on the public and the most serious threat they pose to survival of the market economy results from their performance of functions which labor laws authorize them to perform in pursuit of their own self-interest rather than the commission of illegal acts. The problem, then, is the reduction of the legally held powers of unions when such powers unreasonably restrain commerce and eliminate competition. The solution is to bring unions under the antitrust laws.

Removing the exemption for unions from the antitrust laws would not be a punitive measure. It would not subject unions to any new and unusual penalties but merely restore the equity in treatment of business enterprise and unions that has been lost because of the free hand given to unions to monopolize and restrain trade. Bringing unions under the scope of the laws that were designed to insure the survival of a competitive economy would no more destroy unions than it has destroyed business enterprises.

It has been argued that bringing unions under the antitrust laws is too difficult and too complicated, and that it would place the antitrust laws and the national labor laws into conflict. These arguments are easily answered.

It was not so difficult to bring business enterprises under the antitrust laws that Congress was unable to achieve it. Bringing unions under antitrust restraints is no more difficult, in fact, it is less so because of the years of experience gained in applying the laws to business firms.

Complexities arise only if an effort is made to spell out in the law the various actions of unions which shall be considered in restraint of trade. This was not done in the Sherman Act with regards to business enterprises, but rather the act simply states that:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.

It leaves to the courts the determination of the meaning and specific application of the words of the statute. The Clayton Act likewise uses broad and nonspecific terms, delegating interpretation to the courts.

This same principle should be followed in the case of labor unions. The courts will decide what actions monopolize and restrain trade and are, therefore, illegal under the antitrust laws.

National labor law and the antitrust laws, when made applicable to labor unions, will complement rather than conflict with each other. National labor law deals with problems and practices in the relationships between unions and

employers, without attempting to determine the limits to which union power can accumulate and be exercised without substantially injuring the public interest and endangering the survival of the market economy. Enforcement of the antitrust laws as applied to unions will be concerned solely with the latter and not with the former. Thus a union can violate the National Labor Relations Act without running afoul of the antitrust laws, or it can violate the antitrust laws with an action that is not prohibited by the NLRA. In other words, it will be subject to two different types of regulatory action and in this respect it will be no different from business enterprises, which are subject to a variety of restraints.

Bringing unions under the antitrust laws requires a few very simple amendments to the Sherman and Clayton Acts and an equally simple modification of the application of the Norris-La Guardia Act. These changes are long overdue and Congress should take action to put them into effect without further delay.

Mr. President, I send to the desk a bill to effectuate the changes outlined above and ask unanimous consent that the bill be printed in the RECORD following these remarks.

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

S. 2237

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 "Antitrust Law Labor Amendments of 1973".

CLAYTON ACT AMENDMENTS

SEC. 2. (a) The second sentence of section 6 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (38 Stat. 730; 15 U.S.C. 17), is amended by striking out "the antitrust laws" and inserting the following: "any provision of the antitrust laws except as provided by the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (26 Stat. 209, as amended; 15 U.S.C. 1 et seq.)".

(b) Section 20 of such Act (29 U.S.C. 52) is amended by—

(1) striking out the word "That" in the first paragraph thereof, and inserting in lieu thereof the words "Except for the purpose of preventing any violation of the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (26 Stat. 209, as amended; 15 U.S.C. 1 et seq.),"; and

(2) striking out the word "And" where it first appears in the second paragraph thereof, and inserting in lieu thereof the words "Except for the purpose of preventing any violation of such Act,"; and

(3) striking out the words "any law of the United States" in the second paragraph thereof, and inserting in lieu thereof the words "any other provision of law of the United States".

NORRIS-LA GUARDIA ACT AMENDMENT

SEC. 3. The Act entitled "An Act to amend the judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (47 Stat. 70; 29 U.S.C. 101 et seq.) is amended by inserting at the end thereof the following new section:

"SEC. 16. Nothing contained in this Act shall deprive any court of the United States of jurisdiction to issue any order or injunction to restrain any violation or threatened violation of the Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies', approved July 2, 1890 (26 Stat. 209, as amended; 15 U.S.C. 1 et seq.)."

SHERMAN ACT AMENDMENTS

SEC. 4. (a) Section 1 of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (26 Stat. 209, as amended; 15 U.S.C. 1), is amended by—

(1) inserting, immediately after the section designation "Sec. 1.", the subsection designation "(a)"; and

(2) adding at the end thereof the following new subsection:

"(b) Every contract or agreement between any labor organization and any employer whereby such employer undertakes to cease or to refrain from using, selling, handling, transporting, or otherwise dealing in any of the products of any producer, processor, or manufacturer which are distributed in trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who enters into, attempts to enter into, or combines or conspires with any other person to enter into, any such contract or agreement shall be punished by a fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or both."

(b) Section 3 of such Act (15 U.S.C. 3) is amended by—

(1) inserting, immediately after the section designation

"SEC. 3.", the subsection designation "(a)"; and

(2) adding at the end thereof the following new subsection:

"(b) Every contract or agreement between any labor organization and any employer whereby such employer undertakes to cease or to refrain from using, selling, handling, transporting, or otherwise dealing in or with any of the products of any producer, processor, or manufacturer which are distributed in trade or commerce in any Territory of the United States or the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and the District of Columbia or any State or foreign nation, or between the District of Columbia and any State or foreign nation, shall be unlawful. Every person who enters into, attempts to enter into, or combines or conspires with any other person to enter into, any such contract or agreement shall be punished by a fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or both."

(c) Section 8 of such Act (15 U.S.C. 7) is amended to read as follows:

"SEC. 8. As used in this Act—

"(a) the term 'person' or 'persons' includes corporations and associations existing under or authorized by the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country; and

"(b) the term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

EFFECTIVE DATE

SEC. 5. The amendments made by this Act shall take effect on the first day of the fourth month beginning after the date of enactment of this Act.

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

S. 2238. A bill to amend the Internal Revenue Code of 1954 to increase the maximum credit and deduction allowable with respect to contributions to candidates for public office, to make certain changes in subtitle H of such code with respect to the financing of Presidential election campaigns, and for other purposes. Referred to the Committee on Finance.

PRESIDENTIAL CAMPAIGN FINANCING ACT

Mr. MONDALE. Mr. President, I am introducing today, together with the Senator from Pennsylvania (Mr. SCHWEIKER), the Presidential Campaign Financing Act of 1973.

This legislation, which provides for substantial public financing of Presidential primary and general elections while severely limiting the size of private contributions, is designed to free those elections from the corrosive and corrupting influence of big money and return them to the American people.

In my judgment, the enactment of our bill—or of one like it—is the single most important election reform that can emerge from Watergate. It is absolutely essential if we are ever to get money off the backs of American politicians and restore integrity and confidence in our political system.

One of the great ironies of Watergate is that some of those who have been among the staunchest opponents of public financing have, through their blatantly illegal activities, made the strongest possible case for its adoption.

The acceptance of corporate contributions, the widespread use of secret funds, the "laundering" of contributions in foreign countries, the solicitation of funds from businesses with important cases pending before Government agencies, the insistence on dealing in cash, the ambassadorships for sale—these are symptoms of a system that is fundamentally flawed.

Perhaps no incident dramatizes the extent of the flaw as strikingly as that involving American Airlines.

Herbert Kalmbach, one of President Nixon's principal fundraisers approached American board chairman, George Spater, at a time when American had pending before the Civil Aeronautics Board a plan for merger with Western Airlines and indicated that a contribution of $100,000 was "expected."

I knew Mr. Kalmbach to be both the President's personal counsel and counsel for our major competitor (United Airlines).

Mr. Spater said later:

I concluded that a substantial response was called for.

That "substantial response" amounted to a total American Airlines contribution to the Nixon campaign of $75,000, of which $55,000 was in clearly illegal corporate funds.

In short, American Airlines was so determined to advance and protect its corporate interests that it consciously decided to violate the law in order to submit to Mr. Kalmbach's intimidation.

Here's how Mr. Spater himself put it:

Under existing laws, a large part of the money raised from the business community for political purposes is given in fear of what could happen if it were not given.

I cannot imagine a more severe indictment of our political fund-raising process, unless it is the now familiar Vesco

affair. That incident dramatized how an individual in apparent trouble with the SEC was solicited for a huge contribution, and how he gained access to one of the highest officials in the Government to discuss his difficulties only 2 hours after delivering the contribution—all in $100 bills.

And there is the ITT incident in which a huge contribution to help underwrite the GOP National Convention mysteriously coincided with an antitrust settlement between ITT and the Justice Department—a settlement highly beneficial to ITT.

Then there is the Ashland Oil contribution and who knows how many more sordid episodes. When they are all revealed, they will portray a story of government virtually up for sale. They will make a mockery of our principles of free and open representative government. They will make us truly ashamed of what we have allowed to happen to our political process, the most precious of all of our national possessions.

As a Democrat, I can take no comfort in these disclosures. My own party's record of political fund-raising—while never in the same league as the Nixon campaign of 1972—has not always been as open and as forthright as I would like it to have been.

The chief fault lies in the system itself—a system which forces candidates to rely on excessively large contributions if they hope to compete effectively in a modern Presidential campaign.

This system, I am convinced, has a great deal to do with declining public confidence in government. People were asked in 1966 by the Harris Poll, "How often can you trust the government?" Two-thirds answered, "most of the time." Recently the question was asked again and less than half—only 45 percent—said they could trust their government most of the time.

The same poll indicated that only 27 percent of the people had "a great deal of confidence" in the executive branch of the Government—a drop from 41 percent in 1966.

If we are to eliminate the corrosive influence of money on the political process and restore public trust in our Government, we must fundamentally change the system by which we finance our campaigns—especially our Presidential campaigns. The only way to do this effectively, in my judgment, is by severely limiting the amount any individual may contribute to a candidate while at the same time providing substantial public funds to help finance the campaigns. Neither of these steps by itself will be sufficient; any effective reform must embody them both.

The costs of running campaigns in this country are rising so rapidly that this question cannot be put off any longer. It is estimated that last year candidates for all offices spent an estimated total of $400,000,000—an increase of one-third over 4 years before. In short, the cost of campaigning is rapidly outstripping the ability of most candidates to raise the necessary funds responsibly.

The United States is one of the few western democracies which provide absolutely no public assistance to candidates in its national elections. As Watergate so vividly illustrates, we cannot afford to postpone further this essential measure.

And if this kind of legislation is not enacted in the wake of Watergate, it may never be enacted. That is why Senator SCHWEIKER and I—together with a bipartisan coalition of Senators—intend to push this matter vigorously in the next few months.

John Gardner has called the way in which our campaigns are financed a "national disgrace," and I agree with him. In our common effort to remove that disgrace, I am grateful to Mr. Gardner and Common Cause for their considerable help in preparing the legislation which we are introducing today.

It is not a perfect bill, and we are not irrevocably wedded to every detail in its present form. After circulating it widely, we will make whatever revisions are necessary to make it the most effective possible bill.

We are committed, however, to the principles contained in this measure. And we believe its basic concepts are sound.

These, Mr. President, are the principal features of our bill:

No individual is allowed to contribute more than $3,000 to any one candidate during an entire Presidential campaign;

Groups which aggregate or "pool" funds are limited to collecting individual contributions of $25 or less and may in turn contribute to any one candidate no more than $25,000;

Cash contributions or transactions in excess of $100 are barred;

The existing tax credit is doubled to make it one-half of any contribution up to $50 for an individual return and up to $100 for a joint return; The present tax deduction for contributions is also doubled;

During the prenomination period, each individual contribution up to $100 will be matched by an equal amount from the Federal Treasury; A candidate must raise $100,000 in matchable contributions in order to qualify for Federal matching funds; The matching funds will be available beginning 14 months before the date of the general election; There is an overall spending limit of $15 million during the prenomination period; Matching funds must be spent during the prenomination period and cannot be carried over to the general election period;

The existing $1 check-off system is retained and strengthened for the general election; Each dollar checked off is matched by another dollar from the Federal Treasury, and the check-off fund is made self-appropriating; For the general election period there is a spending limit of $30 million, roughly two-thirds of which will come from the check-off fund and the balance from private contributions under $3,000; Unlike the present check-off law, there is no incentive not to take advantage of the public funds;

Stiff criminal penalties are provided for misuse of the public funds and other violations of the act.

I ask unanimous consent that an explanation giving more details, together with the text of the bill, be printed at the conclusion of my remarks.

If public financing legislation is to accomplish its intended purpose, it is essential that it apply to the Presidential primary period as well as the general election. If individuals and interests are permitted to contribute huge amounts early in the campaign, it makes no difference that they are prohibited from doing so later; the obligation will have been incurred and the entire purpose of the reform will have been effectively undermined.

And yet, the primary period is the most difficult part of the presidential election process for which to provide public financing. We have concluded that the only way to treat all candidates fairly is by placing a premium on their ability to raise small contributions. The combination of the $3,000 limitation on individual contributions and the availability of matching funds for contributions of $100 and under forces candidates, in effect, to seek as wide a base as possible in financing their campaigns. That, we believe, is what candidates should have to do in seeking nomination to the highest office in the land. Whatever ability they demonstrate in raising small funds from as many individuals as possible is rewarded in direct proportion to their success.

Candidates, in short, will be going to the people instead of to the interests for their financial support. The impact this change will have not only on our political process but also on the executive branch of government will be enormous.

For the general election period, we have retained and tried to strengthen the $1 check-off system, which we believe is a sound and effective system which has not yet been given a fair chance to prove itself. Every dollar which is designated by an individual for the presidential campaign fund is matched by another dollar from the Treasury, creating in effect a $2 check-off which will insure sufficient funds for the general election. These funds would provide approximately two-thirds of what a candidate would be permitted to spend, the balance to be raised in individual contributions of $3,000 and under.

Public financing of campaigns, I am convinced, is an idea whose time has finally arrived. But it is by no means a new idea. In a message to Congress in 1907—nearly 70 years ago—President Theodore Roosevelt proposed this reform, saying:

> The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money. Then the stipulation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor; and the necessary publicity for receipts and expenditures could without difficulty be provided.

Public financing of campaigns is the most fundamental and important reform we can adopt in this decade. At stake is nothing less than the integrity of our political system and the kind and quality of government we are going to have in this country.

This is not a very complex issue. It can be reduced to one basic question: To whom do we want the President of the United States indebted after his election—powerful economic interests capable of buying influence with huge contributions, or the American people?

Nor is it a partisan or ideological issue. It is designed to benefit neither Republicans nor Democrats—neither liberals nor conservatives. Rather, it is designed to benefit our system of government and, through it, the American people, by insuring that the President of the United States is responsible to them—and to them only.

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

S. 2238

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 "Presidential Campaign Financing Act of 1973."

INCREASE IN POLITICAL CONTRIBUTIONS CREDIT AND DEDUCTION

SEC. 2. (a) Section 41(b)(1) of the Internal Revenue Code of 1954 (relating to maximum credit for contributions to candidates for public office) is amended to read as follows:

"(1) Maximum credit.—The credit allowed by subsection (a) for a taxable year shall not exceed $25.00 ($50.00 in the case of a joint return under section 6013)."

(b) Section 218(b)(1) of the Internal Revenue Code of 1954 (relating to amount of deduction for contributions to candidates for public office) is amended to read as follows:

"(1) AMOUNT.—The deduction under subsection (a) shall not exceed $100 ($200 in the case of a joint return under section 6013)."

(c) The amendments made by subsections (a) and (b) shall apply with respect to any political contribution the payment of which is made after December 31, 1973.

PRESIDENTIAL ELECTION CAMPAIGN FUND

SEC. 3. Section 9006(a) of the Internal Revenue Code of 1954 (relating to establishment of campaign fund) is amended to read as follows:

"(a) ESTABLISHMENT OF CAMPAIGN FUND—There is established on the books of the Treasury of the United States a special fund to be known as the 'Presidential Election Campaign Fund There is appropriated to the fund for each fiscal year, out of amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to two times the amount designated during the preceding fiscal year (and subsequent to the previous Presidential election) by individuals for payment into the fund under section 6096. Moneys in the fund shall remain available without fiscal year limitation."

EXPLANATORY STATEMENT ON TAX AND PUBLICITY

SEC. 4. (a) Section 6096 of the Internal Revenue Code of 1954 (relating to designation by individuals of income tax payments to Presidential Election Campaign Fund) is amended by adding at the end thereof the following new subsections:

"(d) EXPLANATORY STATEMENT.—The page containing the designation provided for in subsection (c) shall contain the following statement in bold type: 'Designating that $1 (or $2 for a husband and wife filing jointly) shall be paid over to the Presidential Election Campaign Fund will not increase your tax liability, and each $1 you designate will be matched by another $1 from the Treasury.'

"(e) PUBLICITY.—The Secretary of the Treasury or his delegate shall give extensive publicity to the Presidential Election Campaign Fund, including prominent notice in explanatory material sent to individuals, posters, and the use of radio, television, newspapers and other media. This publicity shall emphasize that the designation provided for in subsection (a) does not increase an individual's tax liability, and that each $1 designated will be matched by another $1 from the Treasury."

LIMITATIONS ON GENERAL ELECTION CAMPAIGN PAYMENTS, EXPENSES, AND CONTRIBUTIONS

SEC. 5. (a) Subsection (b) of section 9004 of the Internal Revenue Code of 1954 (relating to entitlement of eligible candidates to payments) is repealed and subsection (c) is redesignated as subsection (b).

(b) Paragraphs (2) and (3) of subsection (b) of section 9007 of the Internal Revenue Code of 1954 (relating to repayments of excess campaign expenses and contributions) are repealed and paragraphs (4) and (5) are redesignated as paragraphs (2) and (3).

ELIGIBILITY FOR CAMPAIGN PAYMENTS

SEC. 6. Section 9003 of the Internal Revenue Code of 1954 (relating to condition for eligibility for payments) is amended by striking out subsections (b) and (c) and inserting in lieu thereof the following:

"(b) Candidates for Election to the Office of President.—In order to be eligible to receive any payment under section 9006, the candidates of a major, minor, or new party in a presidential election shall certify to the Comptroller General, under penalty of perjury, that they and their authorized committees will not incur qualified campaign expenses in excess of the $30,000,000 limit in section 9012(a).

CRIMINAL PENALTIES

SEC. 7. Section 9012 (a) and (b) of the Internal Revenue Code of 1954 (relating to criminal penalties for excess campaign expenses and contributions) is amended to read as follows:

"(a) Excess Campaign Expenses—

"(1) It shall be unlawful for any candidate of a political party for President and Vice President in a presidential election or any of his authorized committees knowingly and willfully to incur qualified campaign expenses in excess of $30,000,000 with respect to such election.

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $25,000, or imprisoned not more than five years, or both.

"(3) At the beginning of each calendar year (commencing in 1974), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Comptroller General and publish in the Federal Register the per centum difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for the base period. The limit on campaign expenses in paragraph (1) and in section 9003(b) shall be increased by such per centum difference. The limit so increased shall be the amount in effect for such calendar year.

"(A) The term 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"(B) The term 'base period' means the calendar year 1972.

"(b) Contributions—

"(1) It shall be unlawful for any candidate of a major, minor, or new party in a presidential election or any of his authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount greater than that necessary to make up the difference between the payments received from the Fund under Section 9006 and the limit on qualified campaign expenses established by subsection (a).

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both.

PRESIDENTIAL PRIMARY MATCHING PAYMENT FUND

SEC. 8. The Internal Revenue Code of 1954 is amended by adding at the end thereof the following new Chapter:

"CHAPTER 97—PRESIDENTIAL PRIMARY MATCHING PAYMENT FUND

"Sec. 9031. Short titles.
"Sec. 9032. Definitions.
"Sec. 9033. Creation of funds.
"Sec. 9034. Entitlements.
"Sec. 9035. Limitations.
"Sec. 9036. Examinations and audits; repayments.
"Sec. 9037. Criminal penalties.

"Sec. 9031. Short title.

"This chapter may be cited as the 'Presidential Primary Matching Payment Fund Act'.

"Sec. 9032. Definitions.

"For purposes of this chapter—

'(1) The term 'qualified campaign expense' means an expense—

"(A) incurred by a candidate for nomination for election to the office of President to further his nomination for such office, or by an authorized committee of such candidate to further his nomination to such office.

"(B) incurred within the matching payment period (as defined in paragraph (2)), or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period, and

"(C) neither the incurring nor payment of which constitutes violation of any law of the United States or the State in which such expense is incurred or paid. An expense shall be considered as incurred by a candidate or an authorized committee if it is incurred by a person authorized by such candidate or such committee, as the case may be, to incur such expense on behalf of such candidate or such committee.

"(2) The term 'matching payment period' means the period beginning 14 months prior to the date of the general election for President and ending on the date on which the national convention of the party for whose nomination the candidate is campaigning nominates its candidate for President.

"(3) The term 'authorized committee' means, with respect to a candidate for nomination for election to the office of President, any political committee which is authorized in writing by such candidate to incur expenses to further the election of such candidate. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidate with the Comptroller General. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

"Sec. 9033. Creation of fund.

"(a) ESTABLISHMENT OF CAMPAIGN FUND.—There is hereby established on the books of the Treasury of the United States a special fund to be known as the "Presidential Primary Matching Payment Fund" (hereinafter referred to in this chapter as the 'fund'). The fund shall remain available for expenditure without fiscal year limitation and shall consist of such amounts as are appropriated into it as provided in subsection (c).

"(b) REPORT TO CONGRESS.—The Secretary of the Treasury shall be the trustee of the fund and shall report to the Congress not later than March 1 of each year on the opera-

tion and status of the fund during the preceding year.

"(c) APPROPRIATION OF FUNDS.—There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this Act.

"Sec. 9034. Entitlements.

"(a) MATCHING PAYMENT FOR CONTRIBUTIONS OF $100 OR LESS.—Any candidate for nomination for President, or his authorized committee is entitled, upon certification by the Comptroller General, to payments from the fund for qualified campaign expenses beginning 14 months prior to the date of the general election for President in an amount equal to the amount of each contribution received by such candidate or committee (disregarding any amount of contributions from any person to the extent that such amount exceeds $100).

"(b) VOUCHER.—To be eligible for the entitlement established by subsection (a), such candidate shall submit to the Comptroller General, at such times and in such form and manner as the Comptroller General may require, a matching payment entitlement voucher. Such voucher shall include the full name of any person making a contribution together with the date, the exact amount of the contribution, the complete address of the contributor and the occupation and principal place of business, if any, for contributors of more than $100.

"(c) DETERMINATION AND CERTIFICATION BY COMPTROLLER GENERAL.—Comptroller General shall—

"(1) make a determination, according to such procedures as he may establish, as to whether each contribution enumerated on such voucher is consistent with the provisions of sections 9034(a) and 9035 of this chapter; and

"(2) certify for payment by the Secretary to such candidate an amount equal to the sum of the contributions enumerated on such voucher which meet the requirements of subsection (c)(1).

"(d) PAYMENT BY SECRETARY.—Promptly upon certification, the Secretary shall make a payment from the fund to such candidate in the amount certified by the Comptroller General.

"(e) AUTHORIZED COMMITTEE.—For the purposes of this section, the authorized committee of any candidate for nomination for President may submit an entitlement voucher pursuant to subsection (b) in behalf of such candidate, listing contributions received by such committee eligible for payment under this chapter.

"Sec. 9035. Limitations.

"(a) CERTIFICATION BY THE COMPTROLLER GENERAL.—The Comptroller General shall not certify pursuant to section 9034(c)(2) any portion of any contribution made by any person to a candidate or committee entitled to payments under this chapter—

"(1) which, when added to other contributions made by such person to such candidate or committee in connection with the nomination of such candidate for President, exceeds $100; or

"(2) if payment from the fund of an amount equal to the amount of such contribution, or portion thereof, when added to any other payment from the fund to such candidate or committee during the matching payment period, is in excess of 5 cents multiplied by the voting age population of the United States (as certified to the Comptroller General by the Secretary of Commerce pursuant to section 104(a)(5) of the Federal Election Campaign Act of 1971).

"(b) PAYMENT BY THE SECRETARY.—The Secretary shall make no payment to a candidate or committee entitled to payments from the fund—

"(1) until the Comptroller General has certified contributions submitted by such candidate or committee, pursuant to section 9034(b), in an aggregate amount of $100,000; and

"(2) earlier than 14 months prior to the date of the general election for President.

"(c) QUALIFIED CAMPAIGN EXPENSES.—A candidate shall be eligible for payments from the fund only—

"(1) to defray qualified campaign expenses incurred by such candidate or his authorized committee, or

"(2) to repay loans the proceeds of which were used to defray such qualified campaign expenses, or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by such candidate or committee) used to defray such qualified campaign expenses.

"(d) RETURN OF UNUSED FUNDS.—Amounts received by a candidate from the fund may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred during the matching payment period for a period not exceeding six months after the end of the matching payment period; and all obligations having been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the Fund bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the fund.

"(e) RULES AND PROCEDURES.—The Comptroller General shall make such rules and establish such procedures as may be necessary to carry out the purposes of this chapter. All such rules and procedures shall be published in the Federal Register not less than thirty days prior to their effective date, and shall be available to the general public. The Comptroller General shall publish and make available forms for the making of such reports and statements as may be required, and a manual setting forth uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter.

"Sec. 9036. Examinations and audits; repayments.

"(a) EXAMINATIONS AND AUDITS.—After each matching payment period, the Comptroller General shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates receiving payments from the fund.

"(b) REPAYMENTS.—

"(1) If the Comptroller General determines that any portion of the payments made to a candidate from the fund was in excess of the aggregate payments to which such candidate was entitled under sections 9034 and 9035, he shall so notify such candidate, and such candidate shall pay to the Secretary an amount equal to such portion.

"(2) If the Comptroller General determines that any amount of any payment made to a candidate from the fund was used for any purpose other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses,

he shall notify such candidate of the amount so used, and such candidate shall pay to the Secretary an amount equal to such amount.

"(c) NOTIFICATION.—No notification shall be made by the Comptroller General under subsection (b) with respect to a matching payment period more than three years after the end of such period.

"(d) DEPOSIT OF REPAYMENTS.—All payments received by the Secretary under subsection (b) shall be deposited by him in the general fund of the Treasury.

"Sec. 9037. Criminal penalties.

"(a) EXCESS CAMPAIGN EXPENSES.—

"(1) It shall be unlawful for any candidate for nomination for election to the office of President or any of his authorized committees knowingly and willfully to incur any expenses in connection with such nomination in excess of $15,000,000.

"(2) Any person who violates paragraph (1) shall be fined not more than $25,000, or imprisoned not more than five years, or both. In the case of a violation by an authorized committee, any officer or member of such committee who knowingly and willfully consents to such violation shall be fined not more than $25,000, or imprisoned not more than five years, or both.

"(3) At the beginning of each calendar year (commencing in 1974), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Comptroller General and publish in the Federal Register the per centum difference between the price index for the twelve months preceding the beginning of such calendar year and the price index for the base period. The limit on campaign expenses in paragraph (1) shall be increased by such per centum difference. The limit so increased shall be the amount in effect for such calendar year.

"(A) The term 'price index' means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

"(B) The term 'base period' means the calendar year 1972.

"(b) UNLAWFUL USE OF PAYMENTS.—

"(1) It shall be unlawful for any person who receives any payment from the Fund, or to whom any portion of any payment received from the Fund is transferred, knowingly and willfully to use, or authorize the use of, such payment or such portion for any purposes other than—

"(A) to defray the qualified campaign expenses with respect to which such payment was made, or

"(B) to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(c) FALSE STATEMENTS, ETC.—

"(1) It shall be unlawful for any person knowingly and willfully—

"(A) to furnish any false, fictitious, or fraudulent evidence, books, or information to the Comptroller General under this subtitle, or to include in any evidence, books, or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books, or information relevant to a certification by the Comptroller General or an examination and audit by the Comptroller General under this chapter; or

"(B) to fail to furnish to the Comptroller General any records, books, or information requested by him for purposes of this chapter.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(d) KICKBACKS AND ILLEGAL PAYMENTS.—

"(1) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expense of a candidate receiving payment from the fund or his authorized committees.

"(2) Any person who violates paragraph (1) shall be fined not more than $10,000, or imprisoned not more than five years, or both.

"(3) In addition to the penalty provided

by paragraph (2), any person who accepts any kickback or illegal payment in connection with any qualified campaign expense of a candidate or his authorized committees shall pay to the Secretary, for deposit in the general fund of the Treasury, an amount equal to 125 percent of the kickback or payment received.

"(e) The table of chapters for subtitle H is amended by adding at the end thereof the following new item:

"Chapter 97. Presidential Primary Matching Payment Fund."

CENTRAL CAMPAIGN COMMITTEES, CAMPAIGN DEPOSITORIES, AND LIMITATIONS ON CASH TRANSACTIONS

SEC. 9. Title III of the Federal Election Campaign Act of 1971 is amended by redesignating sections 308 through 311 as sections 311 through 314, and by inserting after section 307 the following new sections:

"CENTRAL CAMPAIGN COMMITTEES

"SEC. 308. (a) Each candidate shall designate one political committee as his central campaign committee. A candidate for nomination for election, or for election, to the office of President, may also designate one political committee in each State in which he is a candidate as his State campaign committee for that State. The designation shall be made in writing, and a copy of the designation, together with such information as the Commission may require, shall be furnished to the Commission upon the designation of any such committee.

"(b) No political committee may be designated as the central campaign committee of more than one candidate. The central campaign committee, and each State campaign committee, designated by a candidate nominated by a political party for election to the office of President shall be the central campaign committee and the State campaign committees of the candidate nominated by that party for election to the office of Vice President.

"(c)(1) Any political committee authorized by a candidate to accept contributions or make expenditures in connection with his campaign for nomination or for election, which is not a central campaign committee or a State campaign committee, shall furnish each report required of it under section 304 (other than reports required by the last clause of section 304(a)) to that candidate's central campaign committee soon enough in advance of the filing dates in section 304(a) to enable the central campaign committee to file its reports on those dates.

"(2) The supervisory officer may, by regulation, require any political committee receiving contributions or making expeditures in a State on behalf of a candidate who, under subsection (a), has designated a State central campaign committee for that State to furnish its statements and reports to that State central campaign committee.

"(3) The supervisory officer may require any political committee to furnish any statement or report directly to him.

"(d) Each political committee which is a central campaign committee shall receive all reports and statements filed with or furnished to it by other political committees, and consolidate and furnish the reports and statements to the supervisory officer, together with its own reports and statements, in accordance with the provisions of this title and regulation's prescribed by him.

"CAMPAIGN DEPOSITORIES

"SEC. 309. (a)(1) Each candidate shall designate one National or State bank as his campaign depository. The central campaign committee of that candidate, and any other political committee authorized by him to receive contributions or to make expenditures on his behalf, shall maintain a checking account at the depository so designated by the candidate and shall deposit any contributions received by that committee into that account. No expenditure may be made by any such committee on behalf of a candidate or to influence his election except by check drawn on that account, other than petty cash expenditures as provided in subsection (b).

"(2) The treasurer of each political committee (other than a political committee authorized by a candidate to receive contributions or to make expenditures on his behalf shall designate one National or State bank as the campaign depository of that committee, and shall maintain a checking account for the committee at such depository. All contributions received by that committee shall be deposited in such account. No expenditure may be made by that committee except by check drawn on that account, other than petty cash expenditures as provided in subsection (b).

"(b) A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of $100 to any person in connection with a single purchase or transaction. A record of petty cash disbursements shall be kept in accordance with requirements established by the supervisory officer, and such statements and reports thereof shall be furnished to the supervisory officer as he may require.

"(c) A candidate for nomination for election, or for election, to the office of President may establish one such depository in each State, which shall be considered by his State campaign committee for that State and any other political committee authorized by him to receive contributions or to make expenditures on his behalf in that State, under regulations prescribed by the supervisory officer as his single campaign depository. The campaign depository of the candidate of a political party for election to the office of Vice President shall be the campaign depository designated by the candidate of that party for election to the office of President.".

"LIMITATIONS ON CASH TRANSACTIONS

"SEC. 310. No political committee shall receive a contribution, or contributions in the aggregate, from any person of $100 or more other than in the form of a check drawn on the account of the person making the contribution. No political committee shall make any expenditure of $100 or more other than by check drawn on the account of that committee and signed by the treasurer of the committee or his delegate."

INCREASED PENALTY FOR VIOLATIONS

SEC. 10. Section 314 (as redesignated by this Act) of the Federal Election Campaign Act of 1971 (relating to penalty for violations) is amended to read as follows:

"PENALTY FOR VIOLATIONS

"SEC. 315. (a) Violation of the provisions of this title is a misdemeanor punishable by a fine of not more than $10,000, imprisonment for not more than one year, or both.

"(b) Violation of the provisions of this title with knowledge or reason to know that the action committed or omitted is a violation of this Act is punishable by a fine of not more than $100,000, imprisonment for not more than five years, or both."

REPEAL OF EQUAL TIME PROVISIONS FOR PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES

SEC. 11. Section 315(a) of the Communications Act of 1934 (47 U.S.C. 315(a)) is amended by inserting after "public office" in the first sentence thereof the following: ", other than the office of President or Vice President,".

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES AND PENALTY FOR EMBEZZLEMENT

SEC. 12. (a) Chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"Sec. 614. Limitations on Presidential campaign contributions and expenditures by persons not candidates.

"(a)(1) No person may make any contribution during any calendar year to or for the benefit of any candidate for nomination for election, or for election, to the office of President in excess, in the aggregate, of—

"(A) $3,000 to such candidate; and

"(B) $1,000 to a fund maintained by a political party solely to finance the general election campaign of its candidate for President; or

"(C) $25,000 in the case of a political committee registered under section 303 of the Federal Election Campaign Act of 1971 which collects funds from individuals in amounts which do not exceed $25 from any individual in any calendar year.

"(2) For purposes of this section—

"(A) a contribution to a candidate nominated by a political party for election to the office of Vice President shall be considered to be a contribution to the candidate nominated by that party for election to the office of President;

"(B) a contribution made to a political committee or fund authorized by a candidate to receive contributions for that candidate shall be considered to be a contribution to that candidate;

"(C) any contribution made in connection with a campaign in a year other than the calendar year in which the election to which that campaign relates is held shall be taken into consideration and counted toward the limitations imposed by this section for the calendar year in which that election is held; and

"(D) 'political party' means a political party which, in the next preceding Presidential election, nominated candidates for election to the offices of President and Vice President, and the electors of which party received in such election, in any or all of the States, an aggregate number of votes equal in number to at least 10 per centum of the total number of votes cast throughout the United States for all electors for candidates for President and Vice President in such election.

"(3) The limitations imposed by paragraph (1) shall not apply to contributions from a political party fund maintained in accordance with subparagraph (B) of that paragraph, or to contributions to a candidate from one of his authorized political committees.

"(b) No person who is not authorized in writing by a candidate to make expenditures on his behalf in connection with his campaign for nomination for election, or for election, to the office of President shall make any expenditure on behalf of that candidate (except by contribution made to that candidate or one of his authorized political committees) during any calendar year in excess, in the aggregate, of $1,000.

"(c) As used in this section, the words "contribution" and "expenditure" shall not be construed to include—

"(1) personal services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee,

"(2) communications by any organization, excluding a political party, solely to its members and their families on any subject,

"(3) communications (including advertisements) to any person on any subject by any organization which is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for Federal office,

"(4) normal billing credit for a period not exceeding 30 days,

"(5) expenditures by a broadcaster regulated by the Federal Communications Commission, or by a periodical publication, in reporting the news or in taking editorial positions, or

"(6) expenditures by any organization described in section 501(c) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code in communicating to its members the views of that organization.

"(d) Violation of the provisions of this section is punishable by a fine not to exceed $25,000, imprisonment for not to exceed five years, or both.

"Section 615. Embezzlement or conversion of political contributions.

"Whoever, being a candidate, or an officer, employee, or agent of a political committee, or a person acting on behalf of any candidate or political committee, embezzles, knowingly converts to his own use, or to any other noncampaign use, or deposits in any place or in any manner except as authorized by law, any contributions or campaign funds entrusted to him or under his possession, custody or control; or

"Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled or converted—

"Shall be fined not more than $50,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1000 or imprisoned not more than one year, or both.

(b) Section 591 of title 18, United States Code, is amended by striking out "and 611" and inserting in lieu thereof "611, 514, and 615".

(c) The table of sections for chapter 29 of title 18, United States Code, is amended by adding at the end thereof the following new items:

"614. Limitations on Presidential campaign contributions and expenditures by persons not candidates.

"615. Embezzlement or conversion of political contributions."

DETAILED EXPLANATION: MONDALE-SCHWEIKER, PRESIDENTIAL CAMPAIGN FINANCING ACT OF 1973

I. PRIMARY ELECTIONS

A. Each candidate in the Presidential primaries is entitled to matching payments from the Treasury for the first $100 or less received from each individual contributor.

1. Payments begin 14 months prior to the date of the general election for President.

2. Any contribution made "in connection with" the candidate's campaign for nomination, in whatever year it occurs, is eligible for matching. However, all such contributions are aggregated, and no more than $100 from any contributor may be matched.

B. Candidates must accumulate $100,000 in matchable contributions before the first Treasury matching payments are made. Thus a candidate would have to accumulate 1000 contributions of $100 each, 2000 contributions of $50 each, etc. Only the first $100 of each contribution counts toward meeting the $100,000 requirement.

C. No candidate may receive total matching payments in excess of 5¢ for each person over 18 in the United States (roughly $7 million).

D. No candidate may spend more than $15 million in his campaign for the Presidential nomination.

E. Matching payments may be used only for legitimate campaign expenses during the pre-nomination period, and unspent payments must be returned to the Treasury.

F. The Comptroller General certifies eligibility for payments, and is responsible for conducting a detailed post-convention audit and obtaining repayments when necessary.

G. There are severe criminal penalties for exceeding the overall primary spending limits, and for unlawful use of payments, false statements to the Comptroller General, and kickbacks and illegal payments.

II. GENERAL ELECTION

A. The existing Presidential Election Campaign Fund Act (the $1 check-off) is retained, with the following amendments:

1. Removes the requirement for a separate appropriation before money from the $1 check-off Fund becomes available.

2. Doubles the amount going into the Fund by providing for a Treasury matching payment of $1 for each $1 designated by a taxpayer.

3. Requires the Internal Revenue Service to give "extensive publicity" to the $1 check-off, emphasizing that using the check-off does not increase a taxpayer's tax liability and that each $1 checked off will be matched by another $1 from the Treasury. Also requires that a bold print one-sentence explanation of the check-off be placed on the return next to the check-off designation.

4. Permits candidates to receive and spend private contributions of $3000 or less (see III, below) to supplement the funds they receive from the $1 check-off, up to a maximum overall spending limit in the general election of $30 million.

a. Under the existing $1 check-off law, major party candidates may not use private contributions at all if they receive their full entitlement from the check-off (15¢ per eligible voter, or roughly $20–22 million), and minor and new Party candidates may use private contributions only to make up the difference between the smaller amount they receive from the check-off and the amount major party candidates are entitled to. (If the funds in the check-off are not sufficient to provide major party candidates with the full amount they are entitled to, they also may raise private money to make up the difference.) All candidates using the check-off money are thus limited to spending no more than $20–22 million in the general election. Those who accept no check-off money, however, may spend an unlimited amount in the general.

b. The $30 million limit on total spending in the general election imposed by this bill applies to all candidates (including those who decline their entitlement from the check-off), and therefore leaves no incentive for a candidate not to use the check-off. The $30 million limit would increase with cost of living increases.

c. The $30 million limit would permit major party candidates to supplement the $20–22 million they receive from the check-off with $8–10 million from private contributions of $3000 or less. This ⅔ public, ⅓ private, ratio would continue as cost-of-living increases raised the $30 million spending limit, and as population increases raise the amount major party candidates may receive from the check-off (15¢ times the voting age population).

d. Minor and new party candidates could receive a larger proportion of their funds from private sources to make up for their smaller entitlement under the $1 check-off, but in no case could their total spending exceed $30 million in the general election.

B. Payments to candidates are distributed in accordance with the existing law, i.e.:

1. Major party candidates (those whose party received 25 percent or more of the vote in the previous election)—15¢ times the 18-and-over population of the U.S.

2. Minor party candidates (those whose candidates received between 5 and 25 percent of the vote in the previous election)—a percentage of the major party candidate entitlement equal to the percentage of the average major party vote their candidate received in the preceding or current election (whichever is larger).

3. New party candidates—if the candidates receives more than 5 percent of the vote in the current election, he is repaid after the election according to the percentage of the average major party vote received.

C. The Comptroller General certifies eligibility for payments and is responsible for conducting a detailed post-convention audit and obtaining repayments when necessary.

D. There are severe criminal penalties for exceeding the overall general election spending limit, and for unlawful use of payments, false statements to the Comptroller General, and kickbacks and illegal payments.

III. CONTRIBUTION LIMITS FOR PRESIDENTIAL CAMPAIGNS

A. No individual, organization, or group may contribute more than a total of $3000 to any Presidential candidate in connection with his campaign, and another $1000 to a fund maintained by a political party solely to finance the general election campaign of its candidate for President.

1. Contributions given in any year "in connection with" the campaign count toward the limits.

B. However, if a political committee registered under the Federal Election Campaign Act of 1971 aggregates or "pools" individual contributions of no more than $25, it may give up to $25,000 to a Presidential candidate.

C. Individuals or groups acting independently (i.e., without written authorization from the candidate) may spend no more than $1000 on behalf of a candidate.

D. A political party may spend an unlimited amount on behalf of its candidate for President from its special Presidential campaign fund (subject to the overall $30 million spending limit), but the party must receive written authorization from the candidate to spend more than $1000 on his behalf.

IV. MISCELLANEOUS

A. The equal time provisions are removed for Presidential candidates.

B. Each candidate is required to set up a single central campaign committee to handle reporting of receipts and expenditures, and a single campaign depository through which all receipts and expenditures must be channeled.

C. All cash transactions (contributions or expenditures) of $100 or over are prohibited.

D. The existing tax credit is doubled to make it one-half of any contribution up to $50 ($100 for joint returns), and the existing deduction is doubled to $100 ($200 for joint returns).

E. The penalty for misdemeanor violations of the Federal Election Campaign Act of 1971 (now $1,000 and/or one year imprisonment) is increased to $10,000 and/cr one year in prison, and knowing violations are made a felony punishable by a fine of up to $100,000 and/or imprisonment for up to five years.

F. Embezzlement or conversion to noncampaign use of political contributions is made a felony punishable by a fine of up to $50,000 and/or imprisonment of up to five years.

Mr. SCHWEIKER. Mr. President, I am pleased to join the Senator from Minnesota, Senator MONDALE, in introducing a comprehensive new plan to use public financing for Presidential primary and general elections.

Congress and the courts have taken many steps during the past decade to insure that political representation of all people reflects principles of one-man, one vote. Now is the time to extend one-man-one-vote principles to the election process itself.

Campaign costs have skyrocketed in recent years, creating a climate where officeseekers too often become dependent on large contributions to wage their campaigns. The shocking revelations of Watergate clearly indicate we must take dramatic steps to eliminate the corrosive effect of large contributions from our election process.

Our public financing bill is designed to strengthen our Presidential political

election system through the following principles:

First. It provides a substantial campaign financial base for a candidate from public funds;

Second. It encourages small contributions of $100 or less from individual contributors, and imposes contribution limits;

Third. It sets up reasonable campaign spending ceilings.

For Presidential general elections, there would be a $30 million spending limit, two thirds of which would be financed from the existing income checkoff plan. For primary elections, there would be a $15 million spending limit, one-half of which would be financed from a new special treasury fund to provide matching payments for individual contributions of $100 or less to each candidate. Increases would be allowed in the amount of tax credits and tax deductions for contributions of $100 or less to help encourage small contributions by more individuals. This would enable a candidate to easily raise the difference between the spending limitations and the treasury funds. The important fact of this system is that a candidate could conduct a significant campaign without having to become dependent on large contributors, and without becoming indebted to large contributors who might seek special influence.

Public financing is not a new idea. Presidential and congressional review of public campaign financing proposals has gone on throughout this century. But today's high-cost campaign climate makes action today to enact a public financing system an urgent necessity.

Our bill deals only with the Presidential race, but would include major financing of both primary and general elections. This has the advantage of building on an existing public financial mechanism, already approved by the Congress, the $1 tax checkoff option for Presidential races. In addition, it immediately reduces the need for large contributions in the most expensive election.

Some of the spending and contribution ceilings, and other provisions of our bill will be covered in debate on S. 372, the pending campaign reform legislation. Additional details may be added or modified at a later date. However the important principle of beginning to reassess our system of campaign financing must be addressed immediately, and I urge the Congress to quickly turn to hearings and consideration of public financing of elections.

ADDITIONAL COSPONSORS OF BILLS

S. 177

At the request of Mr. THURMOND, the junior Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 177, to amend section 4 of the Internal Security Act of 1950.

S. 796

At the request of Mr. PELL, the Senator from Minnesota (Mr. MONDALE), the Senator from Utah (Mr. MOSS), and the Senator from Connecticut (Mr. RIBICOFF) were added as cosponsors of S. 796, to improve museum services.

S. 871

At the request of Mr. STAFFORD (for Mr. COTTON), the Senator from Alaska (Mr. GRAVEL) was added as a cosponsor of S. 871, to correct certain inequities in the crediting of National Guard technician service in connection with civil service retirement.

S. 1142

At the request of Mr. MUSKIE, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 1142, to amend the Freedom of Information Act of 1967.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 144

At the request of Mr. HANSEN, the Senator from Wisconsin (Mr. NELSON) and the Senator from New Mexico (Mr. DOMENICI), were added as cosponsors of Senate Resolution 144, expressing the Senate's opposition to an increase in salary during fiscal year 1974 for Members of Congress, the judiciary, and top-level employees of the executive branch.

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1973—AMENDMENTS

AMENDMENT NO. 409

(Ordered to be printed, and to lie on the table.)

Mr. WEICKER. Mr. President, I am submitting today an amendment to S. 372, the Federal Election Campaign Act Amendments of 1973, which would make available to the voters, 2 weeks before an election for Federal office, a complete report of each candidate's campaign finances. This report would account for all sources of money raised and all expenditures made or obligated before the election. The theory is that new regulations proposed in this amendment would bring the complete facts as to the role money played in each campaign to the voters' attention, 2 weeks before the election—in plenty of time for the voters to make their judgment about each candidate's use of money. This public disclosure would afford greater insurance against the abuse of our system of elections, greater by far than new election laws, commissions, or provisions for stricter penalties.

In simplest terms, this amendment provides that as of a date 2 weeks before the election, no more contributions may be accepted, no more expenditures may be contracted for or budgeted for, and a complete financial report must be filed immediately.

To accomplish this result, three separate amendments to the pending legislation (S. 372) would be required.

First, the reporting section would be amended to require each condidate to file a cumulative financial report of all contributions received and all disbursements made as of the date 2 weeks before the election. This report shall also include an accounting of future expenditures, those contracted for or budgeted for, in connection with the candidate's campaign.

Second, the section on expenditures is amended to provide that no expenditures may be made in behalf of the political candidate after 2 weeks before the election for anything not reported as contracted for or budgeted for in the report of that date.

Third, the "limitations on contributions" section is amended to prohibit any contributions to or for the benefit of a candidate after 2 weeks before the election.

Far from hinder campaign operations, this amendment should be a blessing in disguise. Money could be spent in the last 2 weeks of the campaign, but only for items duly reported as contracted for or budgeted for in that period. This means that each candidate is responsible for keeping current all financial records, especially as the final preelection reporting date approaches.

Clearly, any deficit would become public knowledge before the election—and such a deficit would under the provisions of this bill become the personal liability of the candidate. This is by no means a waiver of the maximum limit established by the pending bill on contributions from the candidate's personal funds or those of the candidate's family. Therefore, this amendment forces the self-policing of campaign financing by each candidate. In the future, then, the impracticality of deficit spending will compel candidates to utilize improved accounting procedures, and will cause campaign creditors to reassess their practice of extending unlimited credit to favored candidates. Furthermore, this restriction is aimed at the postelection donation which has long been a significant factor in campaigns, and it is "bad money" that rides on the winner's new office.

The power of the purse has become the most undisciplined, uncontrolled and irresponsible force in politics. Our method of financing campaigns has done more to demean the practitioners of politics and to discredit the political system in the eyes of the public than anything else. Therefore, the burden of responsibility for a clean and open campaign must fall on the candidates themselves. Thus, under the amendment I have proposed, each candidate would be required to manage his campaign with utmost care and candor. The candidate must ignore influence seekers and clandestine charades in favor of winning the confidence and contributions of individual voters on the basis of personal qualification and a capacity to represent and govern.

With the full financial story of a campaign told before the election, the candidate is fully accountable for the propriety and handling of his campaign finances. Perhaps the light of public scrutiny will diminish the role of money as a corrupting force in political campaigns. Truly the inherent strength in our democratic process lies in the free exercises of the informed judgment of the American electorate.

AMENDMENT NO. 410

(Ordered to be printed and to lie on the table.)

Mr. ALLEN. Mr. President, I submit, on behalf of myself, Mr. HANSEN, Mr. NUNN, Mr. DOLE, Mr. GOLDWATER, Mr. TALMADGE, Mr. FANNIN, Mr. DOMINICK,

Mr. BROCK, Mr. CRANSTON, Mr. GURNEY, Mr. PROXMIRE, Mr. BARTLETT, Mr. DOMENICI, Mr. MCCLELLAN, Mr. SPARKMAN, Mr. ERVIN, Mr. HRUSKA, Mr. MCCLURE, Mr. MCGOVERN, Mr. CURTIS, Mr. TOWER, Mr. THURMOND, Mr. HARRY F. BYRD, JR., Mr. HELMS, Mr. EASTLAND, Mr. AIKEN, Mr. MOSS, Mr. ROTH, Mr. BIBLE, Mr. FULBRIGHT, Mr. TAFT, Mr. MAGNUSON, Mr. BURDICK, Mr. CHURCH, and Mr. NELSON an amendment to S. 372.

The amendment would have the effect of freezing at their July 1, 1969, level the salaries of Members of the House of Representatives and the Senate, members of the President's Cabinet, and members of the Federal judiciary.

It is my intention to call up the amendment tomorrow, when S. 372 is the pending business, immediately after the adoption of the committee amendment. I ask that the amendment lie on the table and be printed.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

Mr. MANSFIELD. Mr. President, will the Senator from Alabama include me as a cosponsor?

Mr. ALLEN. Yes. Mr. President, I should like to add the distinguished majority leader, the Senator from Montana (Mr. MANSFIELD), as a cosponsor.

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

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

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

AMENDMENT NO. 410

At the end of the bill add, and give proper numerical designation to, the following new section:

"Notwithstanding any other provision of law, until such time as the amounts of their salaries are changed by Act of Congress, the salaries of members of the Congress, members of the President's Cabinet, and members of the Federal judiciary shall continue at the salaries in effect for their respective positions on July 1, 1969."

AMENDMENTS NOS. 412 AND 413

(Ordered to be printed, and to lie on the table.)

CAMPAIGN SPENDING AMENDMENTS

Mr. PERCY. Mr. President, on June 4, 1973, I introduced S. 1936 to amend the Federal Election Campaign Act of 1971. It has seven major provisions, of which five have been adopted in large measure by the Senate Rules Committee and made part of the bill, S. 372.

I believe that the remaining two provisions should be included in this bill.

S. 372 requires that a contributor be identified only by name and address. I do not feel that is sufficient. Therefore, Mr. President, I submit an amendment to require that an individual be identified by name, address, occupation, principal place of business, and social security number. In the case of persons other than individuals, it would require them to be identified by their businesses, as well as by their names and addresses. I feel that this further identification will thoroughly identify the contributor and make all sources of political contributions clear beyond any doubt.

The second amendment I submit would raise the allowable tax credit for individual political contributions from $12.50 to $25, and from $25 to $50 in the case of a couple, or alternatively, the tax deduction to $100 for an individual and $200 for a couple from the present limits of $50 and $100.

I approve of the major thrust of S. 372, which is to limit large individual contributions to candidates, but I believe we should go one step further and actively encourage the small contribution from a wider spread of individuals, thus involving more people in the political process.

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

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

AMENDMENT NO. 412

On page 15, line 14, strike "name" and insert in lieu thereof "name, social security number, occupation, principal place of business (if any),".

On page 15, strike line 18, and insert in lieu thereof the following: "name and the business of that person and the full address of that person at his principal place of business;".

On page 16, between lines 18 and 19, insert the following:

"(c) The Social Security Administration is authorized to furnish to any supervisory officer, upon request made therefor, the identification of any individual to whom a social security number is assigned."

AMENDMENT NO. 413

On page 60, before the matter relating to the amendment of the title of the bill insert the following:

"SEC. 19. (a)(1) Section 41(b)(1) of the Internal Revenue Code of 1954 (relating to maximum credit for contributions to candidates for public office) is amended by striking out "$12.50 ($25" and inserting in lieu thereof "$25 (50".

"(2) Section 218(b)(1) of such Code (relating to limitations on amount of deduction for contributions to candidates for public office) is amended by striking out "$50 ($100" and inserting in lieu thereof "$100 ($200".

"(b) The amendments made by this section shall apply with respect to any poliictical contribution the payment of which is made after December 31, 1973."

AMENDMENT OF TITLE 38, UNITED STATES CODE—AMENDMENTS

AMENDMENT NO. 411

(Ordered to be printed, and referred to the Committee on Veterans' Affairs.)

Mr. INOUYE submitted amendments, intended to be proposed by him, to the bill (S. 147) to amend chapter 34 of title 38, United States Code, to extend the time period within which veterans may be entitled to educational assistance under such chapter after their discharge or release from active duty.

EXTENSION OF EMERGENCY EMPLOYMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 414 AND 415

(Ordered to be printed, and to lie on the table.)

Mr. HATHAWAY submitted two amendments, intended to be proposed by him, to the bill (S. 1560) to extend the Emergency Employment Act of 1971, to provide public service employment for disadvantaged and long-term unemployed persons, and for other purposes.

NOTICE OF HEARING ON NOMINATION OF MR. WILLIAM A. ANDERS TO BE A MEMBER OF THE ATOMIC ENERGY COMMISSION

Mr. PASTORE. Mr. President, the Senate section of the Joint Committee on Atomic Energy will hold a public hearing at 2 p.m. on Wednesday, August 1, 1973, in room S-407 of the U.S. Capitol, on the nomination of William A. Anders, of Virginia, to be a member of the Atomic Energy Commission for a term of 5 years expiring June 30, 1978. Mr. Anders will fill the term previously held by James T. Ramey.

I ask unanimous consent to have printed in the RECORD the biography of Mr. Anders which was provided to the joint committee with his nomination to the Atomic Energy Commission.

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

WILLIAM ALISON ANDERS

A. PROFESSIONAL EXPERIENCE

July 1973—Technical Consultant to the government since the abolishment of the National Aeronautics and Space Council under Executive Reorganizatcn Plan #1 of 1973.

1969—July 1973—Executive Secretary, National Aeronautics and Space Council. Appointed by the President with Senate confirmation as director of an independent agency within the Executive Office of the President. Responsible to the President, the Vice President, and Cabinet-level members of the Council for the development of Administration policy options concerning research, development, operations, and planning of aeronautical and space systems. Provided for interagency coordination on national and international space and aeronautics matters among Council member agencies (Departments of State, Defense, and Transportation, NASA, and AEC). Participated as a senior member of U.S. negotiating teams developing programs with the USSR, Japan, and Europe. Maintained close working relationships with government and industry contractor teams and with the CAB and air transport industry. Provided technical and policy support on major issues to National Security Council, Domestic Council, Council on International Economic Policy, and Office of Management and Budget. Acted as a spokesman to Congress and industry on many R&D policy areas. Directed extensive policy studies in such fields as applications satellites, the aerospace and air transport industries, foreign military sales, international cooperation in space, and launcher licensing. Exercised Executive responsibility for the clearance of all nuclear materials launched into space. Security clearance: TS and others.

1964–1969—NASA:

Engineering duties—Technical and management responsibilities during the Gemini and Apollo programs for: environmental control systems design, test, and procedures; research and development on spacecraft radiation shielding and detection systems; and safety procedures and operational requirements for space nuclear power generators and other radiation sources. Participated in the overall management of these large system acquisitions. Maintained a close working relationship with industry research, development, management, and production teams.

Aircraft Operations duties—Jet instructor pilot. Simulated spaceflight maneuvers.

Space Operations duties—Back-up crew for Gemini II.

Lunar Module Pilot for Apollo 8 (1st lunar flight)—spacecraft systems, space radiation, and experiments specialist.

Back-up Command Module Pilot for Apollo 11 (1st lunar landing).

Misc.—USAF Officer—Numerous public appearances.

1962–1964—Nuclear Engineer—USAF.

Primary duty—Engineering design and test support for space nuclear power reactors and isotopic power sources while at the Air Force Weapons Laboratory. Technical contract monitor for the Nuclear Aerospace Research Facility (NARF) with responsibilities for the management of the technical program and performance of approximately 140 contract engineers and scientists using three research reactors and over $12M of related laboratory equipment on a broad program of basic science, radiation effects research, and nuclear power development.

Secondary duty—Instrument instructor and check pilot.

1960–1962—Postgraduate Study—Nuclear Engineering.

1956–1960—USAF Officer.

Primary duty—All weather interceptor pilot in the U.S. and overseas—Nuclear Weapons responsibilities.

Secondary duties—Maintenance Officer responsible for all base jet engine overhaul and test facilities and the performance of over 40 technicians. Safety Officer and accident investigator.

1955–1956—Commissioned in the USAF and completed jet pilot training.

B. EDUCATION

Undergraduate Study: 1951–1955—U.S. Naval Academy, Annapolis, Maryland, B.S.—Engineering.

Graduate Study:

1960–1962—Air Force Institute of Technology, Dayton, Ohio.

M.S. Nuclear Engineering—with Honors.

M.S. degree research area: Solid State Physics (Edge Emission of Cadmium Sulfide)—Aeronautical Research Laboartory.

1961–1962—Additional graduate study from Ohio State University (extension)—Aeronautical Engineering, Stability and Control.

C. AERONAUTICAL RATINGS AND EXPERIENCE

Military—USAF Ready Reserve, Bolling AFB—Command Pilot-Astronaut.

4,000+ flying hours in jet fighter and transport aircraft, helicopters, and rocket vehicles (currently qualified and active in T–38 jet trainer and OH58 helicopters);

Civil-Commercial Pilot (Certificate #1407861). Ratings: Single engine land and sea. Multi engine land, and helicopters. Instrument qualified. Considerable flight time in many types of aircraft.

D. MEMBERSHIP

Professional:

American Nuclear Society.

American Institute of Aeronautics and Astronautics.

American Astronautical Society (Fellow).

Society of Experimental Test Pilots.

NASA Space Vehicle Systems Advisory Panel.

Academic/Scientific:

Tau Beta Pi National Engineering Honor Society.

Explorers Club (Board of Directors).

National Space Club (Board of Governors).

Naval Academy Alumni Association (Trustee).

Service:

Yosemite Institute-Environmental Education and Conservation of National Parks (Board of Directors).

National Exploring Committee, Boy Scouts of America.

E. HONORS

Co-holder of several world speed and altitude records.

National Geographic Society Hubbard Medal for Exploration

Collier, Harmon, General Thomas D. White, and Robert H. Goddard Trophies.

AAS Flight Achievement Award.

NASA and USAF Distinguished Service Awards—Spaceflight.

USAF Commendation Medal (1963)—Research and Engineering.

Several Honorary Doctoral Degrees.

F. PUBLICATIONS

"Temperature Dependence on Edge Emission in Single-Crystal Cadmium Sulfide"—Kulp, Detweiler, and Anders, *Physical Review*, 1 September 1963 (Primarily based upon research work done in masters thesis).

Articles for the popular press.

Various Governmental Reports.

G. MISCELLANEOUS

Testimony before House and Senate Committees on Space and Aeronautics and Appropriations.

Numerous Speeches and Public Appearances.

Civic Activity—Road Commissioner (unpaid) of the City of El Lago, Texas—1965-1969; School Lectures.

H. PERSONAL DATA

Born—October 17, 1933, Hong Kong, China (BCC), U.S. Citizen.

Formative Years—La Mesa, California and La Grange, Texas.

Spouse—Valerie Elizabeth (Hoard) Anders—Born—San Diego, California.

Children—Alan, Glen, Gayle, Gregory, Eric, Diana.

NOTICE OF HEARINGS

Mr. RIBICOFF. Mr. President, the Subcommittee on Reorganization, Research, and International Organizations will hold hearings on S. 2135, a bill to establish a Department of Energy and Natural Resources, on July 31 and August 1, 1973, at 10 a.m., in room 3302, Dirksen Office Building.

NOTICE OF HEARINGS ON MUTUAL FORCE REDUCTIONS IN EUROPE

Mr. MUSKIE. Mr. President, on Wednesday, July 25, and Friday, July 27, the Subcommittee on Arms Control, International Law and Organization of the Foreign Relations Committee will hold hearings on "Mutual Force Reductions in Europe."

The hearings will be held in room 4221 of the Dirksen Office Building and will begin at 10 a.m.

Witnesses Wednesday will be Senator MIKE MANSFIELD, the distinguished majority leader and a long-standing advocate within the Senate of reducing the American military presence in Europe, and the Deputy Secretary of State Kenneth Rush. Witnesses Friday will be Secretary of Defense James Schlesinger, former Deputy Assistant Secretary of Defense for NATO Affairs Frederick Wyle, and Harvard professor, Stanley Hoffmann.

In the post-Vietnam era, a key element in our foreign affairs will be our relations—political, economic, and military—with our European allies. At present, we have more than 300,000 troops deployed in Europe and our total NATO commitment costs this country more than $17 billion a year. In light of the current detente with the Soviet Union, Europe's increasing strength and prosperity, and our own economic difficulties, Congress has a responsibility to examine the question of what constitutes an appropriate level of U.S. forces in Europe at this time. It is my hope that these hearings will enable the American people to understand better some of the considerations associated with the troops question as well as the nature of the upcoming NATO-Warsaw Pact negotiations on mutual reductions of forces in Europe.

ADDITIONAL STATEMENTS

AID CONFERENCE ON ORPHANS IN VIETNAM

Mr. KENNEDY. Mr. President, after many weeks of delay, and even longer years of neglect, it appears today that our Government is at last on the verge of establishing an active policy of concern and help for the hundreds of thousands of children and orphans in need throughout Indochina. In South Vietnam alone, a decade of war has left—by official count—over 880,000 orphans or half-orphans, including some 25,000 children fathered by Americans, about 1,000 of whom have now been abandoned to orphanages.

This crisis of children in Vietnam will be the focus tomorrow and Thursday of a special conference with American voluntary agencies convened by the Agency for International Development. This meeting follows the recommendations of a study mission recently dispatched to Indochina by the Judiciary Subcommittee on Refugees, which I serve as chairman. Together with a member of that study mission, Dr. James R. Dumpson, dean of the school of social services at Fordham University, and voluntary Agency representatives and U.S. AID officials, the conference will seek ways to immediately address the needs of these children, especially those for whom adoption is now clearly the best solution.

I commend AID for convening this conference, and I hope the recommendations for action which flow from this meeting will receive the attention and priority of the highest levels of our Government.

Mr. President, the serious plight of the children of Vietnam was described in detail in the study mission's report in hearings before the Refugee Subcommittee in May, and a number of specific recommendations were made to help meet short term and longer term war-related child welfare and adoption needs. In letters to the President and Secretary of State William P. Rogers, I urged immediate consideration of these recommendations. As I wrote in my letter to the President, there are no easy solutions to the many people problems which now beset South Vietnam and all of Indochina. But few of these problems evoke more public compassion and concern, and have greater significance for the future, than the special problems and needs of children, who represent at least 50 percent of South Vietnam's population.

I also expressed my strong conviction, which I know I share with many Members of Congress, that our country clearly must do a great deal more to help these, the youngest victims of the war. But unless some greater measure of priority is attached to this task by our Government, unless our Ambassador in Saigon and other officials in the field raise the

issue at the highest levels of the South Vietnamese Government, and unless some impediments in our bureaucracy are removed, the crisis of children in South Vietnam and other war-affected areas of Indochina, will continue to grow each day.

Regrettably, the response to date has been slow and disappointing. As in the past, official concern has been more in response to small criticism than out of a deep or larger concern for the welfare and needs of children and other war victims in Vietnam. Funds set aside for children are still characterized by a spirit of tokenism, rather than the vigor with which our Government can provide, on 24-hour's notice, millions in military hardware for Cambodia.

In fact, the answers I recently received from the Department of State and the Agency for International Development in response to my letters 2 months ago tend, even now, to downplay the seriousness of the problem of child welfare needs, even as they verbally recognized their importance. No response has yet been received from the White House. And, as a witness said before the subcommittee in May—

. . . the one thing at this point that is needed, the most essential thing, is a concerted effort with high priority at all levels of the U.S. Government. It would be a simple matter, Mr. Chairman, a very simple matter, if one person—the President—were just to scribble on a little piece of paper: "Mr. Secretary of State, please expedite the programs for the children of Vietnam," and pass that down the line.

Mr. President, that piece of paper has yet to be written. Instead, we hear from our AID officials far more concern about "economic stability" in South Vietnam—about the "postwar development" of bridges, or public administration or, worse, public safety. But, as the witness before the subcommittee pleaded:

What about social stability? What is stability for close to a million orphans?

To the hundreds of children languishing in overcrowded and understaffed orphanages in Vietnam—for whom adoption is now the best solution to their needs—every day of talk is one more day that their lives will be disadvantaged and their growth stunted. As the study mission concluded in its testimony:

Each day that these children remain in orphanages, under the conditions which we have seen, is one more day of destruction for these children, and one more day of lost opportunity for their moving into an environment conducive to healthy growth and development and, ultimately, as contributing citizens of their country. And it makes it more difficult, each day that we wait, to take the child out of this cultural setting, and adopt him in his country or any other country.

Hopefully, tomorrow's conference at AID will launch a new effort to help meet this crisis of children in Vietnam and all of Indochina. Hopefully, too, the voluntary agencies can help bring to our Government that greater measure of priority and sense of concern for children and orphans so long absent in our past assistance efforts in Indochina. So that the day will come when our Ambassador meets with the highest officials of the Government of South Vietnam, that he will first talk of the needs of the children and homeless and other war victims, and then, only, second of "commodity imports," "economic stabilization" and all those other programs devoid of the humanitarian concern which should now be our sole objective in Indochina.

Mr. President, I again urge the administration to respond to the widespread public and congressional concern that our Government should and must do more to help the nearly 1 million war orphans in Vietnam.

I hope that the Department of State and AID will see to it that the conclusions and recommendations of tomorrow's special conference on orphans will be communicated to our Ambassador in Saigon, and that he will be instructed to give them the highest priority for action and implementation. Anything less will betray America's sense of deep concern over this problem, and perpetuate our Government's record of neglect and tokenism.

Mr. President, I ask unanimous consent that the text of my letter to the President and to Secretary of State Rogers, and the letters I have received in reply, be printed in the RECORD.

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

U.S. SENATE,
May 22, 1973.

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

DEAR MR. PRESIDENT: In March, a group of medical and welfare experts, representing the Senate Judiciary Subcommittee on Refugees, traveled in all areas of Indochina to study humanitarian needs and the kinds of additional efforts our country could make towards healing the wounds of war. In South Vietnam, especially, members of the Study Mission focused considerable attention on the plight of children, who represent at least fifty percent of South Vietnam's population.

Since the earliest stages of the war in Vietnam the special problems and needs of children have received scant attention among officials in our Government, despite the very active concern of other Americans in the private voluntary agencies and elsewhere. And even today, with the new opportunities for peaceful development, these special problems and needs of children are still not being given the priority they so rightly deserve.

There are no easy solutions to the many people problems that beset South Vietnam, and all of Indochina. But few of these problems evoke more public compassion and concern, and have greater significance for the future, than the special problems and needs of children.

I share the view of many Americans that our country could do a great deal more to encourage and support the efforts of the South Vietnamese Government in restoring the lives and spirit of the youngest war victims, particularly those who were maimed or orphaned or abandoned or fathered by Americans. But unless some greater measure of priority is attached to this task by officials in our government, and unless some impediments in our bureaucracy are removed, the crisis of children in South Vietnam and other war-affected areas of Indochina will continue.

Knowing of your personal humanitarian concerns in past emergencies, and sharing your present concern over the future of South Vietnam and the people throughout the area who have suffered so much for so long, I just wanted to appeal for your personal interest in the children of South Vietnam, and express the hope that our country will do whatever it can to help the youngest war victims of Indochina renew their lives.

I appreciate your consideration, Mr. President, and look forward to working with you and members of your Administration in helping to heal the wounds of war within our own society and among the people of Indochina.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Refugees.

U.S. SENATE,
Washington, D.C., May 22, 1973.

Hon. WILLIAM P. ROGERS,
Secretary of State,
Department of State,
Washington, D.C.

DEAR MR. SECRETARY: As you may know, following the return of its Study Mission to Indochina, in mid-April the Judiciary Subcommittee on Refugees began a series of public hearings on humanitarian needs resulting from the war and the kinds of additional effort our country could make in helping to meet these needs. In light of the very high percentage of children in the population of the war-affected areas, and the special problems the conflict has brought to young people, on May 11 the Subcommittee held a hearing on the children of Indochina, especially those in South Vietnam. Witnesses before the Subcommittee included Mr. Robert Nooter, Assistant Administrator for Supporting Assistance in the Agency for International Development (AID), and two members of the Study Mission—Dr. James Dumpson, Dean, School of Social Service, Fordham University, and Mr. Wells Klein, Executive Director, American Council for Nationalities Service.

With regard to the situation in South Vietnam, the hearing record and Study Mission findings clearly establish that, until recent months, the special problems of children, including those fathered by Americans, received scant attention in official quarters; and, because of this, both our own government and the Government of South Vietnam have a backlog of responsibility in meeting child welfare needs. The hearing record and Study Mission findings also suggest that one of the continuing impediments to more meaningful progress in this area—especially as it concerns long-term rehabilitation goals—relates to conflicting assessments within the U.S. Mission in Saigon, over such matters as the urgency and scope of child welfare needs, the degree of priority our government should attach to these needs, and the kind of commitment our government should make to encourage and support the long-term efforts of the South Vietnamese Ministry of Social Welfare, the voluntary agencies and others, in restoring the lives and spirit of the youngest war victims.

Study Mission findings, supported by internal memoranda of the U.S. Mission and conversations in the field, strongly suggest that legitimate efforts by some American officials to upgrade our country's long-term policy and program priorities, have been repeatedly undermined by higher officials in the U.S. Mission, especially those representing the Department of State. Such conditions are distressing to me, as I know they are to others in the Congress and to many Americans.

As I recently wrote to the President, there are no easy solutions to the many people problems that beset South Vietnam, and all of Indochina. But few of these problems evoke more public compassion and concern, and have greater significance for the future, than the special problems and needs of children, who represent at least fifty percent of South Vietnam's population. I share the view of many Americans that our country should do a great deal more to help these young war victims. But unless some greater measure of priority is attached to this task by our Ambassador in Saigon and other officials within our government, and unless some impediments in our bureaucracy are removed, the

crisis of children in South Vietnam and other war-affected areas of Indochina will continue.

In the hearing on May 11, Dean Dumpson and Mr. Klein submitted a number of recommendations to energize American policy towards the special problems and needs of children in South Vietnam. Enclosed are excerpts from their testimony, which, in consultation with members of the Study Mission and representatives of interested voluntary agencies, is currently under review by officials in AID.

Hopefully, our Government will take immediate steps along the lines recommended by the Study Mission, and I look forward to getting your comments on American policy toward helping the youngest war victims in South Vietnam and the other countries in the area.

Many thanks for your consideration and best wishes.

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Refugees.

DEPARTMENT OF STATE,
Washington, D.C., July 2, 1973.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Refugees, Committee on the Judiciary, Washington, D.C.

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of May 22, 1973, concerning the recommendations of the Judiciary Subcommittee on Refugees Study Mission to Indochina and requesting our comments on American policy towards assistance to the children who have become victims of the Viet-Nam conflict. AID is writing to you directly concerning most of the Study Mission recommendations. I write at this time to comment on those recommendations. applicable to the Department of State.

We share your deep concern for the welfare of Vietnamese children, especially those orphans who were fathered by Americans. We believe, however, that the most effective way to express this concern is through a policy of supporting the integration of the children into Vietnamese society, together with provisions for the rapid entry into the United States for Vietnamese orphans for whom suitable adoptions have been arranged here.

The Study Mission report suggests that the inter-country adoption process could be expedited by assigning one additional officer to the Immigration and Naturalization Service Regional Office in Hong Kong in order to eliminate a "bottleneck" in the process. While this Department is not in a position to comment on the staffing needs of another agency, I do wish to point out that in our experience the INS office in Hong Kong has not been responsible for any delay in the processing of orphan cases. According to our Embassy in Saigon, the bulk of Vietnamese adoption cases are handled by the various Immigration and Naturalization Service offices in the United States where the adopting parents file their petitions. Requests for investigations in Viet-Nam in orphan cases are handled by the consular section of our Embassy in Saigon. Thus, an addition to the Hong Kong office would not appear to serve a useful purpose in processing adoption caess.

The Study Mission also sugegsts that the Subcommittee on Refugees should review the various pieces of legislation addressed to the needs of the children of Viet-Nam which have been introduced over the past two years. During this period of time, both Houses of Congress have requested this Department's opinion on a number of bills designed to provide special immigration status for Viet-Nam orphans.

We believe that the opinions we have offered on these bills are still valid. The bills are designed to provide special status under the law to Viet-Nam orphans who have one alien parent and one U.S. citizen parent. These provisions would apply whether or not arrangements have been made for a satisfactory adoption of the child in the United States. We do not believe that large-scale immigration of Vietnamese-American orphans to orphan homes in the United States is in the best interest of these children, nor would it have the support of the Vietnamese Government. The details of our position can be found in our report on S. 2071, 92nd Congress, transmitted to the Senate Committee on the Judiciary on May 23, 1972.

In its eighth point, the Study Mission suggests consideration of a change in the Immigration and Nationality Act in order to enable American fathered children to obtain American citizenship, if they so wish, upon reaching their majority. A law of this nature would be virtually impossible to administer. There are now in Viet-Nam children of mixed blood who have been fathered by citizens of many nations. There would be no means accurately to establish the paternity of such a child when he presents himself 21 years subsequently for citizenship determination.

Furthermore, the granting of citizenship under these circumstances would be contrary to all precedent, as established through the years in all laws applicable to United States citizenship of illegitimate children. All such laws, except the Nationality Act of 1940, provided citizenship to such children only through legitimation. The Act of 1940 permitted citizenship to pass to illegitimate children provided that paternity was established during minority, either by legitimation or by adjudication by a competent court. The Immigration and Nationality Act of 1952 eliminated the alternative of establishing paternity by court adjudication. We would oppose the Study Mission's suggestion since it would provide for citizenship without the requirement of a legal determination of paternity.

The Department appreciated the opportunity to comment on these provisions. If you should require additional information, please do not hesitate to call on me.

Sincerely,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

DEPARTMENT OF STATE, AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C., June 28, 1973.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Refugees, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your May 22 letter to Secretary of State Rogers concerning child welfare in Vietnam.

First of all, I was pleased to note the Study Mission's recognition of substantial progress made over the past two years in child welfare. The Government of Vietnam's Ministry of Social Welfare, with the full support and encouragement of the Agency for International Development, has made a good start toward establishing minimum child welfare standards and a network of child welfare services for all disadvantaged children, including those in process of adoption to the United States.

As I indicated in my letter, we inquired and now have received information from the field on the facts and the situation regarding the reported differences on child welfare between the Embassy and the USAID in Saigon. It appears that at the time of the visit by the Subcommittee's Study Mission the Embassy was particularly emphasizing the processing of orphans for intercountry adoptions. This emphasis, in part, coincides with needs expressed by the Study Mission representatives in testimony before the Subcommittee as they expressed deep concern for some 500 children in orphanages who should be processed rapidly and placed in suitable American homes. However, there was a feeling on the part of those who were attempting to strengthen the Ministry of Social Welfare's capacity to conduct broad-gauged programs for child welfare that the Embassy's actions were in some cases undercutting the Ministry's authority. Thus the differences of views to which you referred were between the Embassy's emphasis on adoptions as compared to the longer range child welfare needs rather than any fundamental difference as to the need to assist Vietnamese children per se.

The Study Mission also emphasized, as have we, that intercountry adoption should be within the framework of the provision of improved care to all disadvantaged children which requires active Mission support and continued financial assistance to the Ministry of Social Welfare. The Embassy has recently stated that it supports increased assistance to the orphanages and children in Vietnam and the role of the Ministry of Social Welfare and its involvement with the problems of orphans and the registration of international adoption agencies. Representatives of the Embassy are working closely with USAID and voluntary agency officials on the problems of child care, including legislation, programs for increased assistance and expanded child welfare services. I believe, therefore, that any temporary differences of tactics as to how to address these problems are now being worked out satisfactorily.

I have reviewed the Study Mission's recommendations and our comments on them. It appears we are working towards the objectives of the Subcommittee and its Study Mission for improved care of the Vietnamese children. I understand that Assistant Administrator Nooter and his staff have been consulting closely with the Study Mission representatives to determine the best means for the placement of orphans in American homes when intercountry adoption is determined to be of most benefit to the orphans. Consultations have recently been held with the Vice Minister of the Ministry of Social Welfare and are currently being conducted with voluntary agency officials on ways to improve child welfare services in Vietnam.

My last visit to Vietnam coincided with that of the Subcommittee's Mission. We saw many of the same problems and talked with numerous officials and voluntary agency representatives about new or expanded assistance efforts. I want to assure you that our support for increased humanitarian assistance in Indochina, as outlined by our FY 1974 Congressional Presentation, has been fully endorsed by our colleagues in the Department of State. We welcome your continued interest in the problems of the victims of the war and seek your counsel and support in the appropriation requested for our assistance.

Sincerely yours,

JOHN A. HANNAH.

HOME HEATING OIL

Mr. BROOKE. Mr. President, much has been said about the gasoline shortages plaguing our country. Yet—all of a sudden—it seems that such shortages are over. I noted in last Thursday's Washington Post that Exxon has ceased

its allocation program. Certainly this is welcomed news to the beleaguered American consumer.

While there is cause for joy over this welcomed news, we must not be lulled into thinking that "all is well." A far more serious threat lurks around the corner. I speak of the imminent crisis in supply of No. 2 home heating oil. I am quite fearful that in our concern over the gasoline shortages we neglected an even more critical area of supply.

Responding to the concerns of the Committee on Banking, Housing and Urban Affairs, William Simon, Deputy Secretary of the Treasury and chairman of the Oil Policy Committee, offered reassurance:

In January, we removed all restrictions on the importation of No. 2 fuel oil. Partly for this reason, stocks of distillate fuel oil are now higher than at this time last year. Imports of fuel oil continue at high levels. We are now importing over 200-thousand barrels per day. This, combined with domestic production, gives us a total projected supply that is adequate to meet our needs this summer and, barring extremely cold weather, to make it through next winter.

Unfortunately, I do not share his optimism.

During those same hearings the committee also heard testimony from the Independent Fuel Terminal Operators Association, whose members own and operate 25 percent of the No. 2 fuel oil distribution facilities along the east coast and 40 percent of the facilities in New England. The association and the New England Fuel Institute, an outstanding group of dealer distributors who market most of the home heating oil in our area warned more than a year ago that a home heating oil supply crisis would occur during early 1973. Their projections were accurate. Unfortunately the Oil Policy Committee refused to heed the warnings.

In essence the independent deepwater terminal operators feel that:

Demand will be higher, domestic supplies will be tighter and the chances of physical shortages greater than last year. The prospects are grim, indeed; and the gravity of the situation must be faced now and actions taken within the next several months.

My own analysis and that of the committee supports this assessment. The crisis can be attributed to several factors:

First, gasoline demand is at record high levels.

Second, only small volumes of gasoline are available for importation from foreign sources.

Third, U.S. refineries are producing record quantities of gasoline by maximizing the output of this product at the expense of middle distillate oils, namely No. 2 fuel oil.

Fourth. No. 2 fuel oil demand is rising sharply and may, in the coming year, reach a level 8 percent above the 1972–73 period.

Fifth, domestic stocks of No. 2 fuel oil are not building at a rate sufficient to meet demand.

Sixth, No. 2 fuel oil is available for importation from foreign sources but the quantities are insufficient to meet the growing U.S. supply gap. In addition the price of this imported oil is well above the domestic price.

Seventh, the most rapid increase in No. 2 fuel oil usage is by utilities for burning and by other consumers as a blend to reduce the sulfur content of fuels.

Mr. President, these factors have combined to create the serious shortage that now confronts us. Unless prompt action is taken I quite honestly see no way to avoid a crisis throughout much of the Nation by early 1974. Such action might possibly include the following four steps:

First, we must make the voluntary allocation program mandatory. The need for such action is clear. Over a month ago the Senate overwhelmingly passed a measure to establish a mandatory petroleum allocation program. The administration unfortunately continues to delay. However, the time is rapidly drawing near when it will be too late. The stocks of heating oil are at an alarmingly low level. One association which commands nearly 40 percent of the consumer market in New England told Governor Love, the new Director of the Energy Policy Office, that their existing stocks must be built up by more than 11 million barrels over today's levels. And this by October 1. After this date, it will be impossible to make up a shortfall of this magnitude. With cold weather upon us, the demand will simply be too great.

Second, the Oil Policy Committee and other agencies of the Federal Government, in close coordination with State and local governments, must develop an effective plan to prevent diversion of supplies of No. 2 fuel oil from the home heating market. Before the onset of cold weather, a plan must be in effect to assure that massive use of No. 2 fuel oil for nonheating purposes does not force any homeowner to go without heat. For example, careful monitoring and control of use and importation of No. 2 oil by utilities is likely to be required if we are to avoid the tragedy of lack of heat for families throughout the East and Midwest.

Third, the level of No. 2 oil imports into district I on a fee-free basis must be increased to 150,000 barrels per day. Under the new oil import program, which went into effect on May 1, east coast independent deepwater terminal operators will receive only 50,000 barrels per day of regular allocations. Documented analysis submitted by these independents demonstrates that a substantially higher level is needed to meet the gap between assured domestic supplies, which are being cut back, and domestic demand, which is growing.

Fourth, the Oil Import Appeals Board must act promptly on all petitions for importation of home heating oil which meet the Board's newly established criteria. Qualified petitioners must be able to plan their importation schedules. Speedy decisions by the Board can facilitate their efforts in obtaining desperately needed supplies from abroad.

Mr. President, the outlook is grim. Failure to act now will leave us at the mercy of winter weather. And those of us in New England know only too well that the weather is a fickle friend. I am sure my colleagues from the Midwest would heartily concur. Last year we were lucky. Unseasonal weather saved us from what could well have been a very serious crisis. We cannot gamble on such weather in 1974. Rather we must take the necessary steps to assure the adequate supply of home heating oil to all consumers throughout the Nation. And we must do that now.

Mr. President, I ask unanimous consent that the statement of the Independent Fuel Terminal Operators Association before the Committee on Banking, Housing and Urban Affairs be inserted in the RECORD.

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

STATEMENT OF HERBERT A. SOSTEK

Mr. Chairman: Thank you very much for the privilege of appearing before you today. My name is Herbert A. Sostek; I am Executive Vice President of the Gibbs Oil Co. of Revere, Massachusetts, an independent deepwater terminal serving the New England area. I am also a member of the Independent Fuel Terminal Operators Association. With me is Mr. Nicholas Cirillo, Vice President of Cirillo Bros. Terminal Corp., and independent deepwater terminal serving the New York and Long Island areas.

Before beginning my formal statement, Mr. Chairman, I should like to commend you, the members of this Committee, and the Senators, Congressmen and Governors from New England and the Northeast for your persistent fight on behalf of independent marketers and consumers of No. 2 fuel oil and gasoline. It continues to be a difficult, hard effort, but we have made some progress. Substantial changes in oil import policies have been made in recent years and recognition is being given to the competitive and supply problems of independent marketers and deepwater terminal operators along the East Coast. We are deeply grateful for your leadership, for the series of fact-finding hearings and inquiries into the problems conducted by this Committee, and for the continuing support of the public officials of the Northeastern States.

I am appearing today on behalf of the Independent Fuel Terminal Operators Association, whose 15 members operate oil terminals along the East Coast from Maine to Florida. A list of members is included with my statement (Attachment A). Our members own or control terminals capable of receiving ocean-going tankers; none is affiliated with a major oil company. All are qualified to participate in the No. 2 fuel oil program established under Section 2(a)(1) of Presidential Proclamation 3279, as amended, and Section 30 of the Oil Import Regulation, under which 50,000 b/d of home heating oil is presently being imported into District I (the East Coast). The members of our association are independent marketers of No. 2 fuel oil, No. 6 fuel oil, gasoline and other petroleum products.

Our testimony before you in 1971 contained a detailed analysis of deepwater terminal operations and the history of our part of the oil business, and the record compiled by this Committee at that time, "Cost and Adequacy

of Fuel Oil," is a most complete and persuasive document.

We should like, therefore, to limit our testimony this morning to three specific topics:

(1) The gasoline supply situation and its impact on independent marketers.

(2) The No. 2 fuel oil (home heating oil) supply situation and its impact on independent marketers.

(3) The new Oil Import Program.

1. GASOLINE

The urgency and impact of the gasoline shortage have been well known to those of us in the independent gasoline business for a number of months. We are, therefore, pleased that these hearings are being held, for they can play an important role in bringing all the facts to the attention of the public and the Executive Branch of the Federal Government.

Mr. Chairman, you and other members of Congress, have been warning for nearly six months about the threat of a gasoline shortage. Unfortunately once again these warnings have not been heeded; once again the Federal Government has chosen to listen to the assurances of others that the supply problems would be localized and temporary.

We can state our position briefly: I am sure it will be supported by other witnesses. The gasoline shortage will be worse than anticipated; it will be widespread and long-lasting; and unless prompt action is taken by the Congress and the Executive Branch, a major result of that shortage will be the destruction of a large portion of the independent gasoline business.

As independents, our chief fear is that, unless Federal policies are changed, thousands of independent gasoline stations will be permanently closed, tens of thousands of persons will lose their jobs and hundred of millions of dollars of investments will be wiped out. The short term impact on us will be disastrous and the long term impact on our country will be equally serious, for it will mean greater concentration of economic power in the hands of fewer and fewer companies and potential destruction of the competitive operators who have brought good service and lower prices to consumers.

We are not sure why the gasoline crisis has hit so suddenly, nor who is responsible, but there are certain contributing factors which can be readily identified:

Refiners and the Federal Government have been slow to acknowledge the crisis.

Gasoline demand is increasing sharply; in New England it is 8.8% above last year; in 1971 and 1972 the growth rate was an average of 4.5% per year.

Domestic refining capacity has not been expanding; U.S. refineries have not been operating at full capacity.

Accelerated distillate production over the past winter delayed the build-up of gasoline stocks to adequate levels.

Federal price controls have discouraged production of some petroleum products.

Federal and state anti-pollution controls have accelerated the consumption of petroleum products such as No. 2 fuel and gasoline. Coal has been phased out of many regions as an industrial and utility fuel because it cannot meet air quality emission levels, leaving low sulphur No. 6 fuel and No. 2 fuel as the only alternative fuels. Moreover exhaust control systems have led to more gasoline consumption per miles driven in newer model cars.

The shortage of natural gas—and the interruption of its supply to industrial and utility customers—has further exacerbated the No. 2 and No. 6 fuel supply situation because these two fuels are the only alternative fuels available.

Finally, both environmental and economic restraints have led to a far slower growth in nuclear electric generating capacity than expected. This has forced oil—specifically No. 2 and No. 6 fuel—to carry a larger share of energy requirements than expected.

In short, oil has become the "swing" fuel and now is carrying by far the highest share of total energy growth each year nationwide. Failure to recognize these trends earlier has put an enormous strain on the oil industry's ability to meet its new role.

There seems to be general agreement on these points; but, until recently, little awareness of the grave impact of all these factors on independent marketers of gasoline. These marketers are being cut-off by refiners—on a massive, and I repeat, massive scale. In nearly every region of the country stations are closed, customers being rationed and successful and astute small businessmen facing ruin. The refiners are not only cutting back on direct sales to independents, but are depriving independents of alternative sources of supply by buying up most available domestic and foreign gasoline output and taking over the output of U.S. independent refineries through formal and informal crude oil processing arrangements. This latter development—processing arrangements—is well known to the Chairman of the Committee, who has been pressing the Department of Justice for an investigation and action.

The foreign market offers little hope. Some gasoline is available, but not nearly enough to meet the supply gaps facing independents; and what is available is very expensive, due to the high demand from many American buyers, including, as I have indicated, the major oil companies.

The following chart will illustrate the impact of the foreign gasoline price structure on an East Coast independent marketer:

GASOLINE—94 OCTANE REGULAR

[In cents per gallon]

	Domestic	Foreign
Landed price, Boston	16.0	23.5
Massachusetts and Federal taxes	11.5	11.5
Terminal charges	.25	.25
Average transportation to station	.75	.75
Delivered cost to independent station	28.5	36.0
Average independent posted price	34.9	34.9
Margin	[1] 6.4	−1.1

[1] This provides only a marginally acceptable return on investment.

Supplies are tight everywhere, and unless something is done quickly—in a matter of a few months—the structure of the U.S. gasoline market could well be altered—permanently and radically. Some say that nothing can be done and the "free market forces" should be allowed to operate. But the market is not free. And current Federal Government policies including the new Oil Import Program tend to favor the larger companies.

Thus, what is most needed is prompt intervention by the Government to prevent elimination of the independents; in addition there must be some change in oil import policies.

The Government intervention should have a simple, basic goal: to assure that the shortage is shared equitably. Action by Congress should, we believe, be taken on two fronts:

First, a strong allocation and rationing statute should be enacted which would require—and I emphasize require—the Federal Government, in times of short supply of any product, to allocate deliveries and sales. Such allocations should be designed to equalize the impact of supply gaps and shortages throughout the U.S. gasoline distribution system. No one segment, level or group of companies should be allowed to profit at the expense of others.

Second, a forum should be created and standards established by statute so that individual companies could bring formal complaints and secure remedial action against all refiner-suppliers for unfair trade and marketing practices. We support proposals to provide remedies and a forum before the Federal Trade Commission and to establish standards based on historical supply and price relationships.

We realize that it will be difficult for the Federal Government to establish and administer an allocation system, but it certainly would be less complicated than the Phase I or Phase II wage-price control mechanism. The crisis of survival for the independents is no less severe than the crisis of inflation for the consumer. In short, an allocation system to deal with the petroleum-supply crisis can work if the Federal Government really wants it to work.

What we are seeking is similar to what was done in the case of price controls—the establishment of a base period and restoration of supply and price relationships for gasoline, heating oil, and other products until the crisis is passed. There are those who feel the Government should not intervene; our response is that Government policies—in particular the Oil Import Program proclaimed in 1959—have so distorted the petroleum market that the independent is at a severe disadvantage. Because Federal policies have contributed to the crisis, the Government bears a heavy responsibility to help. The basic truth, as I have indicated above, is that we are not operating in a free market system when it comes to oil. There is no such thing as a free market, and the Federal Government should recognize this.

We should like to make a further comment with reference to oil import policies on gasoline. The new, more flexible, authority given to the Oil Import Appeals Board can help. The import licenses for gasoline will have some value to independents who receive them. But the process is subject to abuse and must be carefully administered and regulated. We fear that the major oil companies and others who are not qualified may subvert the system by going to recipient of allocations and offering to buy, rather than exchange, OIAB licenses; they would buy them, for perhaps 25 cents—half their value, accumulate a large volume of tickets from a large number of independents and use those tickets to import gasoline into their own supply system.

In brief, the OIAB can be a useful instrument if it is effectively and efficiently run, and there is continual checking on the end use of allocations granted.

We should like to offer further comments on the new Oil Import Program later in our statement.

Mr. Chairman, our specific recommendations are naturally designed to help our segment of the industry. But I think this Committee should recognize we are fighting for survival and that our survival is of great importance to the public. For if we fail, if the independent is squeezed out of the market, it is the consumer who will be hurt. The consumer—your constituents—have a direct stake in this fight.

We are in business to make a profit. But we have done that by offering the consumer a lower cost alternative product of equal quality. That's why we have grown in market share. Private brand retailers now account for over 22% of total retail gasoline sales. When you realize that our average sales price

has been some 3¢ per gallon under the major brand station, that adds up to some $700 million annually in consumer savings. In short, we have had a competitive impact far greater than our size and financial strength might indicate.

2. NO. 2 FUEL OIL

Under the leadership of the Chairman, this Committee has over the past few years made a complete, thorough record on the subject of No. 2 fuel oil supply and the impact of shortages on independent marketers and consumers. Your interest and your hearings first began in 1968. Since that date you have warned of fuel oil shortages and asked for changes in oil import policies. Unfortunately these warnings have not been heeded until it was too late.

Because of your deep knowledge and extensive consideration of the home heating oil problem, we will not comment on it at great length today. However, we would like to provide our assessment of current supply problems, projections about next winter, and some recommendations for action.

Our projections about next winter can be simply stated: Demand will be higher, domestic supplies will be tighter and the chances of physical shortages greater than last year. The prospects are grim, indeed; and the gravity of the situation must be faced now and actions taken within the next several months.

As you will recall, Mr. Chairman, you and others began warning about the danger of a No. 2 fuel oil crisis more than a year ago. The Administration refused to act, accepting the assurances of the major oil companies; unfortunately, those assurances were wrong. Despite the emergency decontrol program ordered in January, it was the unseasonably warm weather—not decontrol—that saved millions of homeowners from going cold.

We cannot count on similar luck next year. Even more important decisions must not, as was done last year, be delayed. We view July 1 as the final date on which efficient planning can take place.

In considering the actions which must be taken, the Committee must be aware that independent marketers of No. 2 fuel oil are in the same situation as independent marketers of gasoline. The supply crisis for fuel oil marketers is, of course, not so apparent to the public as in the case of gasoline, but it is perhaps more severe. For example, East Coast independent deepwater terminal operators are currently facing a massive supply gap. We are simply unable to buy any significant supplies of No. 2 fuel oil from domestic sources; we are being cut back or cut out by almost every one of our domestic refiner-suppliers. Our total demand for the coming year will be nearly 280,000 b/d. Of this amount, only 85,000 bbls has been provided under firm commitments from domestic refiners. In other words, we are now facing a supply gap of more than 190,000 b/d. An analysis of this gap, prepared last month at the request of the Office of Oil and Gas, is included as Attachment B of this statement.

When you consider that our independent deepwater terminals provide 25% of the delivery capacity and distribution system along the East Coast, you can realize the impact that this shortage will have on the homeowner.

Domestic supplies are already very tight. The API statistic shows that distillate stocks are higher than a year ago, but we do not believe that stocks can be built up to safe levels this summer because of the extraordinary demands for production of gasoline. The summer of 1973 will be a repeat of the summer of 1972—gasoline will be produced at the expense of heating oil. In brief, we face a repeat of the dreary cycle of shortage.

Some supplies of No. 2 fuel are available from foreign sources, and some additional access to those supplies has been provided under the new Oil Import Program. But foreign distillate is already selling at prices that are well above domestic and continuing to escalate, as more and more American buyers enter the foreign market. Included among these buyers are most of the major oil companies and the large utilities. The majors and the utilities obviously view the new import license fee of 15 cents per barrel as no barrier, for they are scouring the market for all the heating oil they can find.

For example, the largest utility in Florida told a House committee two weeks ago that it was sending representatives to the Arab countries to buy fuel oil directly; they are seeking 33 million bbls per year. It should be noted that this purchase, by one utility alone, is equivalent to ⅓ of New England's total annual consumption of No. 2 fuel oil.

In brief, unless the Government and the Congress act and act soon, what lies ahead for the Northeastern states is a shortfall in domestic No. 2 fuel oil supplies, increasing reliance on high priced foreign oil, physical shortages in many areas, and as in the case of gasoline, the eventual destruction of the independent fuel oil marketer. One of the members of our own Association has already been removed from the ranks of the independents. Less than a week after the announcement of the new Oil Import Program, the Union Oil Company of Boston was bought out by a refiner, the Coastal States Gas Producing Company of Corpus Christi, Texas.

As this Committee is well aware, heating oil is a vital fuel. If there is a physical shortage of gasoline it will mean some inconvenience to some drivers; a physical shortage of heating oil poses a direct threat to the health and safety of millions of families, particularly in the Northeastern states and New England, where dependence on heating oil is the highest.

Given this background of potential shortage and destruction of the independents, we should like to offer six recommendations for action:

First, the Federal Government must, unlike last year, recognize the danger and act before mid-year, that is by July 1.

Second, the Oil Policy Committee should act to increase, on July 1, the No. 2 fuel oil import allocations for independent deepwater terminal operators from the current level of 50,000 b/d to a minimum of 150,000 b/d. As this Committee knows, we were deeply disappointed by the last minute rejection of recommendations to increase the level to at least 100,000 b/d. This was a severe blow, particularly in view of the strong evidence of shortage we presented to the Oil Policy Committee.

Third, the Oil Import Appeals Board must act quickly on pending applications for No. 2 fuel oil imports which meet the criteria established by the Board. However, we should add that, while we welcome the opportunity to seek relief from the Board, we do not believe it offers an effective, long-range way of doing business; it is very difficult to run a business on expectation of a year-by-year allocation.

Fourth, the Oil Policy Committee should take immediate steps to discourage the use and importation of No. 2 fuel oil from abroad by utilities. Massive purchases of No. 2 fuel oil in the world market by these companies is a sure prescription for high prices and shortage in the home heating sector of the market.

Not only that, the use of No. 2 fuel by utilities is extremely wasteful. A home heated electrically (when the electric power is generated by burning No. 2 fuel in gas turbine generators) consumes 2½ times as much No. 2 fuel as a home directly heated with an oil burner. This nation can no longer afford the luxury of that kind of waste of a critically short resource. Given these facts and the current energy crisis, we simply cannot understand why continued promotion of electric heating is permitted.

Fifth, the Federal Government should continue its efforts to encourage the states to relax sulfur content standards so that increasing amounts of No. 6 fuel oil can be burned in place of No. 2 fuel oil and so there can be a substantial reduction in the use of No. 2 fuel oil as a blend.

Sixth, as indicated in above, we recommend enactment by the Congress of allocation or rationing legislation and enactment of legislation to provide relief before the Federal Trade Commission. In brief, it is essential that supply and price relationships which existed during prior years be maintained until the current supply crisis for No. 2 fuel oil has passed.

3. THE OIL IMPORT PROGRAM

Before concluding, Mr. Chairman, we should like to offer our comments and reactions to the new Oil Import Program which was announced by the President on April 18. As you know, the new Program is embodied in extensive amendments to Presidential Proclamation 3279 and Oil Import Regulation I.

We support the basic objectives of the Program. We have long urged that domestic refining and storage capacity be increased and have supported efforts to reduce long-term reliance on foreign sources of crude oil and petroleum products.

But we are concerned that the economic theories on which the new program is based simply do not apply to the petroleum market. We fear that, as in the case of the original Oil Import Program promulgated in 1959, the objectives will not be achieved and, in fact, the actual results will be the opposite of what was intended.

We should remember that those who have criticied the Oil Import Program for so long, including the Chairman of this Committee and many of his colleagues, did so because it was not doing what it was intended to do. After 14 years of a program designed to encourage domestic production and exportation and reduce reliance on foreign imports, we find domestic production declining, domestic reserves at an all-time low, and reliance on foreign sources increasing with every year.

Our chief problem with the new Program is that is appears to be based on the classic laws of supply and demand, and attempts to use a fee or tariff-type mechanism to translate the forces of supply and demand into certain results. Unfortunately, as we have pointed out, the reality is that the forces of supply and demand simply do not apply to an integrated international oil company which operates production, refining, and marketing facilities on both sides of the tariff or fee barrier. These integrated companies make business decisions on a much different basis from others in the petroleum business; their costs are different and their internal price structures are different. Therefore, the impact of fees on integrated oil companies and their corporate decisions is much different than the impact on all other oil companies. We can attest to this fact on the basis of many years of experience as petroleum marketers both here and abroad.

It is essential to understand the difference in the economics of the independent and the international major in the world market. Quite simply our cost is determined by what we pay for product and freight to land a cargo of oil at our terminal. The international major has a far different set of costs.

To begin with, the international majors own or control most of the world's crude oil

production outside of the Soviet Union. They also own or control a substantial share of refining capacity around the globe. When their U.S. affiliate buys gasoline or No. 2 fuel from a foreign affiliate, its cost is more often than not simply an interaffiliate transfer price that need bear no real relationship to the arms-length market price we must pay. The major is interested in optimizing its profit from an integrated world-wide operation. I don't blame them. I just want this Committee to understand the disproportionate power and leverage the multi-national integrated major has vis-a-vis the independent U.S. marketer.

Even in dealing with a foreign private independent refiner the international major has a great advantage. The major can tie crude supply to product off-take. If an independent refiner has a surplus of any product, the major can take it and dispose of it in a third market through its own affiliates in order to secure a product in tight supply. This explains why, when we and a major are competing for a limited volume of product produced by an independent foreign refiner, it is the major who invariably gets the product.

Thus, we fear that the new Oil Import Program may never achieve the excellent objectives set forth in the President's Energy Message and the Statements of the Chairman of the Oil Policy Committee in support of that Message. Even worse, from our point of view, the short-term implementation procedures—the phasing up of fees and phasing down of fee-free imports—will result in the destruction of the the independent segment of the market, more concentration of power in the integrated companies and great harm to the American consumer.

To be more specific, we should like to present a list of problem areas which we hope this Committee and the Oil Policy Committee can review and act upon.

We should like to state first that the new oil policy procedure and administrative structure appears to be a more efficient and more responsive one, and we are most encouraged. Deputy Secretary Simon's decision to appoint regional committees of independent marketers was a constructive one, and the improved communication and exchange of ideas that will result from his action can be helpful. The attitudes and accessibility of Mr. Simon; his deputy Mr. William Johnson; Assistant Secretary of the Interior Stephen Wakefield; the Director of the Office of Oil and Gas, Mr. Duke Ligon; and the President's Consultant on Energy, Mr. Charles DiBona have been equally encouraging. We sense a real change in approach and a commitment to make the new program work. Our suggestions are, therefore, offered in a spirit of cooperation and the hope that we can continue to work with the Oil Policy Committee, the Department of Interior and the White House Special Committee on Energy in seeking effective solutions.

We do not believe that massive changes in the new Program are needed nor desirable; we agree that stability is required. A business that is as closely regulated as oil must be able to plan and act with some assurance that Government regulations and policies will remain reasonably stable. But, as we have indicated, when a crisis occurs—and the threat to independent marketers is a crisis—certain changes must be made, to prevent serious consequences.

Our five problem areas are as follows:

1. THE IMPACT OF THE FEES

We are particularly concerned about what happens if, by the time the fees have escalated to their high point in 1975, enough additional domestic refining capacity has not been built. What then? Should the escalation be delayed? Perhaps those who have the greatest difficulty in finding product from domestic sources, such as independents, should receive additional allocations on a lower fee or fee-free basis.

Another concern is whether the fees are any deterrent at all to the importation by the major oil companies and utilities of finished products. Frankly, we do not think so. The majors' costs are much different; they can import vast volumes of gasoline, heating oil and residual oil, pass the cost of their fee through their systems and suffer no adverse effects. In the case of utilities, they can simply pass the cost of fees on to the consumers under their rate escalation clauses.

2. IMPORTS OF FINISHED PRODUCTS BY MAJORS

Our discussion in the preceding paragraph leads to what we believe the most grievous flaw in the new system, particularly from the point of view of independent petroleum marketers: the fact that major oil companies and utilities are permitted to import finished products. We have stated to the Oil Policy Committee on numerous occasions and are stating here today that, given current limited availability of foreign supply, to allow the majors and utilities to import at all, even on a fee paid basis, throws them in direct competition with the smaller independent; it is clear, based on our own experience, who will win this competition.

We urge that this aspect of the program be reviewed and reversed. An absolute prohibition on importation by majors and utilities will not prevent a high level of imports of products. In fact all that is available can be imported by independents. But such a prohibition will prevent the continued export of refining capacity (which results when those with domestic refining capacity that can be expanded decide to import products); such a prohibtion will allow the independents to survive and grow as a competitive force in the marketplace.

3. STORAGE CAPACITY

We agree with the Oil Policy Committee that the license fee program can provide incentives for construction of additional domestic storage capacity. We hope that an effective incentive system can be developed and will be pleased to work with the Oil Policy Committee in an way possible.

4. THE OIL IMPORT APPEALS BOARD

As indicated above, we feel that the Oil Import Appeals Board can help, but should not be viewed as the complete answer for independents. In fact, if the majors and utilities are able to corner the foreign market in gasoline and heating oil, the Oil Import Appeals Board licenses will be of little use. Even if some foreign supplies are available, the heavy demand may continue to drive foreign prices beyond the reach of American independents.

Further, we are concerned that the procedures of the Board will be subverted by the major oil companies, particularly in the case of gasoline. As we have pointed out, there is a great incentive for the majors to buy gasoline tickets or work out phantom exchanges to secure such tickets. This must not be allowed to happen. Procedures must be established to assure that independents who receive allocations actually import the oil for use in their own distribution systems or exchange such tickets on a barrel-for-barrel basis to receive product for use in their own systems. We see this as a problem principally of enforcement and supervision, and we will be glad to cooperate with the Office of Oil and Gas and the Board in developing effective surveillance procedures.

5. SECTION 30

We are pleased that the Western Hemisphere purchase limitation has been suspended by the Chairman of the Oil Policy Committee. This action will help immeasurably in assuring the most effective use of the import allocations received under this Section.

Unfortunately, as we have indicated, the allocation level of 500,000 b/d is woefully inadequate. Our supply gap—the gap between our demand and domestic supplies—is very severe. We will need to import substantial additional amounts of No. 2 fuel oil over the coming year. Some allocations may be available from the Oil Import Appeals Board, but what is really needed and what will be most effective is a decision to increase the regular program to a level of at least 150,000 b/d.

In addition, consideration will have to be given, within the next year, to the question of whether, given the shortage of domestic product, the No. 2 Fuel Oil Program should be reduced in accordance with the schedule established by Section 11 of Proclamation 3279, as amended.

In conclusion, Mr. Chairman, I should like to thank you and the members of the Committee for your continuing efforts on behalf of the marketers and consumers of heating oil and gasoline. We are grateful for the opportunity of appearing before you today and will be pleased to respond to any questions that you may have.

Thank you.

ATTACHMENT A—INDEPENDENT FUEL TERMINAL OPERATORS ASSOCIATION

Belcher Oil Company, Miami, Florida.
Burns Brothers Preferred, Inc., Brooklyn, New York.
Cirillo Brothers Terminal, Inc., Bronx, New York.
Colonial Oil Industries, Inc., Savannah, Georgia.
Deepwater Oil Terminal, Quincy, Massachusetts.
Gibbs Oil Company, Revere, Massachusetts.
Meenan Oil Company, New York, New York.
Northeast Petroleum Corp., Chelsea, Massachusetts.
Northville Industries, Corp., Melville, New York.
Patchogue Oil Terminal Corp., Brooklyn, New York.
Ross Terminal Corp., Bayonne, New Jersey.
Seaboard Enterprises, Inc., Boston, Massachusetts.
C. H. Sprague & Son Company, Boston, Massachusetts.
Webber Tanks, Inc., Bucksport, Maine.
Wyatt, Inc., New Haven, Connecticut.

ATTACHMENT B—NO. 2 FUEL OIL, DEMAND-SUPPLY PROJECTIONS,[1] 1973–74

Total demand, independent deepwater terminal operators, District I,[2] May 1, 1972[2]—April 30, 1973, 260,000 b/d.

Total demand, independent deepwater terminal operators, District I, May 1, 1973–April 30, 1974 (Assuming a 7% increase in demand and that independents maintain—but do not increase—their share of the East Coast market, 278,000 b/d.

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[1] See also projections on p. 16 of Petition of Independent Fuel Terminal Operators Association to Oil Policy Committee, June 5, 1972; and projections supplied by Association to Committee, November 30, 1973, and March 15, 1973.

[2] Includes all independents who qualify under Section 30 of Oil Import Regulation.

Supplies available from domestic refineries (Based on current information from suppliers; however, *this projection may prove optimistic*), 85,000 b/d.

Supply gap, District I, 1973–74, 193,000 b/d.

CAPTAIN EDDIE RICKENBACKER DREAMED DREAMS AND LIFTED HIS SIGHTS HIGH INTO THE SKIES

Mr. RANDOLPH. Mr. President, a page in the dynamic and dauntless history of our country came to a close in a hospital in Zurich, Switzerland on Monday when Edward Vernon Rickenbacker—Captain Eddie—died at the age of 82. Our Nation lost one of its truly great heroes, and I lost a close friend.

I recall so vividly Captain Eddie's sweeping vision for the future of our country as we chatted together on June 16, 1971 while participating in the 30th anniversary celebration of Washington National Airport.

There was hardly an airport in the United States and, indeed, hardly an airport anywhere in the world that this premier airman did not know. Throughout the decades, he fought tirelessly and spiritedly for support of commercial and military aviation. I accompanied him, in an earlier period, to West Virginia airports when he spoke on aviation. I recall especially our visit to my hometown of Elkins where a very large audience heard his challenging speech.

While so many persons in the first two decades of the 1900's were still trying to get into the 20th century, Capt. Eddie Rickenbacker already had his sights on the 21st century. He was a man of great vision who was not afraid to think big when it came to the strength and welfare of his country.

It would have been enough for Captain Rickenbacker to have rested on his brilliant achievements in combat, but he was not that kind of man. He sought challenge after challenge, asking no quarter and proclaiming repeatedly that the greatest privilege this country had to offer was the "freedom to go broke." He believed fiercely in free and private enterprise, and he backed these beliefs with deeds.

Certainly, those of us who knew and loved Captain Eddie did not agree with everything he did and everything he said. It would be false to his memory to suggest that was the case. He thrived on the conflict of ideas.

Over the years, it was my privilege to stand solidly at his side as he helped lead the fighting to overcome the narrow, gauged vision of so many Americans who failed to understand the impact of aviation on our society.

Captain Eddie—actually he was a colonel in the Reserves—understood the need for America to move forward. He understood that progress was not achieved on some sort of a free ride. He knew and was willing to pay the price of assuring a role of world leadership for the United States.

Much will be said and written about this gallant American. But when all is said and done, the life of Capt. Eddie Rickenbacker is the story of a dedicated American who was not afraid to meet new challenges, who was not afraid to dream of dreams, and who was not afraid to lift his sights high into the skies.

Alfred Lord Tennyson wrote in 1842, and Rickenbacker reemphasized by his life, the following lines:

> For I dipt into the future,
> far as human eye could see,
> Saw the vision of the world,
> and all the wonder that would be;
>
> Saw the heavens fill with commerce,
> argosies of magic sails,
> Pilots of the purple twilight,
> dropping down with costly bales

Mr. President, I ask unanimous consent that the article on his death and his career, by Jean Halley, in today's Washington Post, be printed in the RECORD.

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

CAPT. EDDIE RICKENBACKER

(By Jean R. Halley)

Edward Vernon Rickenbacker, the indestructible American Ace of Aces, a legendary hero who cheated death a dozen times on the ground and in the air, died yesterday in Neumuenster Hospital in Zurich, Switzerland.

Captain Eddie, the daredevil auto racer and World War I pilot, who survived plane-to-plane combat, a shattering plane crash in Georgia and later 23 days adrift on a raft in the Pacific in World War II, succumbed to a heart attack at the age of 82.

He had been in ill health since last October when he suffered a stroke in Miami, Fla. He and his wife, Adelaide, had maintained homes in Key Biscayne and New York for many years.

Although the aviation pioneer, who had headed Eastern Airlines for years, was hospitalized for a long period after suffering the stroke, he was considered well enough to make the trip to Switzerland at the start of this month.

He was hospitalized early this month after he and his wife arrived in Zurich. She was at his bedside when he died.

Capt. Rickenbacker, whose name was known to millions of people throughout the world, made it to the top the hard way.

A fervent patriot, he based his success on faith, courage and always a will to work hard. His life was the classic American story of a poor little boy who went on to win this nation's highest honors.

He fought not only for maximum use of the airplane in both world wars, but also for the development of the airplane as an instrument of peace. He was one of the outstanding leaders in commercial aviation.

Capt. Rickenbacker's origins were humble. He was born in Columbus, Ohio, to parents who had migrated to this country. They were poor, but they taught him to revere the basic principles of Americanism and an abiding faith in God.

Although he was never committed to a specific form of religion, he often said in later years that prayer brought him through his many narrow escapes from death.

His father died when he was only 12 years old and Eddie left school seeking work to help support his mother, whom he workshipped, and the other four Rickenbacker children.

One of his first jobs was that of carving tombstones. He carved the marker for his father's grave.

But odd jobs were not enough to satisfy him, and he soon found himself drawn to the then primitive automobile.

He had an innate love of machinery and an uncanny knowledge of mechanics, which he added to through correspondence school courses in mechanical engineering and drafting.

Then he saw his first automobile race and by the time he was 21, he had become one of the great racing drivers in this country. He won seven national championships at Sioux City, Omaha, Providence, Tacoma and Sheepshead Bay. One of his greatest feats was a victory over Barney Oldfield, then considered the king of the game, at Indianapolis.

In later years, Eddie Rickenbacker was president and chief owner of the Indianapolis track, where the annual Memorial Day race still attracts hundreds of thousands of spectators. In 1954, he was elected to auto racing's Hall of Fame at Greenfield Village, Mich.

But in those days, Eddie Rickenbacker, by now a swashbuckling figure, of tall stature and jutting jaw, had still to make his world fame.

It came in World War I. He enlisted in the Army and was sent to France, where because of his knowledge of mechanics, he was assigned as a chauffuer to Gen. John J. Pershing, commander-in-chief of the American Expeditionary Forces.

As a chauffeur, his racing techniques were a little rough on his passenger and Gen. Pershing finally acceded to Eddie Rickenbacker's ceaseless requests to transfer to the Air Corps and became a pilot.

"If you're as dangerous to the Germans as you are to me, you'll be an ace in a week," Gen. Pershing reportedly said when he approved the transfer.

The General was not far from wrong. Eddie Rickenbacker learned to fly in 17 days and within a few months joined the famous "Hat-in-the-Ring" (64th Pursuit) squadron, whose prime target was Germany's "flying circus" led by Baron von Richthofen, better known as the Red Baron.

In those days, there were no parachutes, radios, easily maneuverable guns, plane stabilizers or adequate brakes but Eddie Rickenbacker, who then was called Rick, plunged right into the dogfights.

He fought a hundred air battles over France, sometimes behind enemy lines. Once the struts were shot out of his battle plane and another time he whipped his ship around in the sky with the fabric flapping from the wings.

He always denied that he was reckless, that his survival was due to his own caution and awareness of the risks he took. Yet he did such things as drop to within a hundred feet of a filled enemy balloon on a truck in a narrow village street and destroy it before it could reach the front lines. And he once stayed in a fierce air fight to add the force of his presence although both his machine guns had jammed.

He became the most decorated American pilot in the war. He was credited with bringing down 26 German planes and at least four enemy balloons.

For his daring exploits, he received the Croix de Guerre with four Palms, the Legion of Honor, the Distinguished Service Cross with nine Oak Leaf Clusters, the Medal of Merit and America's highest award, the Medal of Honor.

The citation that accompanied the latter read:

"While on a voluntary patrol over the land, Lieut. Rickenbacker attacked seven enemy planes (five type Fokker protecting two type Halberstadt). Disregarding the odds against him, he dived on them and shot down one of the Fokkers out of control. He then at-

tacked one of the Halberstadts and sent it down also."

That was the way Eddie Rickenbacker fought, often downing not one but two enemy planes in a single battle.

Although he returned from the war as an aviation hero, Capt. Rickenbacker, whose visions of aeronautical progress let him later to become a leader in commercial aviation, seemed to lose interest in flying and he turned back instead to automobiles.

A company was formed to manufacture a new car, named the Rickenbacker, and he served as its vice president. But, claiming that the car was years ahead of its time, he left the firm in 1926, a year before it went broke.

He then started work as an assistant sales manager for the Cadillac Co. and then became vice president of Fokker Aircraft.

In 1932 he joined Aviation Corporation, parent comany of American Air Lines. He left it to join General Motors and in 1934 was made general manager of Eastern Airlines, a subsidiary of General Motors.

It was in that same year, as commander of a giant Douglas airliner, that he set a new coast-to-coast record for passenger planes. The flight from Los Angeles to Newark was made in 12 hours, three minutes and 50 seconds. He was again in the headlines.

There were other record flights, all made to prove that flight service, even on long trips, was practical as an everyday business proposition.

In 1938, the government forced General Motors to cut itself off from the airlines field and Eastern Airlines was put up for sale. Capt. Rickenbacker raised $3.5 million on Wall Street for its purchase and from then on it was his baby. He built it into a big money-maker, by traveling thousands and thousands of miles over his air system each month, lecturing on the safety and convenience of air travel.

He became an astute businessman. But he rarely piloted, content to make the trips as a passenger.

He also cared little about driving an automobile. He once boasted that he had never held a license for either driving or flying.

Capt. Rickenbacker served as president and general manager of Eastern from 1938 until 1953 when he became chairman of the board.

It was during this period that he twice flirted with death. In 1941, he was a passenger on an Eastern plane when it crashed near Jonesboro, Ga., not far from Atlanta.

Eight persons were killed and eight others including Capt. Rickenbacker, were severely injured. He told later of how he had seen that something was wrong and tried to get to the pilot, but the crash happened before he could get into the pilot's compartment.

He was pinned beneath the plane's wreckage, his legs and ribs crushed. He recalled from his hospital bed, where he lay near death for days, how he saw the ship's fuel tanks dripping.

"Don't strike a match—don't strike a match—there's gasoline all around here," he remembered shouting.

Capt. Rickenbacker sprang back from that disaster and a year later was called upon by his country to help lay the foundation for the Military Air Transport Service of World War II.

In this capacity, Secretary of War Henry L. Stimson sent him on special missions around the globe to help build the morale of American fighting men.

On one of these missions in October, 1942, a heavy military plane in which he was flying with a full military crew went down in the Pacific. It was flying from Hawaii to another Pacific island.

The eight men were lost at sea for three weeks, adrift in three rafts. One of the men, who had swallowed much sea water when his raft overturned, died and was buried at sea.

The rafts were separated, but all of the seven survivors were eventually rescued. Capt. Rickenbacker and two of the others were found in a raft about 600 miles north of Samoa.

He told of their ordeal later. When they had to leave their sinking plane, they took only four "scrawny" oranges with them. They made these last for eight days.

"A boy in my boat had an issue Bible in the pocket of his jumper and the second day out we organized prayer meetings. We had one every morning and one every night," he said. "At these meetings we prayed frankly and humbly for our deliverance."

Then, Capt. Rickenbacker, related something happened which he "wouldn't tell if I had not had seven witnesses. Within an hour after prayer meeting, a sea gull landed on my hat."

"I can't describe my nervousness while we all sat spellbound and I slowly reached up so I wouldn't scare him off. I caught him," he added with a smile.

They ate the bird and used the entrails as bait for fish. But he confessed later that he didn't eat much of either the raw bird or the fish because he couldn't stand the taste of either.

When he and his two companions were finally picked up by a Navy scout observation plane, only one of them could be squeezed aboard. Capt. Rickenbacker and the others were lashed to the wings and the airplane taxied 40 miles before it finally got to land.

That he had stamina was obvious. After two weeks of hospitalization he was ready to complete his mission.

Capt. Rickenbacker always disclaimed any credit for being more daring and fearless beyond the limits of ordinary man.

"I've always been lucky," he said. "I always trust to luck—it has never failed me."

Over the many years, he had always spoken out for the need of war planes. As early as 1922, he had supported his friend, Gen. Billy Mitchell, in urging a separate department for aeronautics. In World War II, he plugged, too, for the greater use of air fighting forces.

When he retired in 1963, as chairman of the board of Eastern Airlines, Capt. Rickenbacker declared that he had no plans to be idle.

Politically a conservative and an outspoken anti-Communist, he said then: "I am going to expand my crusade to save the American way of life for future generations, as I want our children, our grandchildren and those who follow them to enjoy the opportunities which have been mine for 73 years."

In 1965, when he was named to the Aviation Hall of Fame in Dayton, Ohio, he suggested that air power should be used for "what it is meant" and added that planes in Vietnam should destroy the powerhouses, dams, bridges and ports in Vietnam, without too great loss of life, but to get at the problem of the war at its source.

Capt. Rickenbacker paid a nostalgic visit to Washington in June, 1971, when he attended the celebration of the 30th anniversary of National Airport's opening.

He recalled the old Washington-Hoover Airport, a field on the present site of the Pentagon that preceded National Airport. It was bisected by a roadway and a crossing guard halted motor traffic when a plane was landing or taking off.

Capt. Rickenbacker said he was at the controls of a plane taking off there one time and was heading down the runway at full steam when he saw a truck the guard apparently had failed to stop.

"I pulled back on the stick, the plane raised enough so the wheels scraped the top of the truck, bounced onto the runway and then climbed into the sky," he said.

Asked about the passengers, he replied: "They didn't know what the hell happened and I'm not sure I knew then either."

He agreed it sounded like an adventure of Capt. Ricketyback, chief pilot of Trans Dogpatch Airlines in Al Capp's comic strip, Li'l Abner. Capt. Rickenbecker agrees some sequences in the comic strip were overdrawn but he didn't mind Capp's characterization.

Capt. Rickenbacker, who never attended college but held 15 honorary degrees, was the author of three books: "Fighting the Flying Circus" about his World War I experiences, "Seven Came Through," an account of his ordeal in the Pacific, and "Rickenbacker—An Autobiography."

Once, in an interview, Capt. Rickenbacker talked about the times he had narrowly escaped death.

"The sensation of dying is sweet, sensuous, placid. It is the easiest thing in the world to die. The hardest is to live," he said.

"I have probably cheated the Grim Reaper more than any other man. I came very close several times. Twice I was actually dying and knew it. But each time, as I moved closer, I began to fight harder. I had faith in the Power above and I had the will to live."

He showed the same will in his last confrontation with death.

Dr. Walter Steffen, who treated Capt. Rickenbacker at the Zurich hospital, said he was placed on the critical list immediately after he was hospitalized but recovered slightly before a relapse.

"Mr. Rickenbacker impressed me very much as a strong character. He never lost his optimism in spite of his serious condition. All the doctors and nurses said he was a model patient," Dr. Steffen said.

In Washington, President Nixon said Mr. Rickenbacker "was an American original—a celebrated racing car driver in the early years of the 20th century, the leading American fighter pilot in World War I, a pioneer of commercial aviation, and a generous patriotic citizen in both war and peace.

"Mrs. Nixon and I offer our condolences to Mrs. Rickenbacker on the passing of this great American, and our assurance that the life he lived and the example he set will long be cherished by his fellow citizens," Mr. Nixon said.

The Rickenbackers' son, David, E., of Upper Montclair, N.J., arrived in Zurich last Saturday. Capt. Rickenbacker also is survived by another son, William F., of Briarcliff Manor, N.Y., two brothers, Louis, of Los Angeles, and Albert W., of Beverly Hills, Calif., and five grandchildren.

NEW FDA COMMISSIONER: DR. ALEXANDER SCHMIDT

Mr. PERCY. Mr. President, I commend President Nixon on the appointment of Dr. Alexander M. Schmidt to be Commissioner of the Food and Drug Administration.

Dr. Schmidt, informally known as "Mac" Schmidt, has the medical background and administrative skills to be a truly outstanding Commissioner. He is an M.D. who has consistently demonstrated his ability to manage.

When the Abraham Lincoln School of Medicine of the University of Illinois was formed in 1970, he became its first dean. He was instrumental in reorganizing the medical college and developing a new curricula. Under Dr. Schmidt's direction,

the school produced an increasing number of M.D's of the highest quality.

Before that, his administrative skills were demonstrated at the National Institute of Health in Maryland. Dr. Schmidt served in the capacity of deputy associate director of program development and research.

Equally impressive is Dr. Schmidt's educational background. He earned his bachelor's degree from Northwestern University, and thereafter continued his education at the University of Utah where he attained his M.D. His internship and residency were also served at the University of Utah. Later, he became a faculty member of that institution.

Of major interest to the drug field is Dr. Schmidt's clinical experience in the treatment of patients. This was demonstrated at Utah before he moved into administrative medicine.

I have met with Dr. Schmidt since his nomination by the President and have discussed various aspects of the regulations involving the Food and Drug Administration. I am thoroughly impressed by his demonstrated administrative abilities, and by the grasp he already has of the highly complicated and delicate issues now before the FDA.

Undoubtedly, the University of Illinois will suffer a great loss, but his potential contributions as FDA Commissioner can be expected to be of substantial benefit not only to the citizens of Illinois, but also to the entire country.

The magnitude of Dr. Schmidt's responsibilities will include the direction of an FDA budget in excess of $165 million a year. Moreover, the regulation of industries whose total worth is estimated at between $250 and $300 billion will be his primary concern.

Recently, I have commended the President on his nomination of Dr. Charles C. Edwards, who has served with distinction as Commissioner of Food and Drugs, to the crucially important position of Assistant Secretary for Health of the Department of Health, Education, and Welfare. Under Dr. Edwards, Sherwin Gardner, Acting Commissioner during the interim period, and Peter Barton Hutt, General Counsel, the FDA has become a more progressive organization in meeting the need for greater consumer protection. They generated an organizational momentum toward this goal.

It is my firm conviction that Dr. Schmidt has the ability and commitment to further advance this effort.

DEATH OF WILLIAM RALPH MASON, OF CALIFORNIA—EDUCATOR, YOUTH LEADER, HUMANITARIAN

Mr. CRANSTON. Mr. President, I would like to take a moment to remember the life of a man I admired and whose friendship I valued, a man of innumerable civic interests and achievements, a man whose untimely death on July 14, grieved and shocked me. His name was William Ralph Mason—president of California's The Irvine Co., educator, youth leader, humanitarian.

Bill Mason was nationally famous for his creation and implementation of the Irvine Co. general plan, a highly innovative program of land development covering some 80,000 acres in Orange County, Calif. The plan included the construction of a beautiful University of California campus, a seaside shopping and financial center, 200 acres of wildlife preserve, and 3 miles of ocean marine preserve, a landscaped industrial park of more than 400 nonpolluting firms, a prospering farming and cattle-grazing operation. a dozen greenbelted communities in three cities, and the building of an entirely new city, the city of Irvine.

Bill Mason was no stereotype corporation executive. He was a builder of imagination and deep humanity who used his technical skills as an engineer to seek practical solutions to the peoples' needs. He once told a reporter:

> That's . . . the most important aspect of it all—the people.

Many of his community activities earned him no headlines—he did them, because he loved doing them. He participated actively in the Boy Scouts of America, serving as Western Region president until the time of his death. Selected as City of Hope's Man of the Year, he was also chairman of the Orange County Red Cross fund drive and a strong organizer in the YMCA and United Fund campaigns.

Starting his career as an assistant professor of civil engineering at the University of Washington, Bill never lost his dedication to the cause of education. He was an active member of the Chapman College President's Council, the Claremont College Board of Fellows, and of other college and university boards and committees.

In an interview for New Worlds of Irvine, Bill Mason concluded:

> In any case, and in the end, the best in man will triumph. I'm convinced of that.

The lives of men like William Ralph Mason help prove that statement.

PIONEER DAY

Mr. BENNETT. Mr. President, today is an important day for those citizens of the United States who are of the Mormon faith. Being a Mormon myself, I would like to stand up and share with you the meaning which this day holds for us.

On July 24, 1847, a group of pioneers entered what is now known as the Salt Lake Valley. They were only the first of many members of the Church of Jesus Christ of Latter Day Saints, or Mormons, who were to follow. They were led by Brigham Young, who has been called a "Modern Moses," for his role in leading these people across the plains.

Their journey was not an easy one, even for those days of covered wagons and horseback travel. Their route was long and filled with hardships as they traveled from the Midwest to the Rocky Mountains. Those who could not afford the cost of covered wagons, put their belongings in a handcart and pushed them by hand across the plains. Their determination led them through times of disease, famine, and the fury of winter. There were many who never arrived at their destination in the West. Truly, their journey is one of the greatest religious exoduses of all time.

When the first group of pioneers came over the mountains that surround the Salt Lake Valley, Brigham Young saw the valley for the first time, and said, "This is the place." At that time, the valley was a desolate wasteland. Yet the same courage and determination which had led these sturdy pioneers across the plains, helped them to tame the desert and truly make it "blossom as a rose."

This example of courage and faith is one that lives in the heart of all of us who share in this heritage. I hope and pray that we can continue to have these qualities as we face the problems of today.

SECRECY AND THE PRESIDENT

Mr. MOSS. Mr. President, some may object to the notion that history can provide an answer to the question over what is or should be the extent of executive privilege as it relates to congressional inquiry. They may assert that the complexity of the 20th century prevents the use of precedent from the early years of our Republic, or before, as guidelines to current problems. But such objections do not appear to be entirely valid. History has been an aid in formulating answers to perplexing problems. It is a base on which we can build. As one writer points out, "the language of the Constitution cannot be interpreted safely" without such reference.

For almost two centuries precedents have been established that give Congress broad investigatory powers. It has only been in the last two decades that the executive department has attempted to curtail this "preeminent" power of the Congress. The power that has been used by the Executive in his claim of executive privilege is a very dangerous maneuver. We must be aware that "arbitrary power and the rule of the Constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought in conflict."

Woodrow Wilson made a cogent statement on the danger of too much power in the hands of a few individuals. He said:

> Concentration of power is what always precedes the destruction of human initiative and therefore, of human energy.

Mr. President, a dangerous concentration of power is now held by the executive department. It is hoped that the Congress will use those prerogatives that are available in order that the possible destruction mentioned by Wilson can be averted. Perhaps the most important pre-

rogative is that of gathering information from every possible source. Without such a right, and this involves broad investigative powers, a possible destructive concentration of power can result in the executive department. This is especially evident due to the recent isolation of the President that has occurred. It is absolutely necessary that the branch of Government that is closest to the people, the Congress, must protect the interests of the people. And nothing can be more destructive of those interests than secrecy in high places.

Mr. President, in the Washington Post on July 24, 1973, a very thought-provoking article appeared by Prof. Raoul Berger, Harvard Law historian and an acknowledged authority on executive privilege and the right of Congress to receive information. The article is entitled "Secrecy and the Presidency." Because of the appropriate nature of this article to the present dilemma which we find in the United States regarding the relationship of the Executive and the Congress, I ask for 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:

SECRECY AND THE PRESIDENCY

(By Raul Berger)

In the midst of the Senate investigation of participation by the White House staff in alleged criminal activities—branded by former Attorney General John Mitchell as "White House honors"—President Nixon has barred access to "Presidential papers prepared or received by former members of my staff." This roster includes John D. Ehrlichman, H. R. Haldeman, John W. Dean III, Gordon C. Strachan and others who have been implicated by testimony in possible crimes. The Nixon order would bar the possible confirmation of such testimony by documentary evidence available in White House files. The order, Mr. Nixon advised the Senate, is not based "upon any desire to withhold information relevant to your inquiry." But that is precisely its effect.

The issue rises above a jurisdictional quarrel between Congress and the President—important though such differences can be—and it presents an issue in which every American has an immediate stake. Mr. Nixon would shroud White House activities behind the very curtain of secrecy which bred the "horrors" that have brought shame upon the President and the nation. It was the Johnson administration's addiction to secrecy that made possible the stealthy and calamitous escalation in Vietnam. Executive secrecy is at war with Madison's admonition that "the right of freely examining public characters and measures, and of free communication thereon, is the only effective guardian of every right." Suppression of information is a prelude to tyranny, a first step toward enslavement of the people.

The historical records fully confirm Henry Steele Commager's statement that:

"The generation that made the nation thought secrecy in government one of the instruments of old world tyranny and committed itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to."

Concealment thus bears a heavy burden. To defend his concealment, President Nixon relies first on the "separation of powers." He himself recognizes that it was designed to defend each branch "against encroachments by other branches," thus assuming that the President was given a constitutional power to withhold information from Congress, upon which Congress may not "encroach." But the "separation of powers" does not confer power; it only protects a power otherwise conferred. The existence of withholding power must therefore be proven, not assumed.

No such power is to be found in the Constitution. To this, presidential advocates retort that the congressional power of inquiry likewise is not mentioned in the constitutional text. There is, however, a profound difference: congressional inquiry rests on a judicially recognized historical base. Looking to English practice at the adoption of the Constitution, the Supreme Court found that Parliament had long exercised a power of inquiry; that it was "an essential auxiliary . . . of the legislative function," an "inherent . . . attribute" of the "legislative power," which the framers intended to include in the "legislative power" committed "to the two houses." Like the Court, therefore, we may look to the parliamentary practice to ascertain the *scope* of that "attribute."

In an extensive sampling of parliamentary records stretching from 1621 to 1742, I found first that the inquiry power ran across the board, into every conceivable aspect of executive conduct. Secondly, I found not one instance of an objection by any minister to the right of Parliament to inquire or to the scope of the inquiry. The great English historian Henry Hallam confirms that no "courtier," that is, minister, "ventured to deny this general right of inquiry." It is safe to conclude that no minister claimed or enjoyed any right to withhold information from Parliament.

A number of historical facts indicate that the founders adopted this practice. Before the convention, James Wilson, one of the leading architects of the Constitution regarded it as one of the glories of the House of Commons that the proudest ministers had appeared before it to account for their conduct. On four or five occasions the founders referred to the House as the "Grand Inquest of the Nation"—so the inquisitorial power was known—without the slightest intimation that they intended to curtail the power in any respect. From this and yet other historical data we may deduce that the "attribute" with which Congress was endowed by the framers was the untrammeled parliamentary power of inquiry. Let the executive branch come forward with contradictory evidence. Until then, we should be guided by the homely maxim: you can't beat somethin' with nutin'.

No presidential advocate has ever brought forward any pre-Constitution precedent for a claim or right to withhold information from the legislature. Nor can the President lay claim to the immunity of the king, for as James Iredell proudly boasted, the framers made the President "triable" and repudiated the principle that the king was immune. Such royal immunity was again rejected by Chief Justice Marshall on the trial on Aaron Burr, wherein he declared that President Jefferson could be required to furnish a letter written to him by General Wilkinson.

Presidential claims are rested on a number of post-1787 refusals by some Presidents of relatively innocuous information. A bare assertion of a right to withhold can no more create constitutional power than a President can lift himself by his bootstraps. Presidents cannot change the Constitution by repeated self-serving assertions. The "precedent" adduced by Mr. Nixon, for example, was a refusal by ex-President Truman in 1953 to testify before a congressional committee, a very recently brewed "precedent." In sum, the Senate request for White House files does not "encroach" on presidential prerogative because no such right to withhold was conferred by the Constitution on the President.

There is powerful confirmatory evidence that the "separation of powers" was not thought to limit congressional inquiry, to mention only the Act of 1789, which made it the duty of the Secretary of the Treasury to furnish to Congress all information appertaining to his office. Drafted by Alexander Hamilton, enacted by the First Congress, in which sat a goodly number of framers and ratifiers of the Constitution, and signed by President Washington, the presiding officer of the convention, the Act demonstrates that the "separation of powers" was considered no bar to the congressional requirement of information.

Second, Mr. Nixon relies on "the indispensable principle of confidentiality of presidential papers": "no President could function . . . (unless) his personal staff be able to communicate among themselves in complete candor." Not a trace of such a "principle" is to be found in our history until 1954, when President Eisenhower first announced it more broadly in belated recoil to the excesses of Sen. Joseph McCarthy. Before long, the "principle" spread to every level of government, and lesser functionaries were denying information to Congress lest it inhibit "candid interchange" among subordinates. In April, 1973, Attorney General Richard Kleindienst make the unprecedented claim that no one of the 2.5 million federal employees can talk to Congress without the President's permission. The "principle" has become the most frequently invoked ground of refusal of information by every branch of the government; it cuts far deeper than "confidentiality of presidential papers." Before we swallow such a crippling "principle" and permit the President to redesign the Constitution by pronunciamento, we should at least be sure that it is indeed "indispensable" to good government.

That government can flourish and prosper in the absence of such a principle is demonstrated by the fact that our federal government successfully functioned from 1789 until 1954 without the benefit of the "principle." When the "principle" was invoked by a ministry against a private litigant before the House of Lords in 1967, it was all but laughed out of court. A "principle" thus dismissed by a great court can not be assumed to be self-evident. Against the assumption that "confidentiality" is "indispensable" to the operation of the entire government must be weighed the undeniable need of Congress for information, the cost of concealing confirmatory evidence of a conspiracy to corrupt the political process, and the loss of confidence in the President which has shaken the nation. Concealment in these circumstances is too high a price to pay for the preservation of "confidentiality" in the White House.

Let President Nixon ponder the acknowledgment of the stiff-necked Andrew Jackson that:

"Cases may occur in the course of [Congress] proceedings in which it may be indispensable to the proper exercise of its power that it should inquire or decide upon the conduct of the President or other public officers, and in every case its constitutional right to do so is cheerfully conceded."

The nation can no more tolerate presidential withholding of documents when the executive branch is under congressional investigation than it can afford to let a bank president dictate to a bank examiner what books he may see. Unhappy are a people

whose suspected officials can lay down the terms of investigation, for then the investigation becomes a dead letter.

THE FUTURE FUNDING OF LIBRARIES IN THIS COUNTRY

Mr. DOMENICI. Mr. President, I would like to have printed in the RECORD my testimony which I presented today before the Senate Subcommittee on Health, Education, and Welfare appropriations with regard to the future funding of libraries in this country.

I am concerned that the present proposal for libraries to be funded through local revenue-sharing programs will simply not be adequate when considering the vital function the libraries have in our society. It was for this reason that I requested the subcommittee to allow for the continued funding of libraries at at least last year's level until such time that it is clear that revenue-sharing programs are working and that the Nation's libraries will not suffer.

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

STATEMENT OF SENATOR DOMENICI

Mr. Chairman and Members of the Subcommittee: I wish to express my appreciation for this opportunity to comment on the proposed appropriations for the Departments of Labor and Health, Education and Welfare for fiscal year 1974. As you know, the Administration has requested no funding for the major library programs this fiscal year, basing this decision primarily on the belief that general revenue sharing and special education revenue sharing would provide sufficient funds to the States for use in many social programs.

Testimony during hearings on the appropriations for both fiscal years 1973 and 1974 for Office of Education programs have indicated that a significant need currently exists in the library and information science area. Public libraries, although serving a great proportion of the public, still have not been able to reach approximately 12%, or 20 million Americans. Many people living in rural areas, people with physical handicaps, economically disadvantaged, institutionalized, and the elderly are just beginning to receive some of the benefits of the Federally-sponsored Library Services program enacted in 1956.

In my own State of New Mexico, for example, the Library Services and Construction Act has been responsible for bookmobile service for 370,000 rural citizens. There are 752,000 books circulating at 250 monthly community stops. This is the only service for 19 Indian groups in the State and hundreds of rural low-income areas.

In addition, a free hotline service, handling 12,600 inquires annually, connects public, special, and academic libraries throughout the State with funds from the Library Services and Construction Act. Further services facing curtailment or elimination formerly supported by this Act are talking books and tapes for the blind and physically handicapped citizens, workshops for librarians, the Nemisys magazine information service, and matching funds to build public library buildings throughout the State.

Reports on the success of the Library Services and Construction Act have been overwhelmingly favorable—States have matched the Federal dollar at a ratio of 3 to 1, and small libraries have been able to set up programs to reach people who have not usually had access to a public library before.

It is true that public libraries would be eligible for assistance under the general revenue sharing program, however, State librarians, public library administrators, and other professionals in the field have stated that it is doubtful that they will be able to compete successfully for funds with such other needed social services as police and firemen. Mr. Stevens of the National Commission on Libraries and Information Science has stated that public libraries have applied for about $8 million in revenue-sharing funds and a little more than $4 million has been granted. It is possible that given more time and additional funds, public libraries might thrive under revenue sharing. However, as the current fiscal year is already underway, the termination of these programs at this time is going to seriously affect the quality and the distribution of their services.

I have been contacted by many librarians in the State of New Mexico. They have voiced their concern over the future of the library service system in our State. For example, Mr. Paul A. Agriesti, City Librarian of Farmington, New Mexico said in a letter dated earlier this spring, "to my knowledge, there has been no indication that the State of New Mexico will use any of the State revenue sharing funds to pick up library programs now supported by the Library Services and Construction Act . . ." Furthermore, Mr. Agriesti states that some of the city's borrowers come as far as 100 miles away through the bookmobile service. In addition, Farmington is one of the chief users of the State Library's Santa Fe based interlibrary loan operation. The library staff has been able to participate in the workshops and institutions sponsored by the State Library. These programs will probably be curtailed without further Federal assistance.

Mrs. Elizabeth C. Cooper, Library Director of the Mesa Public Library in Los Alamos, New Mexico stated that, "I do hope you'll keep in mind that revenue sharing funds can be of great help to cities, especially the large municipalities—but will be of small benefit, if any, to rural areas and small communities."

Mrs. Betty G. Lloyd, Librarian with the Arthur Johnson Memorial Library in Raton, New Mexico, points out that their free watts line service will be curtailed should funds be cut. Talking machine and book services for the blind are other services offered by this rural library, but the equipment is borrowed from the State Library and are threatened by Federal budget cuts.

School and college libraries are also scheduled for termination in the Administration's fiscal 1974 budget request. Many schools, according to surveys conducted by the American Library Association, have substandard libraries, or no libraries at all for the use of students and teachers. Twenty-two percent of the elementary schools in the State of New Mexico are completely without school libraries. In Alaska, 60% are without school libraries; in Montana, 75%, and in Ohio 80%. Certainly the need for additional assistance to these schools, and to secondary schools as well, is evident.

Colleges have found the money they receive under Title II of the Higher Education Act to be very valuable—funds have supported the acquisition of library materials, training of students in librarianship, and research and demonstration projects in library and information science. With many institutions of higher education facing severe financial difficulties, it is doubtful that they can continue to support adequate library systems and carry on the necessary training programs without additional Federal aid. Indeed, Mr. Fred H. Wilding-White, Librarian with the New Mexico State University at Grants, New Mexico wrote me indicating that the University library will need continued Federal assistance to buy and maintain audio-visual equipment.

In recent years library expenses have risen sharply for several reasons. Expanding populations mean more library users and thus greater demands for books and services and room in which to use them. Keeping up-to-date means new kinds of services—films, videotapes, microfilm and copying machines, special programs for the poor, the elderly and the blind. Because of inflation, costs for these materials and books and staff salaries have mushroomed (for example, books have gone up about 32% and magazines 48% since 1966).

In view of the above facts, the House Committee on Appropriations has recommended continued funding of library resources programs at least at the 1972 appropriation level. A total of $176,209,000 is suggested for funding library programs in fiscal 1974, an increase of $38,479,000 over the current operating level. These funds would be needed just to keep pace with rising inflation rates and are not intended to enable public and school libraries to develop new and innovative programs, expand services into new areas to reach the unserved population, or to enable colleges and universities to increase their collections or train more library personnel. But even the subsistence functions which can be carried on with the amount recommended by the House Committee and passed by the House require our support and encouragement. Without some form of Federal encouragement, it is possible that the public libraries, which have done so remarkably well in attracting State matching funds would no longer receive such assistance, and college and school libraries would be folded into other educational expenditures, perhaps to be passed over in efforts to solve the other demanding problems facing schools and students today. The librarians in the State of New Mexico are concerned. I am concerned.

There are still human needs that public libraries are not meeting; there are still not enough books, not enough audio-visual materials, not enough dedicated librarians, not enough skill or money to have achieved the goals we hoped to reach. For one thing, the goals themselves persist in moving ahead of us even as we begin to catch up. There are more people to serve, more kinds of services demanded, and as I have stated before, more inflation to reduce our funds.

People tend to take librarians for granted, but the current trend could have serious effects on the education of children and adults alike in our country. A library is a keystone in every community. They are the fulfillment of Abe Lincoln's passion for books and learning which led him to walk miles to borrow them and study long hours before the dim fire.

Libraries reflect freedom of opportunity to learn, to engage the best thinkers of the past. They are quiet places in a neighborhood where we can seek out higher ideas than the tawdry or mundane.

Libraries are an important—even vital—aspect of our education, informational society and we *must* perserve them in all communities.

Mr. DOMENICI. At this time I would also like to have enclosed in the RECORD the total contents of a letter written my office by Mr. Alan B. Clark, director of the Albuquerque Public Library. Mr. Clark brings up many valid points I would like to bring to the attention of my colleagues.

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

JUNE 14, 1973.

Senator PETE DOMENICI,
U.S. Senate,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR DOMENICI: I wish to express my appreciation for your efforts on behalf of continued federal funding for libraries. The situation in New Mexico and in Albuquerque in regard to cuts in Federal aid to libraries is very serious.

The problems are several fold. In rural areas and small towns in New Mexico a zero federal budget for library aid will mean almost total elimination of library services to most residents.

The New Mexico State Library is the only link to library service for over 300,000 New Mexicans who live in communities too small to support organized libraries.

The State Library operates bookmobiles over large thinly populated regions of the state. The total elimination of federal aid will cut more than sixty per cent of the current funding for this operation. The remaining state and county contributions will not be enough to put bookmobiles on the road.

For the rural residents of this state, these cuts will mean an abrupt and in many cases total cessation of access to library services.

The larger population centers in New Mexico will not be as dramatically hit by a federal budget cut, but the effects will be wide ranging and serious.

For nearly twenty years public librarians in New Mexico have been struggling to organize an effective state-wide library system. A coordinated library services system would open up the resources of all the libraries in the state to all New Mexicans. In a state that is hungry for books and information a cooperative library system is vital.

In the last decade solid achievements have been made in this direction. A small amount of federal funding has made it possible to establish a workable inter-library loan system. This loan arrangement makes the transfer of books from community to community feasible and economical.

Federal aid has sponsored cooperative training programs to upgrade skills of local library staff. With federal grants special innovative projects to extend the services of libraries to the economically and culturally disadvantaged have been developed. These activities are sponsored by, coordinated by and modestly funded by the New Mexico State Library. A total cutoff of federal funds to the State Library will make these and other projects close to impossible. More than ten years of patient, careful work toward an efficient state-wide library cooperative system will be irreparably damaged.

For residents of Albuquerque a cut in federal aid will mean:

A serious reduction in the availability of books and journals now borrowed from other libraries, and the elimination of special training projects for the staff.

Sixty staff members of Albuquerque Library have been involved over the last two years in continuing education programs sponsored by the State Library. There are no local funds to support these programs and no library training programs available in Universities in New Mexico.

The reduction of our effort to provide outreach services to the economically disadvantaged. The State library has used special grants (in very modest amounts) to stimulate special projects. In one area of metropolitan Albuquerque (West Mesa, South Valley) our surveys indicated that over seventy per cent of early grade school children read below grade level. A child who reads significantly below grade level is almost doomed to educational underachievement. Drop-out rates in Junior High can be directly linked to early grades reading difficulties.

The public library in cooperation with local schools and the State Board of Education has operated for two years a preschool awareness program. Over 500 four and five year olds have gone through the program with substantial success. This project began with a $1,700 grant based on federal funds from the New Mexico State Library. Without this kind of modest help most innovative projects in New Mexico libraries can not begin.

Local libraries count heavily on the New Mexico State Library for counselling and assistance and technical expertise in operating with library boards and local government. With more than half its staff laid off the State library will not be able to consult and coordinate local library efforts.

As New Mexico's representative to the American Library Association National Council, I have met with librarians from all over the United States. In our formal and informal discussions the dimension of the problem that will arise through cuts in federal aid to libraries has become clear. The impact on the nation's rural populations will be close to total. In the South, the West, and the Southwest where libraries have been badly underfinanced for decades, millions of Americans will find that the little library service that was available to them is gone. In the nation's cities, in ghettos and barrios, outreach programs that have just begun to touch the disadvantaged will be abruptly cut off.

Cooperative library ventures that magnify the possibilities of sharing resources will be damaged nation-wide.

I do not personally believe that large scale federal aid to libraries is permanently needed or desirable. I would prefer to see local and state funding used for most library programs. I have been a member of the City of Albuquerque's Revenue Sharing Task Force for the last year. This group of city department heads reported to the City Commission on a plan for the spending of revenue sharing. With the best will in the world no funds for expanded library operation could be found in the thirty million dollar plan for the use of revenue sharing. As one of the six department heads who spent months analyzing budget and income I would not recommend additional library expenditure when faced with massive problems and difficulties in public safety, health and transportation. This experience is mirrored in libraries nationwide. Revenue sharing money will not be available to libraries in any significant amount.

Underfinanced nationally, without real hope of meaningful revenue sharing funds and abandoned by federal aid, public, school and university libraries in the United States face a bleak prospect.

I urge continued federal aid to libraries. I will work to enhance efforts to establish a firm local revenue base for libraries in New Mexico. It is my hope that local contributions and well developed economies can point us toward independence of long range federal funding. It will realistically take years to establish a sound financial backing for libraries in New Mexico. In that interim federal aid is vital.

Once again my sincere appreciation for your concern and efforts on behalf of library services. I am ready to provide any information or assistance I can at any time.

Sincerely,

ALAN B. CLARK,
Director.

PROPOSED ADJUSTMENT OF COMPENSATION OF FEDERAL JUDGES, OFFICIALS OF THE EXECUTIVE BRANCH, AND MEMBERS OF CONGRESS

Mr. McGEE. Mr. President, the distinguished Member from Alabama, Senator ALLEN, has served notice on the Senate that he proposes to introduce an amendment to the campaign spending bill to require an act of Congress to adjust the compensation of Federal judges, officials of the executive branch, and Members of Congress. This amendment, if enacted, would effectively torpedo the existing procedure by which these salaries are set. It would have the effect of nullifying a central portion of S. 1989, a bill to improve certain aspects of the existing procedure requiring joint Presidential-congressional action—a bill the Senate passed by voice vote July 9.

Senator ALLEN's amendment deserves vigorous opposition when he introduces it later this week. I shall have more to say at that time. Meanwhile, I believe it would be helpful to Members who may be considering this question to review here today the nonpartisan machinery which has been carefully established to implement these salary considerations and to detail how S. 1989, which Senator ALLEN's amendment would circumvent, improves that machinery.

Under current law, the salaries of the Federal judiciary, certain officials of the executive branch and Members of Congress are based upon recommendations made to the President by a Commission on Executive, Legislative, and Judicial Salaries. The Commission serves for one fiscal year and reports its pay recommendations to the President prior to January 1. The President considers the recommendation of the Commission, adopts it or modifies it if he sees fit and includes in his next budget message his recommendations on the rates of which he believes equitable and advisable for the officials concerned.

The salary commission's recommendations were sent to the President on June 30 of this year. Under current law, he would transmit his recommendations to Congress with his January 1974 budget and the pay adjustments would become effective shortly thereafter. On the other hand, S. 1989, which the Senate approved less than 3 weeks ago, provides that the President would send his recommendations to the Congress by August 31. After 30 days of continuous session, if the Congress did not reject his proposal, it would become effective in October or November, depending upon the pay periods of the officials involved. The October effective date of the pay adjustments involved conforms reasonably closely to the October 1 effective date set by law for General Schedule pay adjustments based upon Bureau of Labor Statistics comparability figures. The procedure under S. 1989 means that the salary adjustment mechanism would take place in odd numbered, nonelection years.

Mr. President, I think it will be helpful to take a look at the salaries of the three groups of officials with whom existing pay procedures are concerned. They are the executive branch, the Federal judiciary and Members of Congress.

First, let us consider the executive branch officials. They, along with all the others involved, received their last pay adjustment in March of 1969. The pay of a level V official of the Executive Schedule was established that year at an an-

nual rate of $36,000. At that time, a grade GS–18 employee, the immediate subordinate of a Presidentially appointed level V official, was paid $30,239 a year, a reasonable 20 percent lower salary than that of his boss. Pay adjustments for a GS–18 employee are made annually in accordance with the comparability principle established as public policy in 1962.

These pay adjustments provided that Federal statutory pay raises shall be comparable with those of private enterprise for the same levels of work. If the comparability principle were followed and the GS–18 employee had received since 1969 the four statutory pay increases provided by law, he would today be making $41,734 a year—some $6,000 a year more than the pay of his level V boss, which is keyed to the recommendations of the quadrennial commission. No GS–18 has been paid that amount. The pay raises for GS–18, GS–17 and four steps of GS–16 have been limited by law to $36,000, a ceiling imposed so that their pay scales would not obtrude into those of the Executive Schedule.

Mr. Arch Patton, the Chairman of the Commission on Executive, Legislative, and Judicial Salaries before the Commission was dissolved on June 30, testified before the Post Office and Civil Service Committee that the ceiling imposed by the quadrennial commission procedure placed all GS–18's, 17's and more than one-half of the GS–16's in a "very difficult demotivational position." "We have been told," he said, "that many a subordinate is receiving the same income as not only his boss but also his boss' boss." He said he knows of four levels of executives reporting one to another who are all receiving the same income. This is the compression which pay adjustments would eliminate. If a GS–18 employee, in accordance with comparability, is now worth $41,734 a year, then the Salary Commission will, it seems reasonable, find that the officials in the Executive Schedule should be commensurately compensated, and the sooner the better.

The committee carefully considered the cycle in which these salaries should be reviewed by the President and the Congress. A review every 4 years is obviously too infrequent. There have been four statutory pay increases since 1969 amounting to a 24.6 percent total increase. Increases of this order for the executive, legislative and judicial branch officials, when they are recommended every 4 years, invoke criticism on the part of those who do not realize that these pay adjustments are considered quadrennially. Mr. Patton, who is also a director of McKinsey & Co. Inc., testified that a 2-year cycle would ease the compression problem substantially. He said that in most American businesses, senior management does not receive annual pay increases, that their increases are more likely to come every 18 months or 2 years. With the statutory pay adjustment on an annual basis, I feel that consideration every other year for the officials involved here is equitable. Such pay adjustments will not be in any sense automatic, but will be subject to rejection by the Congress at its own judgment.

Mr. Patton testified with regard to "demotivational" aspects of the compression at the top of the General Schedule. The committee has been advised by the Civil Service Commission that the static pay condition at the top of the General Schedule tends to make the Government noncompetitive in its recruitment efforts. In these days of inflation, executives are interested not only in what their salaries will be when they enter on duty but what the future holds for them in the way of compensation. When a candidate for a position at the top of the General Schedule is advised that he must wait 4 years before an increase in pay for him can be considered, he tends to seek employment elsewhere.

Similarly, top managers are retiring from the Federal Government at the earliest possible time. With their salaries frozen for 4 years, they see how difficult it is to increase the high 3-year annual salary upon which the retirement annuity is based. If a GS–18 employee knows that his high 3 is unlikely to increase during the next 4 years and that, therefore, he cannot increase his retirement annuity by continuing to work, he is likely to retire as soon as he is eligible and seek a position in private enterprise which can utilize his readily marketable skills.

In 1969 the salaries of Members of Congress were established by law at $42,500 a year, having been increased from $30,000. Establishment of the $42,500 salary marked the sixth increase which Members of Congress have received since 1874. When you consider that statutory employees of the Federal Government have received four increases in the past 4 years, the pay increases for Members of Congress over the last century do not appear to have been too frequent. Some Members of Congress regularly oppose congressional pay adjustments. I do not share this position. It is my belief that the Salary Commission has probably recommended an increase for Members of Congress based upon the inescapable fact that the cost of living has gone up at least 5 percent a year since 1969 when our salaries were last adjusted. I think Members of Congress deserve an increase comparable to those other Federal officials have been receiving.

The comparability principle is not applied by law to the compensation of Members and it should not be, for there is no position in the private sector comparable to that of a Member. Nevertheless, since other Federal employees, to whose compensation the comparability principle does apply, have received a 24.6 percent increase during the last 4 years, then I think it is the better part of equity to provide by law that the pay of Members of Congress be considered at least every other year rather than quadrennially. It totally defeats the purpose of current provisions of law to require an affirmative act of Congress to make any increase effective.

Mr. Rowland Kirks, Director of the Administrative Office of the U.S. Courts, speaking in behalf of the Judicial Conference of the United States, the policy-making body of the Federal judicial system, stated that the compression problem exists in the Federal judiciary no less than it does in the executive branch. He said that the top classified employees in the judicial system are frozen in their present salaries, which are fixed as a percent of the salary of a district judge. For example, he said, referees in bankruptcy, U.S. magistrates, clerks of court, and probation officers who have received the top of their grades can no longer receive increases in salary as long as the district judge's salary remains static. He stated that new law school graduates this year are being employed at a starting salary of $20,000 a year by law firms, and he added—

> Now, when you talk about paying someone who steps out of law school into the legal profession one-half of what a Federal judge makes, you can see the tremendous compression that is taking place within the judicial system as a result of the static situation that prevails at the top.

Mr. President, the committee, in considering these problems was fully cognizant of the criticism that any bill dealing with congressional pay increases may engender in these days of inflation. I personally do not believe that the pay increases involved here are inflationary. There have been six congressional salary increases in the last 100 years. During that period, the United States has gone through eras of inflation and deflation, increased economic productivity and decreased productivity. There is no sign that congressional compensation has had any effect whatever upon the fluctuating economic fortunes of this country. Current law provides that the President may postpone to a date selected by him any pay adjustments he may recommend. The committee members meeting in executive session agreed that any pay adjustments recommended by the President should be subject to any freeze or other applicable economic restraint which the President may see fit to impose on the Nation's economy in his efforts to control inflation.

Mr. President, I hope the Senate will allow present, carefully conceived procedures for arriving at judicial, executive, and legislative compensation to function as planned and that Senators will reject Senator ALLEN's amendment when it is considered.

SENATOR MONTOYA'S STATEMENT TO THE OKE OWEENGE CRAFTS COOPERATIVE

Mr. JACKSON. Mr. President, on Saturday, July 21, 1973, the Oke Oweenge Crafts Cooperative celebrated the opening of its new building at San Juan Pueblo in New Mexico.

The building was built with an Economic Development Administration grant to the Tribal Council of the Pueblo of San Juan. The council will lease the center to the Oke Oweenge Crafts Cooperative, a nonprofit organization. It includes training facilities and display area

for crafts and work of the cooperative. The center will create 15 new jobs and provide an outlet for the work of an additional 50 persons. Senator MONTOYA dedicated the building in 1970 when construction began, and had hoped to be present for the opening celebration on Saturday. Unfortunately his duties here kept him in Washington. State Senator Alex Martinez of New Mexico, who is deeply concerned also with the future of the Indian peoples, read Senator MONTOYA's statement for him at the ceremony.

Because this statement discusses the new self-image which is creating important changes for Indians in all parts of the country, I ask that Senator MONTOYA's message to the San Juan Pueblo be printed in the RECORD.

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

A STATEMENT BY SENATOR JOSEPH M. MONTOYA TO THE OKE OWEENGE CRAFTS COOPERATIVE, JULY 21, 1973

I am sorry to be unable to be with you myself today as you celebrate this festival and the completion of the Oke Oweenge Crafts Building. I know that you will understand that only the pressure of my duties in Washington keeps me away.

I wanted to talk to you today about the ending of some old ideas and the beginnings of some new ones, and about the necessity for keeping the old as a part of the new.

First, however, let me take a moment to mention the tragic fire which destroyed the ancient Mercantile Center in San Juan Pueblo two weeks ago. Nothing I can do or the government can do, of course, will replace the treasure of history and art which were lost in that blaze.

There is an ancient story which came to my mind when I thought of your new building, opened so soon after the destruction of that old building here in San Juan. I was reminded of the Phoenix, a beautiful and sacred bird of Egypt. The Egyptians believed that every five hundred years the Phoenix, a great bird dedicated to the Sun God, flew into a fire and was burned. Then, from the ashes, a new Phoenix was born—a new life from dust.

This story of renewal of hope and beauty after destruction by fire has been an inspiration to men and women for thousands of years. I think for the people of San Juan Pueblo this building opening today can be a symbol of that same kind of inspiration.

It will not replace the old, but it is a symbol of the birth of something exciting and full of new life. It is a symbol to the people of San Juan, and to Indian peoples everywhere, of achievement. It is typical of a new concept which is growing everywhere in the United States of Indian self-development and Indian participation in planning and direction of their own lives. It is one small demonstration of the new idea that American society is at last ready to understand and appreciate the richness of a many-cultured nation in which we can all share.

Here in this new building Indian craftsmen and craftswomen will learn to make the ancient artifacts of your people and to work with modern tools. Here the old and the new will join to create a growing spirit of Indian strength and Indian culture. Here you will control your own economic future and you will do it in your own way, combining your ancient culture with the world of 1973.

Your Corporation is part of what is happening everywhere in Indian communities. Nearly four hundred years after the Spaniards first came here to find your ancestors waiting—a Tewa people so courteous that the visitors called this place "San Juan de los Caballeros"—a new birth of Indian pride is taking place. At last we are going to begin to undo the centuries of injustice and frustration and despair which have kept the Indian peoples in poverty and without hope.

Like you here in San Juan Pueblo, Indians everywhere are renewing their sense of history and creativity. They are now demanding a future which will be determined by Indian acts and Indian decisions.

Certainly it is time that should happen.

Three years ago when I dedicated this building, I spoke to you about some of the serious problems which faced the Indian people: unemployment, poverty, a false image in the nation, educational deprivation, and the disgrace of American Indian soldiers who served their nation in war only to return to a country which refused them equality of opportunity in peace.

Those statistics have not changed in these three years—at least not for the better. Unemployment rates are still as high as sixty or seventy percent in some Pueblos and reservations. Many Indians who work are in jobs which do not pay enough and do not use their talent and skills fully.

Health statistics for Indian citizens are still the worst in the nation: an infant death rate of thirty per thousand while for other Americans it is only twenty-two. Indians still receive the worst health care, have the fewest doctors, the least out-patient clinics, the most tragic disease statistics, the lowest life-expectancy. These are figures which mean unmet needs and injustice in the distribution of tax money.

All of this nation needs better health care, and a better distribution of health care, but surely the greatest need can be demonstrated for the Indian peoples. To be poor and to be sick is always wrong. To be poor and to be sick in the wealthiest country in the world is an indictment of the system which allows it to happen.

Education is another area of great need. There are more than twenty thousand Indian students in New Mexico schools, but only a little more than one hundred teachers who are Indian. We have not yet begun to properly fund the bilingual and bicultural classes which are needed to prevent the cultural assault which causes dropout rates to rise and frustration to be the normal end of school for so many minority children.

Nationwide almost all Indian children below the age of thirteen are in school—but the median number of school years for Indian children on reservations is only six, and only seventeen percent graduate from high school. That is the result of schools which have not properly met the needs of these children.

The economic statistics are only one more place to find shocking indications of neglect and injustice which have been part of the old system. More than forty percent of Indian families still live below the national poverty level—compared with only thirteen percent of the rest of the nation.

Recently a regional Director of the Civil Rights Commission—Joe Muskrat, an Indian—said that the majority population has always said "Assimilate or starve!" to the Indian people. That has been true for five hundred years on this continent. What it has resulted in is tragedy and inequality—a shame which we cannot hide from the world.

But today everywhere Indians are speaking out and demanding another concept. They are asking for the right to keep their own culture and their own heritage at the same time that they participate fully in the life of the whole country. They know that the image of America will be enhanced by the excitement and stimulation of many cultures complementing one another in respect and appreciation.

That is the new Phoenix rising out of the old ashes. That new independence and pride will create the answers to problems which have never been solved by the majority demanding complete assimilation. But as you move forward in the process of owning your own businesses, running your own schools, developing your own history and art, governing your own villages and towns, and participating in the state and federal government process, you will be a part of that great and growing new development in this nation.

In 1970 President Nixon promised many things in his message to the Indian people. He talked about this new kind of full participation in the decision making. He promised federal help for schools, health, loans, long term leasing, and an Indian Trust Council authority.

However, like many other plans of this Administration, all those ideas soon became "inoperative" and something happened between the saying and the doing. None of the Administration proposed programs ever came to pass. Instead Mr. Nixon vetoed health and education bills and sent budgets to Congress which asked for cuts in funding for most of the programs which helped Indians and other Americans in need.

However, Congress and the Courts have managed to keep most of these programs alive, and in some places we have achieved new legislation to increase the help the federal government can offer.

The new Economic Development Act which I submitted to Congress as Chairman of the Economic Development Subcommittee on Public Works—and which recently passed the Senate—contains provisions for up to one hundred percent financing for Indian projects, and extends current EDA programs which support projects like your Craft Building.

There are other pieces of new legislation which will provide the help you need and about which you should know. I have recently submitted a Highway Safety Act which includes $75 million for access roads and bridges on Indian reservation to improve transportation to and from Indian communities.

Senator Jackson's Indian Education Act of 1973 is another important piece of legislation. It will provide drastic changes in control and in a move toward complete autonomy for Indians in their own schools and educational development programs.

All of these new ideas will require your help and your support. They are aimed at maximum participation by you in the decision making and in the creation of new programs. Tribal members must continue to take over the rules of manager and decision-maker. They must be able to assess their own resources, get the technical training they need, develop industrial and educational programs in the way they want them to operate, and demand a fair return for their labor and their land holdings.

Government help should not be minimized, but the key factor in this new legislation is the imagination and effort by the Indian peoples themselves. Creating new sources of employment while preserving valued tribal traditions, taking the initiative to plan, as you planned here, will do now what has never been done before.

That is what I meant when I said that your beautiful new building was a symbol of something much bigger and more important and something new. Because you did all of these things. You waited ten years.

It is hard to realize that this building grew out of a beginning step taken in a small classroom in the Day School here in San Juan.

That beginning step—into the school room to learn and relearn the crafts of your people and the new techniques of craft work today—that first step was the important step.

The second step was the organization of

the Oke Oweenge Crafts Cooperative itself, and the realization that working together would make it possible for your talent to grow and prosper, bringing both education and employment to your Pueblo.

Then the long and difficult years of working with government so that you could take the third step: building this place, a home for your work and a hope for the future. You continued to work in cramped space and with little hope while you waited. There must have been many days when you shook your heads in despair. A less highly motivated people would surely have faltered and given up.

But you never gave up and you never stopped taking those forward steps.

Today the waiting is over. I share your joy in this building and in your great achievement. You have done what many thought was an impossible thing. You have found a way to share your heritage and your culture with the rest of the world and to do it profitably.

You, here in San Juan Pueblo, are an inspiring example of the rebirth of Tewa art and crafts. You have provided new hope for your children and the future of your people.

I can only offer you my deepest congratulations.

WAR POWERS BILL—MEMORANDUM OF 25 QUESTIONS AND THE AUTHOR'S ANSWERS

Mr. GOLDWATER. Mr. President, on last Wednesday, July 18, during opening debate on S. 440, the war powers bill, I inserted a 19-page memorandum of law and facts raising previously unanswered questions about the bill. At that time, I also extended an invitation to the authors of S. 440 to reply to these points.

Mr. President, I am happy that the Senator from New York (Mr. JAVITS), the principal author of S. 440, did take the time to prepare a response to each of these 25 questions, which he offered for the RECORD on Friday, July 20. I thank the Senator for his courtesy and, more importantly, for the opportunity to directly engage the competing viewpoints on this legislation.

Mr. President, in view of the major importance of the comments by the primary author of S. 440 relative to these many aspects of his bill, I believe it would be helpful for anyone studying not only this particular legislation but the legal and constitutional issues involved to read the questions and my supporting reasoning side-by-side with the rebuttals which the authors would make. Who might have made the better of arguments in this debate is something I will leave for others to determine from these and other materials which my friend from New York and I have offered throughout the proceedings, both last year and this year on war powers legislation. The interpretation and description of the bill by its primary author is always of great significance to the eventual interpretation of the measure should it subsequently become law and because of the vast importance of this subject, and even though I doubt very much that this bill will become law, I ask unanimous consent that a verbatim composite of my memorandum and the replies by the Senator from New York be printed in the RECORD.

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

MEMORANDUM OF 25 QUESTIONS ON THE WAR POWERS BILL (S. 440) AND THE AUTHOR'S ANSWERS

1. "Shows of force" and other mere deployments of troops or arms are prohibited.

A. Goldwater Memorandum: No matter how much the sponsors of the bill now deny it, the specific text of S. 440 would bar a show of force in crisis areas. The sending of reinforcements to Berlin, for example, such as occurred in 1961, would be barred because it involves a definite risk of involvement in hostilities.

The sweeping prohibition of section 3 restricts the introduction of troops into situations whenever imminent involvement in hostilities is clearly indicated unless the nation or our armed forces are already under attack or the "direct and imminent threat" of attack. In addition, it is the express purpose and policy of the bill, as stated in section 2, to keep United States forces away from hot spots where a hostility might ensue unless Congress has given its approval to the introduction of American forces.

This logically would prohibit both "shows of force" and reinforcements. If American forces are not under threat in their present position so long as they keep away from a trouble spot, the bill prohibits them from being moved into the crisis area because of the danger of it leading to hostilities. This provision would prevent the U.S. Sixth Fleet from being redeployed in the Mediterranean during moments of crisis, such as in the six-day Middle East War of 1967 when President Johnson moved the Sixth Fleet into the danger area in order to forestall Russian pressure against Israel. At that time, the United States itself was not directly threatened with attack by any of the adversaries, nor was there any imminent threat to American forces. There was, however, an open threat made by Russia against Israel, if it did not cease its fighting immediately. President Johnson's prompt response would be illegal under S. 440 because no threat had been made against our own forces or country.

The primary author of the bill, Senator Javits, agreed that it is a purpose of the bill to apply to deployments during a colloquy with Arthur Goldberg at the October 6, 1971 hearing on war powers legislation. The exchange reads:

"Mr. GOLDBERG. Widespread deployments of troops without explicit Congressional authority raises to me Constitutional questions because of the danger of it leading to war, and that is covered by the resolution Senator Javits has been working out with Senator Eagleton.

"Senator JAVITS. Right.

"Mr. GOLDBERG. Deployment is a great problem and I believe Congress is the body to authorize substantial deployment of troops. I don't believe that that power is vested in the President by his role as Commander in Chief."

Senator Spong, an original coauthor of legislation identical to S. 440, also argued that this legislative effort to provide Congress with a stronger role in foreign policy "would require that Congress have a voice in the deployment of troops." Senator Spong explained, "The probability of war is closely related to the deployment of troops. The deployment of troops often increases the chances for conventional war and conventional war increases the prospect for nuclear reliance."

The sponsors of the bill cannot have it all ways. They must either retract these earlier statements and alter the stated purpose of the bill, with conforming changes to the text of the legislation, or admit that the bill does indeed cover mere "shows of force" and other types of deployments of the armed forces.

B. Senator Javits' comment: It was made absolutely clear during the debate last year and again is made clear in the committee report this year that show-of-force deployments—for example, the movement of the 6th Fleet into the eastern Mediterranean during the 1970 Jordanian crisis—are not restricted by the bill unless and until they involve the Armed Forces in hostilities or in situations where imminent involvement in hostilities is clearly indicated by the circumstances. Should these latter conditions pertain, then, of course, "show of force" would be covered by the bill as that is the entire intention of the bill, which relates to involvement in hostilities.

2. U.S. forces cannot be used in defense against any threat which poses a future, rather than immediate, danger to the Nation.

A. Goldwater memorandum: Section 3 of S. 440 requires that before the President takes any defensive action there must be an actual armed attack on the United States or our armed forces or "the direct and imminent threat" of such an attack. Professor Alexander Bickel, who is credited by the Foreign Relations Committee in its report as offering the definitive testimony relating to the construction of the "direct and imminent threat" clause, defined the provision as applying only to situations where an attack on the United States might occur immediately, that is, today or tomorrow.

Professor Bickel said, by way of explanation, "So somebody drops an atomic bomb on Paris or somebody marches into Paris, it is, I think, Constitutionally open to the President, and I take it Senator Javits agrees it is open under his bill, for him to say, 'I know what that means; that means that tomorrow morning they are coming at us. I am going to react to that threat,' the way after all President Kennedy reacted to what was only a threat implicit in the Cuban situation."

Senator Spong, the Floor manager of the War Powers Bill in 1971, also indicated how restrictive the "direct and imminent threat" clause is to be read. In an exchange with Mr. William D. Rogers at the July 27, 1971 hearings, Senator Spong drew a definite distinction between the terms "imminent" and "future."

After Mr. Rogers recommended that the bill allow the President to forestall an imminent attack, as well as an actual attack, Senator Spong asked, "But you are distinguishing imminent attack from future attack?" Mr. Rogers replied, "Yes." Senator Spong added, "Now, you know the word 'future' is used in the Stennis and Bentsen legislation." Mr. Rogers interjected, "Future nuclear, I think." Senator Spong responded, "Future attack. He can act to repel what he believes to be future. I think there is a distinction here. Imminent, I look at as something much more likely to occur."

Thus, an original coauthor and the Floor Manager of the War Powers Bill explained that his interpretation of "imminent" attack excluded the idea of a "future" attack. Again, the present sponsors of S. 440 have not retracted these earlier descriptions; nor has any qualifying definition of "direct and imminent threat" been added to the bill.

The significance of the limitation is that under section 3 the United States could not respond to an attack against a foreign nation, such as Turkey or Israel, where the attack is not accompanied by an immediate attack on our nation or troops, even though the attack would set in motion a chain of events certain to endanger the United States in the future.

B. Senator Javits' comment:

2. "U.S. Forces cannot be used in defense against any threat which poses a future, rather than immediate, danger to the United States, even if the ultimate safety of the Nation is clearly at stake."

Comment: In fact, under section 3(4) of the bill, the President has ample opportunity to obtain from the Congress specific statutory authority to deal with any legiti-

mate future threat to the security of the United States. However, in the absence of any emergency, which is the situation hypothesized by Senator GOLDWATER, the bill rightly does, of course, require prior congressional authorization pursuant to the Constitution of the United States. In this context, the admonition articulated in 1848 by Abraham Lincoln is, most pertinent and articulate:

"Allow the President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion, and you will allow him to do so, whenever he may choose to say he deems it necessary for such purpose—and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect . . . If, today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him? You may say to him, I see no probability of the British invading us but he will say to you be silent; I see it, if you don't."

C. Additional Note: The perspective of time and the Office brought about a change in Lincoln's conception of the Presidency. In a later statement, the then President Abraham Lincoln asserted:

"I felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the Nation."

3. The bill endangers the entire structure of American Mutual Security Agreements.

A. Goldwater memorandum: Section 3(4) of the bill expressly mandates that statutory authorization for military initiatives by the President shall not be inferred from any existing treaty, nor from any treaty hereafter ratified unles such treaty is implemented by legislation specifically permitting the introduction of military forces in hostilities. Thereby, the bill places all of our treaty obligations in a state of permanent doubt. No ally can know if the United States has the will to stand by it in time of mutual danger or not.

Professor Richard B. Morris, who testified in support of war powers legislation at the hearing of March 9, 1971, nevertheless wrote in an afterthought to Senator Eagleton of his fears that NATO would be damaged by the bill. In his letter, sent after his original testimony, Professor Morris warned, "I might add that the effect could conceivably be mischievous were Congress at this time to decide, for example, that NATO was not self-executing. Such a resolution might encourage the aggressive forces in Europe who would no longer see in NATO an effective deterrent to their expansionist aims."

B. Senator Javits, comment: This generalization in unsupported by fact or compelling argument. The important point is that all of our mutual security treaties contain the provision that its articles are to be carried out "in accordance with Constitutional provisions." In the United States, the "constitutional provisions" with respect to going to war require the approval of both Houses of Congress.

4. Outstanding area resolutions, such as the Middle East Resolution, are repealed.

A. Goldwater memorandum: Section 3(4) provides that no provision of law in force now shall be construed as authority for use of the armed forces unless it "specifically authorizes" the introduction of troops in crisis situations.

The sponsors of S. 440 argue that any language in law which provides for an American response to be "in accordance with Constitutional processes," as is generally used in our mutual defense treaties, means that *no* specific authority is granted under this language. Applying their own interpretation to the parallel language contained in the Middle East Resolution, which declares that the use of armed forces shall be consonant "with the Constitution of the United States," this means the Middle East Resolution does not specifically authorize the commitment of American forces in hostile situations. If the authors of S. 440 wish to construe the Middle East Resolution as being self-executing, then they must also admit that the NATO and other treaties which include the words "in accordance with Constitutional processes" are also self-executing.

Furthermore, the Middle East Resolution merely declares "the United States is prepared to use armed forces." The Cuban Resolution uses somewhat similar language which states only that "the United States is determined" to take certain steps. Neither of these resolutions specifically provide that "the President of the United States is authorized to employ the armed forces" or any other language so unequivocal. Unless amended, section 3(4) would repeal both the Cuban and Middle East Resolutions as authorities for emergency use of American forces.

B. Senator Javits' comment: The contrary is clearly stated on pages 23–24 of the committee report, which reads as follows:

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 (4). The wording of the final clause of subsection (4) holds the validity of three area resolutions currently on the statute books. These are: the "Formosa Resolution" (H.J. Res. 159 of January 29, 1944); 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).

5. United States humanitarian relief missions, such as the 1964 U.S.-Belgian rescue operation in the Congo, are prohibited.

A. Goldwater memorandum: Section 3(3) provides authority for the rescue only of American citizens and nationals. No specific authority is granted for joint international rescue missions such as the 1964 Congo rescue effort which saved 2,000 persons, including about 60 Americans, who were being held hostage by rebels. Insofar as the military operation affected 97% of the persons evacuated, it would not have been legal under S. 440 because these individuals were not United States citizens. This interpretation of the provision seems compelled because otherwise the provision might authorize the President to employ troops anywhere in the world under the excuse of protecting our citizens, though the main purpose or result reaches far beyond that end, in light of the fact that United States citizens can be found today in every other nation of the world, including Communist China. Assuming it is not the intent of the authors to so enlarge the President's authority, the only reading of the provision one is left with is that it must prohibit United States participation in international humanitarian missions except for the exclusve purpose of saving American lives.

B. Senator Javits' comment: It is not at all clear what Senator GOLDWATER means by "humanitarian relief mission." If such missions involve the Armed Forces of the United States in hostilities or in situations where their imminent involvement is clearly indicated by the circumstances, the war powers bill does indeed and quite properly apply. However, there is, of course, no restriction on humanitarian relief operations per se in this bill, nor, of course, is there any intention of restricting such relief operations which may be appropriate, providing they do not involve the Armed Forces in a war without the approval of Congress.

6. Any military action designed to defend the economic position of the United States abroad is prohibited.

A. Goldwater Memorandum: Section 3 specifically restricts defensive action to situations where there is an actual armed attack upon the physical United States, or upon our armed forces. If an enemy should occupy and seal off from the free world the Suez Canal, or the Strait of Malacca, for example, the United States could not respond because the hostile action is not an attack upon any actual territory of the United States, or our forces not in that area at the particular moment, although the attack represents an extremely grave threat ultimately to the economic position and the fundamental welfare of the United States. By the time Congress might act to grant authority for a United States reaction, we would be faced with an accomplished fact and a situation in which it would be far more difficult and dangerous to alter the situation.

B. Senator Javits' comment: Under section 3(4) the bill provides a procedure for obtaining congressional authorization for any justified military action in defense of U.S. economic interests, as, if and when concurred in by the Congress. The bill does, of course, prohibit unilateral "gun boat" diplomacy by the President on behalf of U.S. property or interests abroad, as was so often the lamentable practice during the heyday of 19th century imperialism in Europe—and even emulated by American Presidents in the latter part of that century.

7. U.S. personnel in the NATO integrated commands are prohibited from exercising any functions during a crisis.

A. Goldwater memorandum: Section 3(4) flatly states that specific statutory authorization is required for the assignment of members of the armed forces of the United States to "command" or "coordinate" in the movement of the military forces of any foreign country or government at any time when there exists an imminent threat that our forces will become engaged in hostilities. Thus, at the very moment when our participation in the NATO Unified Command would be most needed, the bill squarely prohibits U.S. personnel from exercising any functions at all.

B. Senator Javits' comment: Section 9 of the bill (page 9, lines 7–15) clearly provides to the contrary. This is additionally made unmistakably clear on page 31 of the committee report.

8. The bill may trigger world war III causing foreign adversaries to believe the United States will not respond to threats against world peace.

A. Goldwater Memorandum: At the War Powers hearings, Professor James MacGregor Burns, a Pulitzer Prize historian, testified that any legislation which would encumber the President's ability to respond and adjust to changing world situations will remove the one essential ingredient preventing World War III—flexibility. Doctor Burns warned that imposing artificial restrictions on Executive discretion "may not lead to peace but to war, as foreign adversaries estimate that the United States will not respond to a threat to world peace because of legislative restrictions on the Executive."

Former Under Secretary of State George W. Ball also testified that war powers legislation could inhibit the President in doing what is necessary to avert some future catastrophe similar to the way the Neutrality Acts adopted in the aftermath of World War I "very probably" impeded the United States from taking the steps which would have averted World War II.

B. Senator Javits' comment: The credibility of U.S. actions in the world require a united home front which can only be achieved when the Congress is joined with the President in decisionmaking and in support of basic U.S. international security policy.

9. By compelling a vote of Congress during the peak of each crisis, the bill might precipitate a congressional reaction far more dangerous than the response the President has chosen.

A. Goldwater Memorandum: Professor Arthur Schlesinger testified in March of this year that the 30-day requirement of section 5, under which Congress must vote on the use of the armed forces in hostilities not later than 30 days after the outbreak of a crisis, is "filled with booby-traps." As Doctor Schlesinger indicated, one need go back no further than the Cuban Missile Crisis to recall that Congressional leaders, when informed by President Kennedy of the naval quarantine, felt that he should take more forceful action, including a military attack or invasion.

It must be recognized that the key legal principle on which the bill is based is that the President must carry out the policy directives of Congress in the initiation and prosecution of military hostilities and that the President has no power to contravene such directives. This is the plain legal position taken by Senator Javits, the prime author of S. 440, in a legal brief which he offered in support of the bill at the Senate hearing of March 24, 1971. According to this principle, the President would be required to engage the country into broader hostilities than he wishes in any event when Congress passes legislation (directing that he take stronger action than he had planned. A bill constructed on the supposition that Congress is more peace-minded than the Executive may, as Doctor Schlesinger testified, "have unexpected consequence when, as has been so often the case in our history, it is the Congress which is seeking war and the President restraint."

B. Senator Javits' comment: I reject the fundamental premise of this charge—that is, that the Congress is less responsible than the President. I believe that the last 10 years at least has been to the contrary. Moreover, there is nothing in the bill which compels Congress to vote at the peak of a crisis. In emergency situations, the President has 30 days to act without specific statutory authorization. The choice of this long a period is designed precisely to allow Congress to consider each situation thoroughly and dispassionately—in contract to the experience of Congress with respect to the Tonkin Gulf Resolution. Moreover, the provisions of S. 440 are flexible enough to enable the Congress to decide by majority vote just how it wishes to dispose of each issue—allowing full flexibility to restrain from untimely votes, such as hypothesized by Senator GOLDWATER.

10. S. 440 uses three totally different and unexplained terms to describe the threat which must exist before the President can respond to foreign dangers.

A. Goldwater memorandum: Section 2 of S. 440 refers to the power of the President to respond to "the imminent threat of attacks" upon the United States or its armed forces, but sections 3(1),(2) and (3) refer to authority for the President fo forestall only "the direct and imminent threat" of such attacks. To confound matters worse, the introductory language of section 3 prohibits the introduction of United States troops into situations where "imminent involvement in hostilities is clearly indicated."

The bill does not define when an attack is "imminent" but not both "direct and imminent". Nor does the bill define when our involvement in hostilities is "clearly indicated" but the threat of attack against American forces is not yet "direct and imminent."

Even though the terms of the bill apply to situations in which the life or death of the nation and its citizens may be at stake, the sponsors of S. 440 have made no effort to clarify their use of three different methods of describing "imminent" hostilities. The authors of S. 440 have never explained why they use three different terms and what meaning these differences are to have in situations where the nation appears threatened by foreign danger.

B. Senator Javits' comment: Section 2 of the bill is a negative statement of "purpose and policy." It is not the operative section of the bill. Therefore, the terminology is not statutory controlling. For statutory purposes the terminology of section 3 is controlling over the slightly varient terminology of section 2, the "purpose and policy" statement. So far as the slightly divergent terminology of the initial paragraph of section 3, as compared with the language of sections 1 and 2 is concerned, there is no difference in meaning or intent. The charge is thus a distinction without a difference.

11. The 30-day limit of the bill, after which troops cannot be used, is unrealistic and dangerous.

A. Goldwater memorandum: Section 5 of S. 440 provides that the use of American forces in hostilities, even in emergency circumstances, shall not be sustained beyond 30 days without specific legislation thereafter enacted for that purpose by Congress. Henry Brandon, dean of the international journalists corps in Washington, writes in his latest book, "*The Retreat of American Power*," "In the case of the War Powers Act, the 30-day authorization period, after which the President could not continue a military involvement, does not sound practical in our time. It would mean arguing the case for some 20 days in Congress, and the consequences of such a discussion on the credibility of international American commitments is easily visualized."

Mr. William D. Rogers, a specialist in international law, who supports legislative limits on war powers, nevertheless attacks the 30-day provision of the bill. He testified in 1970 at a House hearing on war powers legislation, "I think the Javits proposal requiring the President in effect to get out if Congress does not act within 30 days is dangerous."

In essence, the 30-day limit provision would give Congress something the Founding Fathers never intended it to have, a veto over the President's judgment that continued defensive measures are required after 30 days. Congress is thereby establishing itself as 535 Commanders in Chief, which is not where the Constitution vests that function.

B. Senator Javits' comment: The characterization of section 5 as "unrealistic and dangerous" is purely a subjective judgment. It is not a conclusion that was reached by the overwhelming majority of the Senate, which approved the War Powers Act by a vote of 68 to 16 on April 13, 1972. In point of fact, the sponsors of the legislation believe that it is more unrealistic and more dangerous to allow the President unilaterally to make war without restraints without obtaining the concurrence of the Congress and thus the acquiescence of the American people. The tragedy of our Nation in the undeclared, Presidential war in Indochina which has lasted already for a full decade demonstrates the greater dangers to our Nation and its security of unrestrained Presidential warmaking.

12. The President could not protect United States fishing vessels against attack in territorial waters claimed by another nation.

A. Goldwater memorandum: Sec. 3 (3) of S. 440 allows the President only to protect while evacuating citizens from "any situation on the High Seas" or "any country in which such citizens and nationals are present."

But it is well-settled under international law that the term "High Seas" does not include the waters known as "territorial waters." Indeed, the two terms are given mutually exclusive definitions by the two 1958 Geneva Conventions on the High Seas and the Territorial Seas. Accordingly, the bill leaves unexplained how the President could protect U.S. citizens or fishing vessels attacked within the Territorial Seas of foreign coastal nations which often extend up to two hundred miles from the coast.

Since these waters are neither within the "High Seas" nor the country proper, the bill must be amended to clearly allow protection of Americans in these circumstances or else no protection can be given.

B. Senator Javits' comment: Any decision to provide armed naval escort to U.S. fishing vessels certainly ought to require the prior statutory approval of the Congress. Disputed fishing beds are well-known and there would be ample opportunity to obtain a joint Presidential-congressional decision to intervene militarily in a fishing dispute. Certainly the very gradual buildup over a period of years of the British-Icelandic dispute indicates that these are matters which can be considered judiciously in advance rather than on an emergency basis.

13. S. 440 provides no authority for rescue operations designed to protect U.S. citizens hijacked on aircraft flying through international air space.

A. Goldwater memorandum: Under Section 3 (3) of the bill, U.S. citizens can be protected only while being evacuated from any situation "on the High Seas" or in another country. Obviously the "High Seas" do not include the "blue skies" and the term "country" does not include international air space. Therefore, the bill provides absolutely no means for immediate action leading toward the rescue of hijacked citizens on an aircraft while it is still in flight until such aircraft has landed in some country, by which time the chance for important steps which might have averted disaster would have been lost forever.

B. Senator Javits' Comment: It is difficult to envisage a rescue being attempted in midair. Hijacked aircraft must land, at which point rescue efforts could be undertaken under the provisions of section 3(3). Nonetheless, midair rescues could, of course, be made without restraint by S. 404.

C. Additional Note: The point is whether or not any steps, of whatever nature, can be initiated while the aircraft is airborne. These steps conceivably could include deployments of troops to likely landing spots or, in the case of an aircraft being forced out of its regular flight pattern by other hostile aircraft, the sending of defensive escorts.

14. No authority exists for protecting United States citizens on vessels within international straits.

A. Goldwater memorandum: Again, Section 3(3) permits protective reactions only as to citizens on the High Seas or within another country. However, under international law, the term "High Seas" is given an entirely different and exclusive meaning from the term "International Straits."

B. Senator Javits' comment: It is amply clear from the legislative history of the bill that any good faith reading of the term "high seas" would be within the ambit of S. 440. As used in S. 440, the words "high seas" are used to distinguish international waters from territorial waters as recognized by the United States in accordance with pertinent international agreements. If upon enactment of this legislation a serious ambiguity persists in the judgment of the executive branch, necessary authorization can be requested and obtained under section 3(4) of the bill.

15. The thirty day time limit might pressure a President to resort to total war within the brief time military action is authorized.

A. Goldwater memorandum: During the Senate hearings of April 23, 1971, Senator Javits, the prime author of S. 440, gave an indication the bill might lead to total war when he admitted there is nothing in his bill to stop it. Senator Javits stated, "Couldn't you wage a pretty good war if it

were nuclear, and the President's immediate response were nuclear? *There is nothing in my bill that stops him from doing that.*"

B. Senator Javits' comment: This charge presumes bad judgment and irresponsibility on the part of the President. The bill assumes good faith and a sense of high responsibility on the part of the President, as well as upon the part of the Congress in guarding the security interests of our Nation. In the opinion of the authors of the bill, it is not feasible or possible to legislate on the basis of presumed bad faith, or irresponsibility on the part of the President.

16. It is impossible to prophesy, as S. 440 attempts, all the unexpected and unlimited variations of events when defensive action may be necessary without advance congressional approval.

A. Goldwater memorandum: Former Under Secretary of State George Ball testified at Senate hearings on July 27, 1971, that "The lesson one learns from the active practice of foreign policy is how often and at what critical times the totally unexpected event occurs to dominate and transform the scene." For this reason, Mr. Ball testified that the War Powers Act is "an attempt to do what the Founding Fathers felt they were not wise enough to do . . . anticipate at any given moment the unlimited variations which the future is capable of presenting."

Similarly, Professor Abram Chayes, who supports the policy of war powers controls, nevertheless vigorously opposed in testimony at 1970 House hearings on war powers legislation all "bills that seek to lay out a detailed blueprint in advance to govern the relations between the President and the Congress in the exercise of the national war powers in all possible contingencies."

B. Senator Javits' comment: The implication of this charge is that total and unfettered advance authority must be given to the President to wage war at his sole and total discretion. The Constitution of the United States clearly rejects any such working premise, as does S. 440. One cannot legislate on the basis of hypothetical unknowns. Rather, one must legislate on the basis of known factors and situation and hard experiences. S. 440 is based upon actual historical experience in contrast to future, unknown, unidentified hypotheses. The authors of the bill believe that this is the correct legislative approach and entails far fewer dangers to our national security.

17. The "declaration of war" clause is an outmoded and invalid basis for restricting presidential defensive reactions against foreign dangers to the nation.

A. Goldwater memorandum: Judge Philip C. Jessup of the Council on Foreign Relations, who was cited by Senator Javits as being in support of the War Powers Bill, nevertheless wrote in a letter inserted in the Senate hearings of March 24, 1971, that "the concept of 'declaration of war' . . . is now an outmoded concept." He added, "Because of my belief about the lack of real legal relevance of the declaration in these times, I would hesitate to tie new legislation so tightly to the 'declaration of war' clause of the Constitution."

The idea that the only way the United States can enter into war is through a declaration by Congress is a myth. The vast majority of wars both in American and Western European history have been begun without any declaration. This fact was well known to the Founding Fathers.

In the eighty-seven years preceding the Constitutional Convention, thirty-eight wars were held in the Western World and thirty-seven of them were without any declaration of war. Alexander Hamilton's statement in the Federalist No. 25 that declarations of war were in disuse in the 18th Century, proves that the Founders themselves knew of this condition. Thus, when the Constitutional Convention narrowed the authority of Congress by substituting "declare" for "make war" the framers understood that many wars had occurred and could continue to exist without a declaration. If the Founders intended for the declaration clause to be the sole way in which the United States could engage in war, why did the framers use a method which was already then in disuse?

B. Senator Javits' comment: S. 440 specifically and explicitly deals with situations arising "in the advance of a declaration of war by Congress." Moreover, the constitutional underpinnings of S. 440 go beyond the exclusive constitutional authority of Congres to declare war. Article I, section 8 enumerates other plenipotentiary war powers to the Congress, including the "necessary and proper" clause, the authority "to make rules for the Government and regulation of the land and naval forces" and to "provide for the common defense."

Senator GOLDWATER's view of the intention of the drafters of the Constitution, as shown by his statement: "The Founding Fathers very wisely gave the power to go to war to the President and the power to declare war—which means not much—to the Congress," is just not mine nor do I believe it is that of the sponsors or a great majority of the Senate.

18. S. 440 erroneously assumes the power "to declare war" means the same thing as the sole power "to make war."

A. Goldwater memorandum: Samuel Johnson's Dictionary of the English Language, which was the standard dictionary used by learned Americans during the period of the Constitutional Convention, defines "declare" as simply meaning "to make known" or "to proclaim." On the other hand, "to make" was defined as meaning "to create" or "to bring into any state or condition. Thus, when the Constitutional Convention struck out "to make" from the Constitutional draft and substituted in its place "declare" it removed from Congress the power to bring the country into the state of war and left with it only the power to proclaim its purpose of bringing the total resources of the nation in support of an existing war. The declaration might also have been conceived at that time as being a method by which the United States could enter into "offensive war" such as might have existed if the United States had acted under the French treaty in 1793 to join France in war with Great Britain instead of taking a position of neutrality. If President Washington had put Naval forces in the French islands of the Caribbean and repelled British attacks on those islands, for example, we would have been acting offensively in support of the territorial integrity of an ally in circumstances when there was no actual attack or threat of attack against the United States itself or our own citizens. In these circumstances, as distinguished from situations where the President may determine to use force to repel or head off dangers against the United States, the framers may well have intended for the declaration of war clause to apply. The authors of S. 440 have confused "offensive war" from the defensive measures which the President may bring to bear under his independent authority whenever he perceives a foreign threat to the security of the United States or its citizens.

B. Senator Javits' comment: S. 440 does not assume that the power to declare war is the same thing as the power to make war. As is well known, the initial draft of the Constitution gave the exclusive power "to make war"—this phrase being retained unchanged as it appears in the Articles of Confederation—to the Congress. On August 17, 1787, during the final revision of the text of the Constitution, James Madison and Eldredge Gary "moved to insert 'declare,' strike out 'make' war; leaving to the Executive the power to repel sudden attacks." This quotation is from Madison's notes on the Constitutional Convention. S. 440 follows very strictly the letter and spirit of the Constitution with respect to the relationship of declaring war and to making war, as intended, proposed and explained by James Madison, the author of this drafting change.

It is significant to note further that S. 440 deals with situations wherein there is no congressional declaration of war, thus clearly contemplating situations in which there is war in the absence of a congressional declaration of war. The purpose of S. 440 is to restore the intended authority of Congress to "decide on war" in view of the modern practice of Presidents who do not request declarations of war from the Congress.

19. The "necessary and proper clause" does not give Congress the power to define and restrict the separate constitutional functions of the President.

A. Goldwater Memorandum: The United States Supreme Court held in the case of *Myers* v. *The United States*, 272 U.S. 52, 127 (1926) that Congress cannot vary the exercise of the President's separate powers under the Necessary and Proper Clause or any other power. Chief Justice Taft wrote that this "would be a delegation by the [Constitutional] Convention to Congress of the function of defining the primary boundaries of another of the three great divisions of government."

The Supreme Court also took a restrictive view of the Necessary and Proper Clause in *Kinsella* v. *Singleton*, 361 U.S. 234, 247 (1960). The Court held this Clause "is not a grant of power," but merely means that Congress may implement the powers it is *otherwise* vested with under the Constitution. The notion that Congress can restrain Presidential military measures under the Necessary and Proper Clause was repudiated over 100 years ago when William Whiting counselled President Lincoln that Congress is "bound to pass such laws as will *aid* him" in carrying into execution his military defensive powers. In line with this interpretation, the Library of Congress compiled a report for me in 1972 which concluded that Congress may act to aid the President in the exercise of his functions, but not restrict him, under the Necessary and Proper Clause.

B. Senator Javits' comment: The authors of the bill believe that the "necessary and proper" clause of the Constitution gives Congress exactly the power which is defined in that clause:

"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."

S. 440 is a wholly constitutional and proper exercise of the "necessary and proper" clause. In testimony before the Senate Foreign Relations Committee leading constitutional authorities of our Nation have affirmed the constitutionality of S. 440, including specifically the appropriations and constitutionality of its use of the "necessary and proper" clause.

20. There is not a single statutory precedent for war powers controls covering unnamed geographic areas and unforeseen situations.

A. Goldwater memorandum: S. 440 is not an exercise in legislating under the appropriation power of the purse. The bill lays down broad and general rules which apply for all time and to all settings and is not tied in any way to Congressional oversight with respect to funds which may be needed to finance military operations now or in the future. A close and extensive study of authorities has not turned up a single precedent for this kind of legislation in the entire history of the United States under the Constitution. Nor have the sponsors of S. 440 cited any prior statute as a precedent. The truth is S. 440 is an enterly unprecedented effort at

usurping Presidential powers over national defense.

B. Senator Javits' comment: It is not at all unusual for Congress to initiate legislation which has no specific statutory precedent, as the need for such legislation arises in our Nation's history. Therefore, the absence of a specific statutory precedent would not be any more significant with respect to S. 440 than was the case respecting legislation establishing the Department of Atomic Energy, for instance. In point of fact, however, very interesting statutory precedents dating back to the earliest days of our Republic do exist; for example, statute 1 of May 2, 1792, and statute 2 of February 28, 1795, both of which contain provisions and concepts remarkably parallel to S. 440.

C. Additional Note: The two statutes claimed to be interesting "precedents" with provisions and concepts "remarkably similar to S. 440" are no more than exercises by Congress of its distinct and specific power over the militia of the several States, not an exercise of claimed authority pursuant to the Declaration of War or Necessary and Proper Clauses. Article I, section 8, clause 15, grants to Congress the power "To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions."

Both the Acts of May 2, 1792 and of February 28, 1795 squarely were based on this power of Congress concerning the militia of the States and had nothing at all to do, as does S. 440, with the authority of the President to use the armed forces of the United States against foreign adversaries. To equate statutes concerning only the use of the militia of the States and which in fact delegate to the President a vast scope of independent discretion, with the sweeping prohibitions of S. 440 which restrict the use of the troops of the United States abroad graphically illustrates the gulf in interpretation of basic materials existing between the proponents and opponents of the War Powers Bill throughout this entire subject.

21. Historical usage conclusively establishes the constitutional authority of presidential defensive reactions against foreign dangers.

A. Goldwater memorandum: There have been at least 204 foreign military hostilities in the history of the United States and only five of them were declared. A complete list identifying each of these incidents is included as an exhibit with my testimony at the Senate hearings on War Powers Legislation of April 1973.

These historical precedents establish a consistent practice by which almost all American presidents have responded to foreign dangers with whatever force they perceived to be necessary and technologically available at the particular moment in time. The incidents were not limited to the Western Hemisphere or to small-scale skirmishes. At least 103 of them took place outside the Western Hemisphere and one, the Filipine Insurrection, involved the employment of over 126,000 United States troops in a war begun and ended without any declaration.

This usage is conclusive of Constitutional interpretation. The United States Supreme Court applied the principal usage as a determining factor in Constitutional interpretation in at least two cases involving the power of the President in relation to Congress, *The United States* v. *Midwest Oil Company*, 236 U.S. 459 (1915) and *Myers* v. *United States*, 272 U.S. 52 (1926).

In *Myers*, the Court held that Congress could not shift gears after seventy-three years of a particular practice and begin setting conditions on a Presidential practice which it had never before overridden by statute, even though the practice had often been the subject of bitter controversy, even as the question of war powers has often been debated, but never legislated against, in the Halls of Congress.

The Supreme Court held:

"Nor can we concur . . . that when Congress after full consideration and with the acquiescence and long-practice of all the branches of the government, has established the construction of the Constitution, it may by its mere subsequent legislation reverse such construction. It is not given power by itself thus to amend the Constitution." 272 U.S. 175.

In agreeing with me that the President possesses independent powers of reacting against foreign dangers, Professors Myers S. McDougal, perhaps the prominent authority on foreign relations law under the Constitution, wrote to me in January of this year "that a people's genuine 'Constitution' is in how they live and cooperate under a basic charter and that the most important authority in a democratic community is in the expectations that people create in each other by such living and cooperation.

B. Senator Javits' comment: Section 3 of S. 440 specifically deals with emergency defensive actions by the President in the absence of prior congressional authorization.

22. It is an historical mistake of monumental proportions to assume the war powers bill will stop future Vietnams.

A. Goldwater Memorandum: There are at least twenty-four statutes in which Congress participated jointly with the President in approving United States activities in Indo-China, the SEATO Treaty and the Tonkin Gulf Resolution being only two among numerous other such examples of Congressional collaboration in the Indo-China war. These statutes, all of which specifically identified the war in Vietnam or Southeast Asia, would have constituted the specific statutory authority called for by S. 440.

Even if not, Arthur Schlesinger is undoubtedly correct in his observation, made while testifying on S. 440, that President Johnson could have gotten all the Congressional blessing he wanted at any point up to 1968 and if S. 440 had been on the books, "It would not have arrested American participation in the war; it would only have locked Congress deeper into the escalation policy."

B. Senator Javits' comment: This is an expression of opinion which the sponsors of S. 440 do not share. In view of the Senate vote of 1972 on the War Powers Act, it is an opinion that is not widely shared by the Senate as a whole.

23. S. 440 creates dangerous uncertainty in time of crisis by denying to the President any "Judgment and Discretion" to determine if an emergency exists which authorizes use of military force.

A. Goldwater memorandum: Nowhere in S. 440 is there any language providing that the President may make an independent judgment of any kind under the bill. To the contrary, a legal brief introduced in the Senate hearings by Senator Javits, the primary author of S. 440, argues that the bill rests upon the proposition that the President is the mere "executive arm of Congress" who must follow the 'policy directives" of the Legislative Branch. This strict proposition allows of no discretion or judgment for the President, but rather contemplates that the President is tightly bound to refrain from any action unless it is clearly consistent with the directives of Congress. Under this position, the President must return to Congress on each occasion when there is any doubt over the Congressional purpose of language used in S. 440. If the bill intends to grant the President flexibility of interpretation, it should specifically say so.

B. Senator Javits' comment: Section 3(4) as explained in some length in the committee report provides a means through which the President and the Congress can fashion any degree of flexibility, discretion and judgment which they jointly think necessary and proper in defense of our Nation's security.

24. S. 440 may incite one of the gravest constitutional crises in American history.

A. Goldwater memorandum: Congress should not create a crisis by placing the Supreme Court in a position where it must take sides with one of the two political branches. The Supreme Court has never directly considered the question of the legality of Presidential use of troops during any ongoing hostility. The Court has historically determined that it is not the function of the Judiciary to entertain litigation which challenges the legality, the wisdom, or the propriety of the Commander in Chief in sending our armed forces abroad or to any particular region. These matters have invariably been held to be plainly within the exclusive province of the political power and not subject to judicial decision. *State of Mississippi* v. *Johnson*, 71 U.S. 475 (1866); *Oetjen* v. *Central Leather Company*, 246 U.S. 297, 302 (1918); *Johnson* v. *Eisentrager*, 339 U.S. 763, 789 (1950); *Mora* v. *McNamara* 389 U.S. 934 (1967) and 373 F. 2nd 664–666 (1967).

An almost unchallengeable line of cases can be mustered which proves that the Supreme Court will not consider any statute governing the President's deployment of troops. It goes without saying that our country would be placed in a bad constitutional state of confusion in the event Congress and the President would be so left without any arbiter to resolve the legality of S. 440.

At the Senate hearings of April 23, 1971, Senator Javits admitted in a colloquy with me that the Supreme Court would not consider his legislation. He said, "I agree that no Supreme Court is going to deal with this legislation. . . ."

B. Senator Javits' comment: Our Nation already is in the midst of a grave constitutional crisis with respect to the exercise of our Nation's war powers. S. 440 in fact provides a wholly responsible way out of the constitutional crisis which already exists.

25. S. 440 ignores the true purpose of the Founding Fathers to prevent a recurrence of the interference with military operations which Washington experienced with the Continental Congress.

A. Goldwater memorandum: General Washington's troubles with the Continental Congress must be remembered in any effort to get at the purpose of the Founding Fathers in vesting the President with the exclusive power of Commander in Chief of all the American armed forces. It is universally recognized that from the beginning of his commission as General of the Continental Army to the end, it was a constant struggle for George Washington to overcome the obstacles put in his way by Congress. Required by his commission "punctually to observe any such orders and directions" as he should receive from Congress, then clothed with the powers of an executive, Washington was harassed, second-guessed, and over-ruled with respect to his military plans and strategy throughout the War of Independence.

A prominent military historian has written, "The amount of harm, caused by the unwise military control usurped by Congress, can only be measured in terms of the appalling sufferings of the American soldiers at Valley Forge, which Washington was powerless to prevent." T. Frothingham, *Washington Commander in Chief* 234 (1930).

The sponsors of S. 440 would have us revert to this discredited system. But, the Founding Fathers realized that Congressional control of military functions had very nearly led to disaster during the Revolutionary War. For this reason, the use of the armed forces in the defense of American rights and freedoms was left with the President as Commander in Chief.

The framers had witnessed at first hand

the terrible inefficiency of the Legislature interfering with military operations. They unquestionably made up their minds that the new government which they formed would have a Commander in Chief who possessed real power to act with promptness, directness, and unity of action.

As Alexander Hamilton wrote in the Federalist No. 73, "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of executive authority."

It must also be recalled that in centralizing the national defense powers in the President, the framers were influenced by the writings of Locke, Montesquieu, and Blackstone, all of whom saw the making of defensive war and of foreign policy decisions as being properly the function of the Executive and with whose writings the members of the Constitutional Convention are known to have been closely familiar.

Thus, S. 440, which is an effort to seize the function of military command powers into the Legislative Branch, runs directly counter to the purpose of the Founding Fathers to place the direction of war into a single hand, the President as Commander in Chief.

B. Senator Javits' comment: As almost all constitutional historians have pointed out the principal purpose of the Founding Fathers in drafting the war powers provisions of the Constitution was to prevent a concentration of "monorchial powers over war in the hands of the Executive. Many quotations in this regard have been cited during the Senate debate, and are contained in the hearings and referred to in the committee report.

EXCUSES USED TO KEEP LIMOUSINES

Mr. PROXMIRE. Mr. President, the excuses, fantasies, and sophistries used by the heads of Government agencies to justify keeping their chauffeur-driven limousines and the right to be driven to and from home are beyond belief. The lobbying and arguments by the administrators and directors to keep their limousines are more intense than the arguments they put forward on behalf of the substance of their agency's programs.

As chairman of the Senate Appropriations' subcommittee with jurisdiction over nine agencies including HUD, NASA, the National Science Foundation, the Veterans' Administration, and others I have held extensive hearings on this subject. The Senate, at the subcommittee's recommendation, voted to deny more than 16 chauffeur-driven vehicles to the heads and assistant heads of these agencies for their personal use when we passed the HUD, space, science, veterans' appropriations bill.

The issue will be joined in the conference between House and Senate perhaps in a few days. The arguments induced on behalf of keeping the limousines and associated perquisites are beyond belief.

SECRETARY OF HUD'S TESTIMONY—NO OUTSIDE INCOME

The Secretary of HUD argued that his limousine was justified on grounds that he has "no opportunity to supplement his Government income. I have to live on what I am paid," Secretary Lynn testified, and should not, therefore, be asked to provide his own transportation to and from work. Lynn's salary is $60,000 a year. Under the bill Lynn keeps his limousine, but cannot use it to drive to and from home. His is the only limousine provided to anyone in the bill.

The Chairman of the FCC argued that he had to have his limousine "in case of an—national—emergency," and the Administrator of the Veteran's Administration justified keeping his limousine and the $16,687 a year paid to his chauffeur on grounds that he had to be "available in case of an earthquake."

AGAINST THE LAW NOW

Even though the law clearly states that Government cars must be used "exclusively for official purposes" and that official purposes "shall not include the transportation of officers and employees between their domiciles and places of employment," an amazing array of excuses is being used to justify the practice of being driven to and from home.

The Director of the Selective Service justified it on ground that "all the previous Directors have done it" and that he "must be available for the exercise of his responsibilities on a continuing basis."

The Administrator of NASA justified the use of his limousine and the $13,500 annual salary of its chauffeur to drive him to and from home on grounds that he was "following the procedures of my predecessors" and that he was engaged in "field work." An exception to the rule is granted for field work to those Government employees working in the boondocks 1- or 2-day drive from their office. But the Administrator of NASA claimed he was on field work, and hence should keep his limousine and chauffeur, to drive him to and from home in suburban Washington, D.C.

CURIOUS SET OF PRIORITIES

It is amazing that men who make from $40,000 to $60,000 a year will fight tooth and toenail to keep their chauffeur-driven limousines to drive them to and from home at the same time that the administration they represent has cut out all new funds for public housing, has dismantled the poverty program, and has cut back drastically on education, health, rural electric, and farm disaster programs.

It is a curious set of priorities which justifies paying chauffeurs $14,000 to $17,000 a year to drive big shots around Washington while all new funds for low-income housing are denied.

This next week may tell whether commonsense or these phoney justifications will win the day in the conference committee struggle to cut out the limousines and trips to and from home as enacted in the Senate bill.

FARM FUEL ALLOCATION PLAN CALLED FOR

Mr. HUMPHREY. Mr. President, despite the fact that we are currently in a relatively low fuel consumption phase of the agricultural production cycle, significant shortages are already showing up for some crops in some places.

In my home State, the Nation's No. 1 turkey producer, shortages of LP-butane and propane gas threaten to seriously reduce turkey production. A reduction of only 2 or 3 percent in our turkey output would bring major price increases to consumers all over the country.

In Michigan, it is the sugar industry that is now having the most serious problem with its fuel supply. A number of Michigan's major sugar crop drying operations are experiencing great difficulty in getting the natural gas that they need.

Reports from all of our agricultural States indicate that for specific crops in certain areas serious problems in getting fuel already exist.

Mr. President, if we are having trouble supplying our farmers and agribusinesses with needed fuel today, what can we expect when the harvest comes? Unless weather conditions are nearly perfect, serious fuel shortages are likely to occur at harvest time. I do not believe that I have to tell any of you what the food price and supply implications of such a shortage would be. We simply cannot afford to let this happen.

I believe that the Department of Agriculture must do more than a survey of fuel needs. Given the potential for a serious fuel shortage in our farm belt at harvest time, a detailed emergency fuel allocation plan for these areas must be prepared immediately.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Bob Monroe, published in today's Washington Post.

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

FUEL SHORTAGE THREATENS HARVEST

(By Bob Monroe)

Associated Press

Gas shortages may carve a slice out of turkey production and some Georgia and North Carolina tobacco growers lack fuel to cure their crop, but farmers generally are scraping by in this summer of tight fuel supplies.

Concern continues, however, in many parts of the country over whether there will be adequate fuel for harvesting, drying and transporting crops this fall. A serious fuel shortage would cause higher food prices.

Much depends on the weather.

"Chances are the amount of fuel we have will suffice until harvesting," said Iowa Secretary of Agriculture Robert Lounsberry.

"But the outlook is bleak if we have a wet fall as we did last year, where we used three times as much fuel as we do normally."

Edward H. Hansen, who helps coordinate the U.S. Agriculture Department fuel program, put it this way: "If we have a normal harvesting season and don't get pushed into the winter as we did last year, fuel needs may not be as great."

Hansen said a primary effort in the department now is to compile a list of fuel needs by state and area for this fall and to plan ahead for next spring.

Beyond supplies, there is the question of price. Like motorists on the highway, many farmers have not only found they can buy less, but they have to pay more.

"The cost of fuel to produce food has drastically increased and the gas shortage has slowed down agricultural production temporarily," said Oren Lee Staley, president of the National Farmers Organization. "But so far, distribution of fuel has been fairly satisfactory."

Some local exceptions did turn up in an Associated Press survey.

In Georgia, a shortage by one major supplier brought a stream of complaints from tobacco farmers in 10 southern counties. They needed more diesel fuel for drying and curing their crop.

American Petrofina, which took over as supplier on July 1, cut its distributors back to 70 per cent of last year's supply because it said the former supplier's inventories were "nil" when it acquired them.

"That really means about a 50 per cent cut when you consider the increase in customers over last year and the fact the farmers have had to do four times as much work on their crops because of the weather," noted one distributor.

North Carolina Agriculture Commissioner Jim Graham said no tobacco farmer was "out of fuel at this moment, but it is critical for those using LP gas. We've got a tight two to three weeks ahead of us . . . I feel like we're going to trickle through."

In Minnesota, the No. 1 state in turkey production, state and farm officials warned that if dealers cannot guarantee LP-butane or propane-gas supplies for heating turkey brooders, growers would have to hold back production.

"It's not enough for a supplier to hope he'll have it," said Minnesota Agriculture Commissioner Jon Wefald. "These growers have millions invested in the turkey industry . . . If heat were cut off during the critical weeks the young turkeys would all be dead within less than two days."

If state production were cut back 20 to 30 per cent, it would have a visible effect on the supply nationwide, said Cy Carpenter, president of the Minnesota Farmers Union. "Even a 2 to 3 per cent reduction would result in substantial price hikes to the consumer."

Natural gas supplies to dry or process foods are the primary problem in Michigan, said Edwin Rankie of the state department of agriculture.

"We have seven crop drying operations which are having difficulty receiving natural gas," he said. "The Michigan sugar industry is hanging in the balance in this thing."

A North Dakota state official told a fuel conference that 3,000 of the state's 42,000 farms were in a questionable category for gasoline supplies later this summer. An early harvest could trigger widespread shortages, he said.

A spokesman for an Illinois fuel hotline service for farmers said "planting was definitely hurt by the shortage but we have no way of estimating the extent it was hurt."

The hotline was set up to try and arrange fuel supplies for farmers caught short. If it failed, the spokesman said, farmers took "15 or 20" five-gallon cans to a town service station and filled up at the pump, paying about a dime a gallon over their usual bulk rate.

At the Oklahoma State Agriculture Department, a spokesman said fuel available to farmers and ranchers willing to pay the price, diesel fuel is up to 23 cents a gallon from 17 or 18 cents earlier this year, he said.

Texas Agriculture Commissioner John White spoke of a "day to day brushfire operation in obtaining fuel for a number of farmers. I foresee a longrange continuing problem unless the federal Office of Oil and Gas can get workable solutions in effect."

In California, an official said the outlook for harvest was "adequate" fuel but noted that stocks were being maintained at only 2 to 3 days' supply instead of the normal 2 to 3 weeks.

"We haven't heard any complaints other than a few farmers who have run out of gasoline and have had to buy it retail," said Paul Engler, Los Angeles county Chief deputy agricultural commissioner. "But as far as we know, they've always managed to get by."

TOM RAILSBACK: CONTINUING FIGHT FOR CRIMINAL JUSTICE REFORM

Mr. PERCY. Mr. President, I have long benefited from the wise counsel and advice of my valued and able colleague, Congressman TOM RAILSBACK, of Illinois, who has long been a leader in the area of corrections and juvenile justice. He strongly believes that juvenile justice reform is vitally needed to prevent thousands of young lives from being wasted and to enable young people to become contributing members of society, rather than a drain on society. He further believes that criminal justice and corrections reform is vitally needed to speed up the administration of justice and also to break the cycle of criminal offenders being returned again and again to prison. He believes that if offenders can be rehabilitated, not only the offender will gain, but also society, due to lowered crime rates and a reduction in the costs necessary to maintain criminal offenders in prison.

Congressman RAILSBACK's latest effort in this field was to add $2.8 million to the appropriations bill providing funds for the judiciary to provide 340 new probation officers requested by the Federal judiciary rather than the 170 positions provided for the Appropriations Committee. He felt that providing more manpower for the probation system could help cut the 72 percent recidivism—return to prison—rate for first-time offenders.

The House saw the wisdom of Congressman RAILSBACK's amendment and it passed by a margin of 56 votes.

Mr. President, I commend Congressman RAILSBACK's continued interest in this vitally important field and encourage him to maintain his leadership in providing criminal justice and juvenile justice reform.

Mr. President, the July 22 issue of the Washington Post had a most interesting article by David Broder on Congressman RAILSBACK's efforts on the floor of the House in increasing the number of probation officers. 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 Washington Post, July 22, 1973]

TWO TALES OF "HEALTHY" POLITICS

(By David S. Broder)

As a relief from the tales of payoffs, cover-ups and buggings, we turn today from the wretched Watergate business to a pair of incidents, not terribly important in themselves, which indicate something much healthier about our country and the men we chose to govern us than the sickening spectacle of the televised Senate hearings.

The heroes of these tales, if you consider them such, are men with unfamiliar names, who labor in the obscurity reserved for all but a handful of members of the House of Representatives. They said and did what they did, not in hopes of praise, but because their consciences prompted them to do—and their political judgment told them their constituents would support them, should they learn of it.

One of them is Rep. Tom Railsback, an Illinois Republican. One day last month, he stood up on the floor of the House and moved to amend the judiciary appropriation bill to add $2.8 million.

Challenging the appropriations committee on the floor is one of the riskiest things a House member can do. That committee is big, strong and proud—and every member needs help from it. Normally, a House member will take on the appropriations committee only when he feels an absolute political imperative to fight for some project for his district.

Railsback was seeking no local benefit. He wanted the House to override its appropriations committee in order to provide all of the 340 new probation officers requested by the federal judiciary, instead of the 170 additional positions approved by the committee.

Railsback happens to be a member of the House Judiciary subcommittee that has been studying America's penal system. In his low-keyed respectful speech, he simply noted that an effective probation system would cut the 72 per cent recidivism rate on first-time youthful offenders.

The manager of the bill, Rep. John M. Slack of West Virginia, roared back in expected fashion, defending the superior wisdom of the appropriations committee and adding, gratuitously, that "If the judges would put some of the criminals in jail instead of on probation, the country would be a lot better off."

But the huffing-and-puffing did not work. Railsback's logic prevailed and the House agreed, by a 56-vote margin, to add the money.

The second case, involving the authorization for the National Foundation on the Arts and Humanities, was an even more striking victory over the know-nothingism many people suppose still dominates the House.

The six-year-old program, the cultural showpiece of the Great Society, has somehow escaped President Nixon's scorn. In fact, he has been superb on the issue, making first-class appointments and strongly backing increased funds for the program.

The proposal before the House to increase funds, from the current $80 million to $145 million next year, was a bipartisan bill with White House backing. Nonetheless, it was a fat target for the know-nothings, and they had their predictable fun, with one congressman ridiculing a grant to "microfilm the principal archives of the island of Malta" and another inquiring, in mocking humor, if there was "any allowance for Buck Owens, Merle Haggard or Grand Ole Opry."

But then something remarkable happened. The know-nothings found they had almost no support among their colleagues. The most derisive speech against the expanded culture program was answered, not by a spokesman for America's aesthetics or academics, but by Rep. Thaddeus J. Dulski of Buffalo, N. Y., who recited what the grants had meant in his city.

There were similar testimonials from other unexpected sources: from Mario Biaggi, the tough ex-cop from the Bronx; from Lloyd Meeds of Washington, telling how half the population of the San Juan islands turned out for a subsidized concert of the Seattle Symphony; from Orval Hansen of Idaho, praising the Oinkara Basque dance tours; from Bill Cohen of Maine, talking of the Skowegan school of painting and sculpture; from Barry Goldwater, Jr., grateful for the aid in preserving classic films; and from Wiley Mayne of Iowa, thankful that professional artist Ray Frederick had been allowed to spend a year in residence at the Fort Dodge High School.

Minority Leader Gerald Ford confessed

that he had opposed the program at its birth six years ago and had been skeptical when it contributed funds for the purchase of an Alexander Calder sculpture for the downtown renewal area of his home town of Grand Rapids, Mich.

"At the time," he said, "I did not know what a Calder was . . . but I can assure the members that Calder in the center of the city . . . has really helped to regenerate the city."

The House beat back a move to cut the authorization by over 100 votes and then passed the expanded programs by a 5-to-1 margin.

Before the vote Rep. Al Quie, the ex-farmer from Dennison, Minn, who has become one of the most respected Republicans in Congress, was moved to quote from Alexander Solzhenitsyn's Nobel lecture the observation that "Literature, together with language, protects the soul of the nation."

"With Solzhenitsyn" said the towering midwestern congressman, "I too believe that our creative artists have a vital role to play in helping to show mankind the way to oneness, brotherhood and peace . . ."

The sight of a Minnesota farmer quoting a Russian novelist to the House of Representatives does not prove the millenium has arrived. But it helps wash out the memory why he concealed a criminal conspiracy from the President of the United States. And for that, one can be grateful.

GRADUATE ENROLLMENT CHANGES, 1971 TO 1972, BY TYPE OF INSTITUTION

Mr. PELL. Mr. President, one of the principal problems the Subcommittee on Education has experienced in decision-making on Government policy for support of higher education is the absence of good data. For example, until recently, no one knew how many students there were in graduate school until many years after the fact. This situation is improving with the prompt collection of information by the Council of Graduate Schools. I have just come across a most pertinent analysis of this information by Robert Snyder, a graduate student who is a summer intern with the Association of American Universities. This is the kind of data that Congress needs not only relating to postsecondary education, but to elementary and secondary education as well. In summary, Mr. Snyder's figures show that:

First, large increases in graduate enrollment have stopped, and annual increases in the early 1970's are much more modest, apparently setting a trend for the decade ahead.

Second, the recent increases have been concentrated primarily in public universities and in the newer so-called nonelite institutions. While total enrollment for all universities increased 1.9 percent from the fall of 1971 to the fall of 1972, it increased by only 0.3 percent in all private universities compared to 2.3 percent in all public institutions. A similar distinction existed between the top 60-rated institutions and the other 215 universities in the survey. The nonelite public universities accounted for 87.8 percent of the increase in total enrollment for this period.

Third, contrary to widespread assertions, more of the Nation's top universities—public and private—increased first-time graduate enrollment between 1971 and 1972 than decreased enrollment.

Fourth, doctorates awarded for 1971-72 rose at higher rate—5.9 percent—than enrollment, indicating the larger enrollments of 5 to 7 years ago when the new doctorates were first entering graduate school. Once again, the vast majority of new doctorates came from the nonelite public universities—80.5 percent—demonstrating that the shift in growth to these institutions has been going on for some time now.

I commend Mr. Snyder for this study and ask that the full text be printed in the RECORD.

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

GRADUATE ENROLLMENT CHANGES, 1971 TO 1972, BY TYPE OF INSTITUTE

(By Robert G. Snyder)

When previously published data on changes in graduate enrollment between the fall of 1971 and the fall of 1972 [1] are analyzed in terms of the top 30 public, the top 30 private and all other universities some interesting trends appear. While they are clear from inspection of Tables 1, 2 and 3, it may be helpful to point out some of the highlights.

A. *Changes in First-Time Graduate Enrollment*

1. Total first-time graduate enrollment increased by 3.5% (Table 1). There was virtually no difference between the percentage increase in the top 30 public universities (2.6%) and the top 30 private universities (2.7%). The largest increase was in all other public universities (4.5%).

These facts are contrary to fairly widespread assertions that the top universities, particularly the private ones, have as a group cut back first-time graduate enrollment.

2. When the percentage increase in first-time enrollment for the top 30 public (2.6%) and the top 30 private universities (2.7%) are examined university by university, it is evident that these averages are the result of increases and decreases in first-time enrollment in both groups (Table 3). For example, in 11 public universities in the top 30 (out of 25 reporting), first-time enrollment *decreased;* in 16 private universities among the top 30 (out of 26 reporting), first-time enrollment *increased.*

3. Among the 51 of the 60 top universities which provided data there were 18 which reported increases or decreases in first-time graduate enrollment of more than 10%. Apparently each institution has arrived at its own mode of adjustment, and there is no clear pattern differentiating the public and private universities in this group. Nor are there clear trends by size of institution (Table 4). The combined economic, political and academic factors resulting in enrollment increases or decreases are apparently not common to types of universities but unique to each university.

4. The overall first-time enrollment figures conceal differences by field. For example, already published aggregated data for all universities show a drop of 8.6% in the physical sciences, but this reflects a decline of 11.1% in the pubic universities and only 1% in private universities. (First-time enrollment in all other fields increased.) A later analysis will examine changes in first-time enrollment by field among types of institutions.

5. When attention is centered on the distribution of the approximately 5,000 increase in first-time graduate enrollment in all institutions, one sees that 83.2% of the increase is concentrated in public institutions, and 62.9% of the increase is concentrated in all other public institutions (Table 2). The top 60 institutions (public and private) account for only 28.6% of the increase (20.3 percent in the public and 8.3 percent in the private universities).

It is worth noting that although the top public universities accounted for 20.3 percent of the increase in first-time enrollment they account for only 4.2 percent of the increase in total enrollment.

It should also be pointed out that while universities not in the top 60 accounted for 71.4% of the increase in first-time enrollment, there are 218 institutions in this category.

B. CHANGES IN TOTAL GRADUATE ENROLLMENT

1. Total graduate school enrollment increased by 1.9% from 1971 to 1972 (Table 1), a percentage increase almost half that of the percentage in first-time enrollment. (The absolute increases were 11,986 and 4,773 respectively.) The non-top 60 universities increased by 2.7% (in absolute terms, 10,513 in 218 institutions), while the top 60 universities, of which 56 reported data, total graduate enrollment in 46 changed by less than 5% up or down (Table 3).

2. Perhaps the most striking figures on changes in total enrollment are that the "all other" public institutions increased 3.4% (10,529 in absolute terms) compared to an increase of only .3% (506 in absolute terms) in the top 60 universities; there was no increase among "all other" privates, while the top 30 private universities increased by 1.5% (967 in absolute terms). It is also worthy of note that the actual increase in first-time enrollment in the top 30 public universities (970) was almost twice their increase in total enrollment (506). The reverse was true in the "all other" public institutions, where total enrollment increased by 10,529 whereas first-time enroll-

[1] This note is based on data collected for the fall of 1971 and the fall of 1972 by the Council of Graduate Schools and the Graduate Record Examination Board. The data include total graduate enrollment, first-time graduate enrollment, and doctoral degrees granted. (Results of the Council of Graduate Schools—Graduate Record Examinations Board 1972–73 Survey of Graduate Enrollment. Part 1, November 22, 1972; Part II, April 12, 1973.)

These organizations kindly made the original questionnaire forms available so that the data could be analyzed in greater detail. A later analysis will review changes by field and by type of institution. For the purpose of this note, the top 30 public and top 30 private universities were selected by giving numerical values to departmental ratings in Roose and Andersen, *A Rating of Graduate Programs* (AEC, 1970), and summing the ratings by institution. This is a rough but usable way of identifying the "top" universities. The public universities are: Arizona, State University of New York (Buffalo), California (Berkeley), California (Davis), California (Los Angeles), California (San Diego), Colorado, Florida, Florida State, Illinois, Indiana, Iowa, Iowa State, Kansas, Maryland, Massachusetts, Michigan, Michigan State, Minnesota, North Carolina (Chapel Hill), Ohio State, Oregon, Pennsylvania State, Pittsburgh, Purdue, Rutgers, Texas, Washington (Seattle), Virginia, and Wisconsin; the private universities are: Brandeis, Brown, Bryn Mawr, California Institute of Technology, Carnegie Mellon, Case Western Reserve, Chicago, Claremont, Columbia, Cornell, Duke, Emory, Harvard, Johns Hopkins, Massachusetts Institute of Technology, Northwestern, Notre Dame, New York University, Pennsylvania, Princeton, Rice, Rochester, Rockefeller, Southern California, Stanford, Syracuse, Tulane, Vanderbilt, Washington (St. Louis), and Yale.

ment increased by only 3,002. The significance of these interesting figures cannot be assessed because such things as the number of students who drop out, or drop back in, have not been counted.

3. Because 64% of total graduate enrollment is in those public universities not in the top 60 and because of the higher percentage increase in this group, 87.8% of the increase in total graduate enrollment is attributed to those public universities not in the top 60 institutions (Table 2). On the other hand, only 12.3% of the overall increase is accounted for by the top 30 public and top 30 private universities combined.

4. The decline in Federal support for graduate students has not been followed by a decline in either total or first-time graduate enrollment. On the other hand, the large successive annual increases in graduate enrollment characteristic of the 60's has ceased.

C. DOCTORATE DEGREES AWARDED [2]

1. The 5.9% increase in the number of doctorate degrees awarded is substantially greater than the percentage increase in total and first-time enrollment. This reflects enrollments of 5 to 7 years ago. Public universities registered considerably greater increases in doctoral awards than privates—7.1% to 3.1% (Table 1). The most remarkable contrast, however, is the comparison between the top 60 universities with the "all other" group. The top 60 which awarded 18,385 doctorates in 1971, increased by an average of only .7%. The net increase of 123 doctorates resulted from widely divergent increases and decreases in both the public and private universities (Table 3). The non-top 60 group went up 15.2% (1,572 in absolute terms), with a 17.8% rise in the public category (1,364 in absolute terms).

2. The non-top 60 institutions accounted for 92.7% of the increase in doctorates awarded (Table 2)—1,572 out of the total increase of 1695. This figure is even more impressive because the top 60 schools produce over 60% of the doctorates.

D. CHANGES BY SIZE OF GRADUATE ENROLLMENT

An examination of percent changes in total and first-time graduate enrollment and doctorate degrees awarded by institution size (based on 1972 total graduate enrollment) for the top 60 universities showed no pattern for either public or private institutions (Table 4). (The −9.1% for first-time enrollment in the top 30 public universities in the 4,000 to 6,000 size range was strongly influenced by one institution in the group with a disproportionately large decline which weighed down the average decline. Without this university, the change would have been −3.0%.)

[2] Data on masters' degrees, not tabulated revealed these key facts:

(a) The top 60 universities grant 35% of the masters' degrees (26% in public and 9% in private universities); all other public universities grant 50% of all masters' degrees.

(b) The number of masters' degrees granted rose by 8.4%; 4% in the top 60 and 10% in all other universities.

(c) Of the increased number of masters' degrees, 65% were granted by all other public universities; 20% were granted by the top 60 universities (16% by the public and 3% by the private universities).

TABLE 1.—PERCENT CHANGES IN TOTAL AND 1ST-TIME GRADUATE ENROLLMENT AND DOCTORATE DEGREES AWARDED, TOP 60 PUBLIC AND PRIVATE UNIVERSITIES, AND OTHERS, 1971–72

	Total graduate school enrollment			1st-time enrollment			Doctorate degrees awarded		
	1971	1972	Percent change	1971	1972	Percent change	1971	1972	Percent change
All universities	624,779	636,765	+1.9	138,083	142,856	+3.5	28,699	30,394	+5.9
Public	473,192	484,227	+2.3	104,641	108,013	+3.8	19,945	21,366	+7.1
Private	151,587	152,538	+.6	34,042	34,843	+2.4	8,754	9,028	+3.1
Top 60 universities	229,772	231,245	+.6	52,498	53,862	+2.6	18,385	18,508	+.7
Top 30 public	164,769	165,275	+.3	37,954	38,924	+2.6	12,268	12,325	+.5
Top 30 private	65,003	65,970	+1.5	14,544	14,938	+2.7	6,117	6,183	+1.1
All other	395,007	405,520	+2.7	85,585	88,994	+4.0	10,314	11,886	+15.2
Public	308,243	318,952	+3.4	66,087	69,089	+4.5	7,677	9,041	+17.8
Private	86,584	86,568	0	19,498	19,905	+2.1	2,637	2,845	+7.9

TABLE 2.—DISTRIBUTION OF INCREASES IN TOTAL AND 1ST-TIME GRADUATE ENROLLMENT AND DOCTORATE DEGREES AWARDED, TOP 60 PUBLIC AND PRIVATE UNIVERSITIES, AND OTHERS, 1971–72

	Total enrollment		First-time enrollment		Doctorate degrees awarded	
	Number	Percent	Number	Percent	Number	Percent
All universities	11,986	100.0	4,773	100.0	1,695	100.0
Public	11,035	92.0	3,972	83.2	1,421	83.8
Private	951	8.0	801	16.8	274	16.2
All universities	11,986	100.0	4,773	100.0	1,695	100.0
Top 60	1,473	12.3	1,364	28.6	123	7.3
30 public	506	4.2	970	20.3	57	3.4
30 private	967	8.1	394	8.3	66	3.9
All other	10,513	87.7	3,409	71.4	1,572	92.7
Public	10,529	87.8	3,002	62.9	1,364	80.5
Private	(−16)	[1] (−.1)	407	8.5	208	[2] 12.3

[1] (−) means decrease.

[2] Discrepancy due to rounding.

TABLE 3.—DISTRIBUTION OF PERCENT CHANGES IN TOTAL AND 1ST-TIME GRADUATE ENROLLMENT AND DOCTORAL DEGREES AWARDED, TOP 60 PUBLIC AND PRIVATE UNIVERSITIES, 1971–72

Percent change gradations	Total enrollment		1st-time enrollment		Doctorates awarded	
	Public	Private	Public	Private	Public	Private
Total	28	28	25	26	28	27
Over +10.0	1		5	7	8	4
+5.1 to +10.0	3	4	3	6	3	4
+0.1 to +5.0	12	14	4	3	2	6
0 [1]			2		1	
−0.1 to −5.0	10	9	6	3	5	2
−5.1 to −10.0	2	1	4	2	2	4
Below −10.0			1	5	7	7

[1] Less than 0.1 percent.

TABLE 4.—PERCENT CHANGES IN TOTAL AND 1ST-TIME GRADUATE ENROLLMENT AND DOCTORATE DEGREES AWARDED, BY INSTITUTION SIZE, IN TOP 60 PUBLIC AND PRIVATE UNIVERSITIES, 1971–72

	Total graduate school enrollment		1st-time enrollment		Doctorate degrees awarded	
	Number	Percent	Number	Percent	Number	Percent
All universities	275	+1.9	232	+3.5	210	+5.9
Top 60 universities	56	+.6	51	+2.6	56	+.7
TOP 30 PUBLIC						
Total	28	+.3	25	+2.6	28	+.5
0 to 2,000	0	----------	0	----------	0	----------
2,000 to 4,000	7	+.7	6	+8.6	7	+4.0
4,000 to 6,000	7	+2.3	6	−9.1	7	+.3
6,000 to 8,000	9	−.6	8	+4.0	9	+1.2
8,000 plus	5	0	5	+7.1	5	−2.1
TOP 30 PRIVATE						
Total	28	+1.5	26	+2.7	28	+1.1
0 to 2,000	16	+1.5	16	+2.8	16	−6.2
2,000 to 4,000	8	+.6	8	+3.5	8	+6.6
4,000 to 6,000	3	+2.1	2	+.6	3	+2.5
6,000 to 8,000	0	----------	0	----------	0	----------
8,000 plus	1	+.5	0	----------	1	+4.2

RESEARCH OF FLIGHTS OF AIRCRAFT IN THE ATMOSPHERE

Mr. GOLDWATER. Mr. President, when this body turned down the construction of the SST the action was based largely on false claims plus a total misunderstanding of what takes place in the atmosphere during supersonic flight. Frankly, there was not a lot known about this, but some meteorologists in this country became overnight experts and ascribed all kinds of damage to the earth if supersonic flights were allowed. The Congress wisely this year allowed funds to remain in the NASA authorization which will guarantee continued research in the atmosphere, not directed at supersonic transport flight, but at flights of any aircraft in that environment.

Some knowledge is beginning to come forward. One is a brief description of the experience the Concorde has run into which appeared in a recent issue of "Aerospace and Technology." The other, which is pretty much a follow-up on the Concorde experience is entitled "Stratospheric Effects of Supersonic Transport Aircraft" and appears in the recent publication, "Weather and Climate Modifications," published by the National Academy of Sciences. I ask unanimous consent that both of these papers be made a part of the RECORD at this point in my remarks.

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

CONCORDE TESTS BLUNT ATMOSPHERIC IMPACT FEARS

WASHINGTON.—Data gathered by instruments flown on board the Anglo-French Concorde 001 prototype in connection with the U.S. Climatic Impact Assessment Program (CIAP) have provided preliminary evidence that no problems exist with the effect of propulsion efflux in the upper atmosphere.

During tests flown June 13, 14 and 16, a Jet Propulsion Laboratory infrared spectrometer installed on the aircraft indicated that nitric oxide levels in the upper atmosphere did not exceed 1 part per billion and that nitrogen dioxide levels were not over 4 parts per billion. Total flight time during the three exercises was 7 hr. 17 min., with 4 hr. 22 min. at supersonic speeds.

In the case of both chemicals, the levels were significantly below those computed by theoreticians as being a result of natural phenomena, CIAP officials said. They said that, if the data prove correct, there is no foundation for fears expressed by some scientists that increased nitric oxide concentrations brought on by high-flying aircraft would reduce ozone concentrations, increasing solar radiation hazards to earth life.

A CIAP program official said the findings indicate "that there is a large [nitric oxide] sink in the lower stratosphere," in which nitric oxides disappear. He said it is not known whether the disappearance is the result of chemical action or simply "transport" where the nitric oxides would be dissipated by winds.

According to Transportation Dept. officials, the CIAP/Concorde tests support data gained by French-sponsored tests flown earlier on board Concorde 001. The French Onera scientific organization conducted experiments on flights June 6 and July 9 and 10, with 5 hr. 44 min. of flight time, 3 hr. 7 min. of it at supersonic speeds.

Bulk of the cost for the CIAP/Concorde flights has been absorbed by Aerospatiale (AW&ST Feb. 19, p. 15), with only basic equipment costs being paid by the U.S. government.

The CIAP test flights were flown at about 55,000 ft. on a route north from Toulouse up the French coast. The IR spectrometer was positioned to peer out the side of the aircraft's fuselage with a field of view from the horizon up to about 100,000 ft. CIAP flights also carried an ultraviolet flux instrument designed by Centre National d'Etudes Spatiales, a French laboratory for atmospheric and physical research, according to CIAP officials.

In a related activity, CIAP personnel briefed two members of the Soviet hydrometeorological office on CIAP efforts during a July 2 meeting sponsored by the U.S. Council on Environmental Quality. CIAP personnel who presented the briefing said the Soviets were especially interested in the scope of CIAP activities, which encompasses numerous airborne and ground experiments (AW&ST Nov. 27, 1972, p. 50).

CIAP personnel said they would be interested in any data exchanges the Soviets would care to participate in concerning the effects of widespread high-altitude flight.

The Soviets are not believed to be actively exploring upper atmosphere studies in connection with the development and production of the Tupolev Tu–144 supersonic transport.

The July 2 meeting involved only a short preliminary presentation to the Soviets on the CIAP concept, but a longer CIAP/Soviet session is planned for the last week in August, again sponsored by the Council on Environmental Quality.

A CIAP report on projected high-altitude environmental effects through 1990 is due in 1974.

STRATOSPHERIC EFFECTS OF SUPERSONIC TRANSPORT AIRCRAFT

With the advent of aerospace technologies permitting transport aircraft flights at supersonic speeds in the stratosphere, potential problems of atmospheric environmental effects have been brought into public focus. The question of possible consequences of additional water vapor injected by such aircraft into the atmosphere at cruise altitudes was examined briefly in NAS 1350 in terms of possible absorption of long-wave radiation in the stratosphere. Two effects earlier identified as possibly important are the formation of persistent contrails and an increase of relative humidity in the stratosphere. Concern has been expressed that either or both of these changes might alter the radiation balance to the extent of influencing the global atmospheric circulation.

The present generation of jet transports such as the 707, DC–8 and 747 cruise at altitudes around 30,000–40,000 ft., which means that they are usually operating within the troposphere. In the troposphere, the effective turnover times for major pollutants from all industrial and technological sources averages only about one week. Precipitation processes rapidly scavenge particulates and gaseous pollutants from the troposphere. On the other hand, the stratosphere does not have such relatively efficient renewing processes. There are essentially no cloud or rain washout mechanisms operative in the stratosphere.

In the lower stratosphere at the levels of operation flight for the proposed SST, the average turnover time is now believed to be about two years. Therefore, steady-state accumulation for any given pollution rate will be about 100 times greater in the stratosphere than in the troposphere.

It should also be noted that the mass of stratospheric air available to dilute pollutants is about five times smaller than occurs in the tropopause.

The stratosphere is also a region of high chemical activity, unlike the troposhere. This is due to the presence of ozone, small but significant concentrations of hydroxyl and peroxyl radicals, oxides of nitrogen, and the flux of solar ultraviolet radiation that is of sufficient energy to initiate many reactions that cannot occur in the troposphere chiefly because of filtration of the energetic quanta by the ozone layer itself.

In NAS 1350, the conclusion was reached, based on an assumed traffic volume of four flights per day for 400 SST's that no climatic effects could be expected, since neither an increase of contrails nor of water vapor would be of such a magnitude as to disturb the characteristics of the stratosphere because of the absorption of long-wave radiation. The present review, even with a larger number of aircraft in use (estimated at 800 SST's, with a utilization factor at cruise altitudes of about 0.25), has provided no reason to modify these earlier conclusions.

An important consideration now, however, is the nature of effects that even small incremental amounts of nitric oxide and water vapor due to SST's may have through secondary chemical and photochemical reactions with natural constituents in the lower

stratosphere. Thus, while the earlier conclusions of the potential effects of SST's are still sound, a new dimension of possible complications has become apparent.

One area of particular concern is the possible reduction of the naturally occurring ozone in the lower stratosphere as a result of injection of water and nitric oxide. In the case of water, excited oxygen atoms that are produced from photodissociation of O_3 molecules interact with water molecules to form hydroxyl radicals (OH). The hydroxyl radicals further react with O_3 to form molecular oxygen and peroxyl radicals (HO_2). The peroxyl radicals then react with atomic oxygen to form molecular oxygen and another hydroxyl radical. The net result is the conversion O_3 and O to O_2, while the original OH radical is regenerated to start the same cycle again. In the case of nitric oxide, the same cycle can occur, with NO substituted for OH and NO_2 substituted for HO_2.

On the basis of estimated reaction rates and concentrations of OH and NO, it is likely that the chain involving NO is more efficient than the one involving OH. In fact, it has been vigorously argued by Johnston (1971) that the injection of NO by SST's might cause a very large reduction of ozone. Such reduction would be biologically dangerous, because ozone prevents ultraviolet radiation from reaching the earth's surface. Any reduction in ozone and resulting increase in ultraviolet radiaiton reaching the earth's surface could possibly, on the one hand, result in an increase in skin cancer and, on the other, bring about certain beneficial aspects.

The question of whether there is a real danger is a very controversial one. The naturally occurring amounts of NO and OH are not known, and the relative importance of chemistry and atmospheric transport at the SST levels is uncertain (although the latter is certainly very important). The degree of uncertainty about these important questions adds to the urgency for dealing with the complexities involved and warrants considerably more attention and effort (Department of Commerce, 1972; Barrington, 1972). Also, the role of sulfur and nitrogen oxides in the formation of stratospheric aerosols is an area of considerable uncertainty, yet of importance in the flux and absorption of radiant energy. Although industrial effluents are considerably greater in total mass than those involved in SST considerations, the greater residence time factor for the stratosphere over the troposphere indicates that optical scattering effects of particulates injected at cruise altitudes might be as important as are industrial smokes within the troposphere.

OUR PRESENT FOOD DILEMMA—WHAT KIND OF FARM POLICY?

Mr. HUMPHREY. Mr. President, never before in our history have Americans been so keenly aware of the importance of the farmer. Consumers all over the country, justifiably alarmed over higher prices and the beginnings of some food shortages, are attempting to understand the strange mechanics by which our commodities are grown and produced.

Mr. George Hulstrand of KWLM has written an editorial which very astutely describes our present farm and food dilemma. In it he explores the type of farm policy we should have to deal with these problems. In light of the recent House passage of the Agriculture and Consumer Protection Act of 1973 and the upcoming House and Senate conference on this bill, I ask unanimous consent to have Mr. Hulstrand's editorial printed in the RECORD.

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

A FARM PROGRAM FOR ALL OF US

(By George E. Hulstrand)

Of late we have heard new voices, and new sounds, about rural America and about our farmers. All of a sudden, urban housewives were found down in the stockyards, and out in the dairy barn, finding out something of the strange mechanics by which corn and oats and grass are converted into the "meat that America likes best—good, lean beef." They have also learned something of the long hard struggle by which grain and grass become meat and milk, and how really little there is in the food dollar for one who gets it all going—the American farmer.

Now the rising prices of meat on the counter, and the spectre of floods in parts of the country and drought in others, all suggest a problem we have not considered for a long time—that we are getting close to the point where food is in short supply and that there may be just not enough to go around.

It is therefore appropriate that on a rural radio station and in a community that owes its prosperity to the farmers in our midst, we editorialize tonight on the question: What kind of farm policy ought we to institute?

Note carefully that the issue is not whether we ought to have a national farm policy. It is axiomatic that we have one. The issue is not whether or not we ought to have government regulation of agriculture. It is imperative that government be in the picture and that it be in it big.

Before we can go on now to build a farm program that will be good not only for rural America but for all of America, it is time we take note of some salient facts.

First of all, we have never had, and do not now have, a real surplus of American food and fiber. The so-called surplus of American farm production is a myth, driven into the American conscience by those who in the interest of their own aggrandizement have fought meaningful farm programs since they were first conceived in the 1930's. A better term was the one early coined to describe what the government's purpose ought to be, to maintain "an ever-normal granary." Too much harm has been done by those who term what has been a reasonable reserve as a monstrous surplus, for us to be charitably inclined toward them.

Secondly, the farmer, except for a short period immediately after World War II, has been subsidizing the American housewife. Parity of agriculture with the rest of the economy has rarely been achieved, and the farmer has been shortchanged even by the stated goal—a *per cent* of parity, something *less* than equality. The result is that the American housewife gets the best food buy, even now, in the world. The American farmer has put her in a position where she considers beef as a necessity, whereas in most of the world it is a luxury, if it is available at all. In no other country of the world is so little of the consumer's dollar spent on food as it is here.

Thirdly, the need for the products of our farms will increase, and not decrease. Were nature to frown in our face, and the drought of the 1930's recur, we would be faced with a national catastrophe worse than the Great Depression.

In the face of these facts, we need to emphasize certain policies that are going to be necessary for us to adopt and pursue in order for us to survive the crises that will be upon us if we do not plan now for the future place of American agriculture in our economy.

Let us put them in the form of certain principles:

1. The Government belongs in Agriculture. Even annual shortages will not forestall the recurring temporary fall harvest surplus, when many farmers must sell, and the fluctuations of the market, which farmers cannot control. It is imperative that we have a farm program that will insure to the farmer-producer a fair price at a time he needs to sell.

The Government belongs in agriculture also in the stimulation of the productivity of the farm and in the discernment of new methodology and in the providing of a decent system of distribution.

2. There must be planning in agriculture. There has arisen a strange, unsupported, and illogical myth in our society that it is evil for the government to plan. Planning, considered essential in all other activity, and the sine que non for business, is strangely frowned upon with respect to government, and this shibboleth must be set to rest forever.

The harnessing of the ideas and abilities of the producer-farmer, the expert in agriculture, agronomy, soils, and the other ramifications of the farm enterprise, the community leader such as the banker, and the representatives of government are essential in order that we can bring order out of chaos and present a workable program for agriculture and for our people.

3. An effective distribution system must be devised.

We have no transportation *system* in this country, and the profligate waste we permit in the name of transporting people and goods is scandalous. Shortages of box cars to haul grain, threatened shortages of fuel at harvest time because transportation is not there to deliver it, and the mind-less call-in by the administration of grain when there was no transportation for it are but a few examples of the mess we have in this country when it comes to moving men and women and the materials they use to make things and the manufactured goods when they are made. It is far beyond the time when government should step in with a firm hand to harness the tools of transportation and make a system of what is now a joke, and worse, a national tragedy.

4. Our national policy must be to make agriculture and rural living a way of life. It is time to declare that the American farm is off limits to the corporate business, to the tax-shelter, and to the absentee landlord. It is time to rid ourselves of the myth that big agriculture is the most efficient agriculture. It is time to set down as a national policy that in the interest of the development of a dynamic rural America, government is going to assist the family farm, run by family farmers, and existing in a community where the owners and the operators of the farming enterprise are one with the community.

It is time that we sat down and set a few things straight in our thinking about our resources. No one has a vested right to buy a farm to use as a tax dodge to escape paying his fair share of taxes on his business in the city. No one has a vested right to add a farm to a conglomerate. No one has a vested right to buy a farm and take it out of production to receive government payments. These are not constitutionally protected rights, but privileges derived from the way we write our laws.

We as the government can write laws where the benefit payments to the producers, where the right to government payments is conditioned on the use of the property in line with a program of developing a vibrant rural America. We can write a law that will make the owner of a farm eligible for participation in government programs only if he participates in the program for the development of the community in which he lives.

We can do these things, and in that way take our great farming enterprise out of the realm of price speculation, out of the hands

of the too tax conscious investor, and out of the grasp of the corporate enterprise which seeks to pyramid its holdings without regard to the community.

We can do all these things. Let us then be up and away. We do not have too much time.

THE GASOLINE SHORTAGE

Mr. HASKELL. Mr. President, many of my colleagues have heard that my home State, Colorado, has been hit worse than any other State by current gasoline shortages. Many will also recall the stories of last January's closing of public schools in Denver due to a lack of fuel oil to heat the schools.

The Petroleum Retailers Association of Colorado, Inc., is a group composed basically of the so-called little guys in the petroleum marketing business—the independent dealers. These dealers have been hit the hardest by the recent shortages.

I recently received a letter from the association which outlined some of their thoughts on the current shortages and their efforts to combat the situation. These small businessmen have been hit—and hit hard—by the lack of gasoline. The letter describes their efforts to tackle the hardships which have resulted from the shortages.

I applaud the association for their efforts and ask unanimous consent that their letter to me be printed in the RECORD.

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

JULY 2, 1973.

Senator FLOYD K. HASKELL,
Russell Senate Building,
Washington, D.C.

DEAR SENATOR HASKELL: We appreciate your consideration and efforts toward the study and eventual fair solution of the so called "energy crisis" in our State of Colorado. We are particularly concerned about the major oil companies control of the fuel market from the well head to the gas tank of the consumer.

For your immediate attention are three resolutions approved by our Board of Directors on June 21, 1973:

1. Full disclosure of allocation and delivery procedures to the dealers used by each individual oil company; monitored by an arbitrator not affiliated with the oil companies to check the allocations and deliveries of fuel supplies.

2. A fuel supply pool to be established by the oil companies to be used to supply any outlet, such as retailers, farmers, municipalities, cities, counties and school districts which have to close because of no supply.

3. We endorse the investigation of the energy crisis as proposed by Senator Jackson.

Furthermore, we and our legal counsel are actively supporting several dealers who have had station contracts canceled; not renewed; harassment; failure to purchase TBA items from company directed sources; short term or no term leases directly related to the so-called energy crisis.

These are small businessmen who have invested their time and money—many hours and financial hardships—to build loyal customer support and now because of a tenuous lease franchise agreement and an arbitrary, capricious, sometimes grossly unfair, and changeable system of allocations of product supply by the oil company, these people are in trouble. These citizens, small businessmen and customers alike, are the people who need your support toward solving the problem.

We have had many personal conferences on the problem—calls from farmers, jobbers, officials of cities, counties, and school districts. We have referred these citizens to Senator Dominick's and your staff here in Colorado. They have been most helpful and effective in working toward solutions to these supply problems.

It appears our State is a target area for the emphasis of the energy crisis—Witness:

1. High tourist travel.
2. Extensive agriculture.
3. This year's past history of closing schools.
4. Lack of supplies for municipalities.

It is our opinion that our State and our Dealers have been selected as an example to demonstrate to the nation that in fact there is this so called "energy crisis". Our dealers report that tourist customers from all over the nation generally do not encounter rationing or limiting the amount of gasoline purchases until they reach Colorado.

We do not agree that in fact there is an energy crisis in the State of Colorado if the oil companies will distribute the fuel available and be honest about the distribution of their product to the dealers in our State, and as a matter of fact, in the region.

Oil companies have always been able to market their product through an antiquated marketing system as they saw fit. Today, they are being faced with a problem—that problem is being fair to their branded dealers and they are having extreme difficulty in meeting that responsibility.

Our regular dealers now are sacrificing their present volume of business and even jeopardizing the future growth of their business because of the arbitrary allocation system now in force. These allocations are set by the oil companies themselves without supervision, examination, or explanation by anyone except the oil company. Dealers have told us that company stations in the same general area, 1 to 2 miles away, are open from 12 to 24 hours per day with an unlimited supply of gasoline.

The oil companies have a built-in market. They are, as a result of this situation, going to have and will have higher profits than ever before in the history of the industry. If for no other reason, than that they now sell to the unbranded dealers at the same price as to their controlled branded dealers. This amounts to as much as 6c to 8c per gallon increase of that which was paid by these unbranded dealers in 1972.

The only people who will suffer are those at the bottom of the pipeline. These are the dealers—independents, unbranded, branded—who are on the firing line every day; who meet the public.

The irony is—the oil company does not meet the public—it is the small independent businessman who must close his doors. It is the small independent businessman who must confront the customer and say—I have no gasoline because my oil company will not supply me, however; there is a company operated station up the street who can provide you with all the gasoline you want and you may use your credit card; and if you don't know where it is, check the station's big sign.

Company operated and managed station allocations run wild—while the regular dealer receives no additional deliveries even if he is forced to cut back on his number of employees, reduce his business hours and close up when he is out of fuel.

Sincerely,

THOMAS A. MOEN,
President, Petroleum Retailers Association.
AL HEIN,
Executive Vice President.

ATCHISON, KANS., SALUTES AMELIA EARHART

Mr. DOLE. Mr. President, I wish to take this opportunity to call the Senate's attention to the first American Revolution Bicentennial event for the State of Kansas taking place in Atchison today. Appropriately, this event honors a woman and a pioneer. She was not a pioneer who led the settlement of the prairie sod, rather she was a pioneer who led the way in the conquest of the air. Her name was Amelia Earhart.

Ten years ago, on the 65th anniversary of her birth, the Amelia Earhart commemorative stamp was issued in her hometown, Atchison, Kans. A major event in the ceremonies associated with the issuance of this stamp was the participation of the Ninety-Nines, a group of distinguished women pilots which Amelia Earhart served as first president. They joined in paying tribute to their first leader by having a flyaway which took the first day cover of the Amelia Earhart stamp to every State capital and foreign countries around the globe.

Today, 10 years after the issuance of the Amelia Earhart stamp and the 75th birthday anniversary of her birth, the Ninety-Nines will again return at Atchison for another flyaway. This time they will be carrying miniature bicentennial flags and seedling trees from the International Forest of Friendship which is being planted at Warnock Lake in Atchison. These seedlings and flags will be taken to every State capital and also carried to more than 30 foreign countries where they will symbolize an invitation to visit the United States during our bicentennial year, 1976.

Mr. President, Amelia Earhart ranks as one of Kansas' outstanding citizens from any era. And in this age when air transportation plays such an important role in bringing the people of the world together, I feel that it is particularly appropriate and fitting that her name be linked with the first bicentennial event in Kansas. I would like to take this opportunity to commend the Ninety-Nines for their participation in this event. And I would give special recognition to the citizens of Atchison for their outstanding tributes to one of the great women of Kansas and of America. I am sure this week's events will be a great success, and I am pleased that the American Revolution Bicentennial celebration in Kansas is being inaugurated in such an outstanding way.

THE NEED FOR GOVERNMENT ACTION TO HALT THE ABANDONMENT OF RAIL SERVICE TO RURAL COMMUNITIES

Mr. MONDALE. Mr. President, an editorial recently appeared in the Mankato Free Press regarding the need for Government action to halt the abandonment of rail service to rural communities.

As the Senate moves toward action on the Northeast rail crisis, I believe we should also take steps to avert a less publicized, but equally serious, rail crisis affecting agricultural communities in many other parts of the Nation.

The Nation's agricultural transportation network is vital for the shipment of fertilizer, feed for poultry and livestock, and grain for milling and marketing. This year transportation will be required to move an estimated 13 percent increase

in wheat, 6 percent in corn, and 24 percent increase in soybean production. Nevertheless, requests for the abandonment of rail lines serving farm communities flood the Interstate Commerce Commission, and in most cases such requests are approved. Often farm communities do not have roads with the carrying capacity required to handle their shipments, and unless rail service is continued, they would be left to wither and die.

In the future, and especially with an additional 19 million acres in farmland scheduled to be brought back into production next year, the availability of rural rail transportation will be essential to rural America and to urban communities that need food at reasonable prices.

I believe that the Senate should approve legislation providing for a moratorium on rail abandonments to insure that the transportation needs of rural America will be fully met while steps are also taken to provide better rural roads and to deal with the financial difficulties plaguing our rail transportation system.

As evidence of the need for such action, I commend to my colleagues in the Senate the editorial from the Mankato Free Press, entitled "Saving Branch Lines."

Mr. President, I ask unanimous consent that the full text of the following editorial be printed in the RECORD.

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

CAVALRY IS COMING: SAVING BRANCH LINES

Congressional bids for a five-year moratorium on railroad trackage abandonments would have fallen on deaf ears if this were, say, June 1963—a time when the world was still the highway vehicle's and the airplane's oyster.

But conditions have since changed, dramatically and across many fronts, so that the urgings of Sens. Walter Mondale and Hubert Humphrey in behalf of the 41-mile St. Clair-Freeborn rail route have particular significance and influence.

It was only a few months ago that a public rallying behind legislative leaders blunted an attempt to eliminate railroad cargo trackage in the Wanda area. The persuasive argument was identical to the one being heard now: Rural Minnesota has already lost too much trackage, a healthy rural economy is essential to the prosperity of the nation, and farm production will continue to swell and make demands on rail transportation—something which would have been considered a pipedream only 10 years ago.

It could be that the railroads someday will be grateful that a moratorium was ordered. Nobody should want to give up an arm when an impending medical breakthrough might restore it to full function.

Rail heads have been getting farther and farther away from the major agricultural production regions over the last quarter-century. The Wanda and St. Clair hearings have underlined the fact that branch line producers and other railroad customers are no longer content to stand by idly as the rug of transportation is pulled from under them.

America's growing energy crisis therefore has become a helpmate to the smaller towns trying to cling to their remaining rail service. what the realization that there perhaps will not always be a handy fleet of trucks to do what the railroads have been, or should have been, doing. Additionally, southern Minnesota still doesn't have the highways to fill the trackage vacuum.

Thanks to a combination of forces and events, the Interstate Commerce Commission will be taking a more studious, considered and sympathetic look at proposed abandonments which in the past have favored corporations more than people. The ICC's arbitrary decision that rail service can be halted without a public hearing if the line generates fewer than 3¼ cars of freight a mile each year has the No. 1 priority for revocation.

UNITED STATES AND EUROPEAN SECURITY

Mr. TOWER. Mr. President, United States and European security are intricately interwoven and, therefore, we must pay increasing attention to attempts to extend détente to security matters in Europe. Despite the state of euphoria in our relations with the Soviet Union, and the celebrated end to the cold war, President Nixon warned us in his State of the Nation address that—

The postwar rivalry with the Soviet Union was not a result simply of misunderstanding, or personal animosities or a failure to create a good atmosphere of negotiations. The conflict was rooted in deeper differences: irreconcilable ideologies the inevitable geopolitical competition of great powers conducting global policies and, to a certain degree, bureaucratic momentum and the disillusionment created by decades of frustration between hopes and tensions.

One of the most important current détente negotiations concerns mutual balanced force reductions in Europe, the preliminary phase of which was recently concluded in Vienna with the main conference set for October 30.

We must pay close attention that these talks really result in balanced reductions by both alliances with "undiminished security for each of the participants" as the Vienna communique puts it.

The U.S.S.R. is stubbornly maneuvering for unilateral advantages on two points. One is the question of geographic limitations of any future agreement. From February until May, they refused to hold even a formal meeting until the NATO members temporarily compromised on the status of Hungary. To the Russians, the exclusion of the territory of Hungary and the Soviet army and tactical air force units stationed therein from the area of projected troop reductions was an important consideration, outweighing their former agreement to extend MBFR to all of Central Europe. Even in the event of an MBFR agreement, they want to gain an uncontrolled and unconstrained beachhead in Central Europe where troops could be deployed at will and a future crisis in Yugoslavia, upon the death of President Tito, exploited by the use or the threat of the use of force.

Our negotiators have reserved the right to raise the issue of the status of Hungary—which predetermines the inclusion or exclusion of Soviet forces in Hungary in an MBFR agreement—and I urge them not to abandon this position, but to make such that Hungary and her territory will be included in any phase I MBFR agreement on the reduction of stationed forces. This would give hope to the gallant people of Hungary with whom the American people share the hope for a retrieval of self-determination and free political development.

FISCAL YEAR 1975 HEALTH PROGRAM MEMORANDUM OF HEW

Mr. KENNEDY. Mr. President, the fiscal year 1975 health program memorandum of HEW has recently come to my attention. It provides another glimpse of the thinking of HEW regarding an attempt to formulate a coherent health strategy for the Nation. I want to take this opportunity to summarize for my colleagues what I consider to be the salient figures of the document.

First of all, Mr. President, it is refreshing to know that the Department begins by taking cognizance of the fact that its previous planning assumptions are no longer realistic. For example, the memorandum indicates that no legislation has been submitted for increased cost sharing under medicare. It also recognizes that the Department's request to the Congress to phase out the mental health center program is unlikely to be acted upon. And it further indicates that a number of additional health programs which the Department had intended to phase out at the end of fiscal year 1973, will be at least partially funded in fiscal year 1974.

The memorandum indicates that HEW should disengage itself from the role of health care provider of the first resort and emphasize rather the use of national health insurance. Yet on page 4, the memorandum includes the following remarkable sentence:

The long-term departmental initiative in financing access to medical care is national health insurance, which is being handled *apart* from the current budgetary and legislative process. (Emphasis added).

With specific regard to medicare and medicaid the memorandum contains the following projections: expenditures for medicare are projected to rise from approximately $12 billion in 1974 to $24 billion in 1979 and expenditures for medicaid are projected to rise from almost $6 billion in 1974 to more than $9 billion in 1979. That makes for a total of almost $34 billion for these two programs. These projections become even more astounding when placed in proper context. For example, the memorandum points out that in 1972 medicare accounted for only 42 percent of health care costs for persons over 65. The aged spent as much for health out of their own pockets in 1972 as they did before medicare was enacted.

With regard to medicaid the memorandum indicates that because HEW has not yet issued all of the regulations and guidelines under the amendments to that law, which the Congress passed last year, estimated cost savings to the government at about $700 million in fiscal year 1974 have largely been lost and that medicaid expenditures are now expected to exceed the budget by $395 million.

Mr. President, the document goes on to describe the Department's latest thinking with regard to special revenue sharing for health, health manpower,

student assistance, primary care, health planning, research, and protection. I do not plan to go into each of these areas in detail now. But I do commend the entire document to my colleagues. Mr. President, I ask unanimous consent that the health program memorandum be printed in the RECORD in its entirety at the conclusion of my remarks.

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

HEALTH PROGRAM MEMORANDUM—FISCAL YEAR 1975 BUDGET

I. INTRODUCTION

The annual Health Program Memorandum is a planning document designed to suggest some of the basic issues which must be addressed by the Department in its attempts to implement an appropriate Federal role in the health arena. This document attempts to focus attention on a small number of important *programmatic concerns*. While limited in number, they are sufficiently reflective of broader policy issues that their resolution will, by inference, provided guidance on a wider array of programming/budgeting decisions.

The health programs were instructed to and, in fact, prepared their forward plans on the basis of the President's FY 1974 Budget. That budget, in turn, made certain assumptions about the scope of DHEW's FY 1975 health budget. Anticipated savings in FY 1975 were more than $1.8 billion, including $1.3 billion from proposed cost-sharing measures in Medicare and $.5 billion from programs scheduled for termination (e.g., Public and Allied Health, Regional Medical Programs, etc.)

There is increasing evidence that the planning assumptions provided are no longer realistics, for example:

No legislation has been submitted for increased cost-sharing under Medicare, and even if submitted is unlikely to be passed.

A request to Congress for multi-year budget authority in FY 1974 and zero budget authority in FY 1975 and beyond for Community Mental Health Centers is also unlikely to be acted upon.

A number of programs scheduled for phase out by the close of last fiscal year will apparently be at least partially funded in FY 1974.

All of the above has created a degree of uncertainty about the planning environment to the extent that a program memorandum whose primary focus were budget numbers would prove largely meaningless.

The alternative chosen was one which concentrated on broader issues, which, in turn, flowed from basic principles regarding the Department's role in health—principles in large part already accepted as a result of last year's planning exercise and to some degree reflected in the President's Budget. The resolution of these issues, coupled with FY 1974 budget decisions due within a matter of weeks, should be translatable into budget guidance for FY 1975.

A. Provision and payment for services

Ultimately, DHEW should disengage itself from the role of health care "provider of first resort" and emphasize, rather, the use of national health insurance and special health revenue sharing as the major means of providing for the delivery of health care services. Some of the issues flowing from this principle are:

Prior to the enactment of NHI, how should the Department meet the pressures for cost control and increased program coverage facing existing financing programs?

What should be the scope of a special health revenue sharing initiative?

What further progress can be made in moving service programs toward increasing reliance on third-party reimbursements?

B. Capacity development

Given the eventual adequacy of financial access to necessary health care services, there will remain an important Federal role in assuring that the resources required to deliver those services are adequate both in terms of quantity as well as distribution. That role, however, should be one which would essentially build upon, rather than supplant, normal market mechanisms. Given that principle:

What should be the Federal role in financing the training of health professionals and in stimulating an appropriate geographic and specialty mix?

What additional leverage should be exerted to change a health care delivery system which has traditionally emphasized acute and inpatient care rather than preventive and ambulatory services?

What structural improvements might enhance the ability of local planning bodies to impact on capacity development?

C. Intelligence/protection/monitoring

A more streamlined Federal role in services delivery and capacity development notwithstanding, there remain functions which, due to their basic nature, must remain a predominantly Federal responsibility. These include, for example, biomedical research, health protection, and surveillance. There are, however, issues attendant to this continued Federal role:

How well are biomedical research budgets allocated in terms of the greatest potential impact on the social cost of disease?

What options are available for augmenting what are generally thought to be inadequate resources in the protection area, e.g., with respect to FDA activities?

II. OVERVIEW

This section of the program memorandum provides an overview of the Department's health programs—both new developments that warrant attention as well as issues that are important in understanding the structure and effectiveness of the ongoing HEW health effort.

1. Medicare and medicaid

The long-term Departmental initiative in financing access to medical care is national health insurance, which is being handled apart from the current budgetary and legislative process. Deliberations on NHI include consideration of whether to restructure or terminate the two existing insurance programs, Medicare and Medicaid. While reforms of Medicare and Medicaid need to be coordinated with NHI, short-term measures should be considered and are discussed below.

Expenditures for Medicare and Medicaid continue to grow rapidly. Anticipated Federal budget levels (in millions) for the two programs through 1979, given existing legislation, are shown below:

	1973	1974	1975	1977	1979
Title XVIII	9,803	12,368	14,999	19,384	24,478
Title XIX	4,727	5,750	6,564	7,802	9,278
Total	14,530	18,118	21,563	27,186	33,756

The Medicare program was designed to finance medical care for the elderly. Yet, in 1972 Medicare accounted for only 42 percent of personal health care expenditures for the over-65 population. Other public programs, primarily Medicaid, accounted for an additional 23 percent. The aged spent as much out-of-pocket for personal health services in 1972 as they did before Medicare was enacted.

The major challenge to the Medicare program during 1975–79, therefore, will be to control costs while maintaining acceptable levels of coverage. Currently, the principal mechanisms to control the costs of both Medicare and Medicaid are: (1) more effective utilization review, (2) more efficient settings for providing health services (such as HMO's and alternatives to institutional care), and (3) more effective procedures for reimbursing health providers.

It is too early to evaluate the effectiveness of newly implemented utilization review mechanisms. In addition, some utilization review initiatives, such as pre-admission review, have not yet been implemented because there is still no Federal plan to serve as a guide. Estimates of cost savings from UR are quite tentative and should be regarded as an indication of *potential* rather than real savings.

The SSA plan suggests no major new initiatives in regard to Medicare but does emphasize the implementation of measures contained in P.L. 92–603. This memo, however, suggests: (1) the need to reassess the legislation proposed in the President's FY 1974 Budget for the purpose of reducing program costs and to propose more effective cost-sharing provisions in the context of modified benefit provisions, and (2) a proposal to improve consumer awareness in the selection of providers and services.

The Medicaid program is the principal means of financing health services for the low-income population of the United States. Yet, it is widely viewed as a welfare program which only incidentally provides health care. It remains a target of criticism because of the following deficiencies:

The exclusion of low-income persons who are not categorically related to one of the public assistance programs;

The seemingly uncontrollable annual increase in program expenditures. Medicaid expenditures have risen 77 percent since 1970. The greatest portion of this increase has been in the number of persons served rather than in expenditures per recipient. In fact, average expenditures per recipient in constant dollars have declined from $335 in 1969 to $238 in 1974. This decrease results from tighter program controls by the States to prevent unnecessary utilization; some reduction in the amount, duration, and scope of services; and some reduction by States in fees paid to providers;

Wide variations in income eligibility levels and the generosity of each State's Medicaid program. In Alabama a family with an income of over $2,856 is not eligible for Medicaid, but a family in Massachusetts with an income of $7,300 may be. The estimated actuarial value of the program to an AFDC family ranges from $180 in Mississippi to $1,180 in New York. The California and New York Medicaid programs accounted for 41 percent of all Medicaid expenditures in FY 1972, yet only 15 percent of census "low-income" persons lived in those States.

The major FY 1974 Medicaid activity will be the issuance of the remaining regulations and guidelines for P.L. 92–603. State estimates generally do not reflect the impact of H.R. 1 and will not do so until all regulations are issued. As a result, some of the cost savings from H.R. 1, estimated at about $700 million in FY 1974, have largely failed to materialize and Medicaid expenditures are expected to exceed the budget figure by $395 million.

2. Health programs

The Assistant Secretary for Health has submitted a comprehensive forward plan for the Department's five health agencies, totalling approximately $4.3 billion in budget authority for FY 1975.

Those sums are distributed among H's constitutent agencies (in millions of dollars) as follows: *

*The "H" column contains agency direction costs for HRA, HSA, and CDC, as well as some program phase out costs. It should also be noted that some trust fund monies are included in the totals, which funds are SSA budget items.

	H	NIH	FDA	HRA	HSA	CDC	Total
1974	78.0	2,897.9	166.1	544.0	1,135.7	125.0	4,946.7
1975	76.0	2,057.7	197.5	546.6	1,271.6	124.3	4,274.1

A major change apparent in the above figures is the net reduction of $840.2 million in the budget authority of the NIH. This stems primarily from the decision in the President's budget to seek multi-year budget authority for Community Mental Health Centers in FY 1974 with a subsequent reduction to zero budget authority in FY 1975 and beyond. The FY 1975 H budget *does* include a net increase of $104 million for biomedical research, arrived at as follows: NHLI, an increase of $50 million; NCI, an increase of $25 million; others (including NIMH), an increase of $74 million; and research training, a decrease of $45 million. H's Forward Plan also raises a major issue regarding "program balance," i.e., are certain of the NIH's research programs (cancer, heart) growing at a rate detrimental to the total biomedical research mission? That issue is dealt with in some detail below.

A major increase of 19 percent is proposed for the FDA in an attempt to more adequately carry out the Department's undisputed mandate in the area of health protection. Top priority in FY 1975 has been assigned to the medical device program and to the Center for Toxicological Research. Increases are also provided for the development of radiological standards and for increased surveillance/compliance activities in human drugs. The H plan does *not* assume user charges, either as an offset or an increment to budget authority. User charges have been proposed by OMB as one possible means of augmenting the FDA budget, and the issue is discussed in Section III, below.

The new Health Resources Administration (HRA) includes the Department's Health Statistics and Health Services R&D functions, as well as its manpower, planning and facilities development programs. Decreased funding in HRA for health manpower activities (which results from a decrease of $200 in capitation payments for students in schools of medicine, osteopathy and dentistry) is offset by an additional $20 million for the comprehensive health planning function and an increase of 26 percent ($7.2 million) in the budget authority of the National Center for Health Statistics, primarily for expansion of the Federal/State/Local Cooperative Reporting System.

In the area of resources development, H sees the need for a capital development strategy. While the H Forward Plan proposes no immediate solutions, it does point to a real problem, namely, the necessity of coordinating Federal activities which stimulate demand (Medicare, Medicaid, NHI) with activities designed to insure the adequacy and appropriateness of supply. Historically, the health industry has not functioned very effectively in this arena. As a result, some geographic areas have a shortage of capital while others have too much. The capital adequacy is related to total revenues and the non-profit nature of the revenues of the industry. Where financing programs have greatly expanded the revenues of non-profit institutions, larger capital increases have followed. Where demand for services has risen without necessary revenues, capital shortages persist.

H has suggested that Federal sources of funds for investment in system capacity might derive from: (1) general revenues; (2) the equivalent of a sales tax on NHI premiums; or (3) an earmarked percentage of the budget of health care financing programs.

While P would suggest that the real issue may not be the total amount of capital investment in the industry, but rather its distribution, it does concur in H's recommendation that the issue be further explored and that specific recommendations be made.

The Health Services Administration (HSA) includes, in addition to the traditional services programs (HMO's, National Health Service Corps, Indian Health, etc.), major DHEW quality assurance activities. In HSA, the concept of special health revenue sharing is reflected in the proposed increase of $60 million in the budget authority of Section 314(d) of the Public Health Service Act (formula grant to States). $45 million of that increase is accounted for by folding in existing formula grants for alcoholism and drug abuse, leaving a net gain of $15 million. $25 million is being earmarked for a "primary care initiative"—a focal point in H's Forward Plan—and is discussed below.

The Center for Disease Control (CDC) now includes programs formerly administered by the Bureau of Community Environmental Management and the National Institute of Occupational Health. The H Forward Plan proposes the elimination of CDC's lead-based paint poisoning and rodent control programs. These reductions ($19 million) are partially offset by expansion of the venereal disease program and the intensified development of criteria standards in occupational health.

Assuming a high contingency plan of ten percent over the planning target for FY 1975 ($120 million), a major emphasis in the H plan is afforded activities geared toward migrant and Indian health ($115 million). Of particular concern with respect to Indians is progress towards a goal whereby they might eventually be in a position to take over their own health care services. $250 of the $420 million, or 60 percent of the funds available in the high contingency plan, would be added to the budget authority of the NIH in the following areas: NHLI, $50 million; NCI, $50 million; all other, $150 million.

III. PROGRAMMATIC ISSUES

A. Health care financing

1. Cost Control/Program Expansion

The FY 1974 budget incorporated three legislative proposals to change the cost-sharing structure of Medicare, including the introduction of 10 percent coinsurance on all hospital charges above the deductible, a dynamic deductible for the Supplementary Medical Insurance Program, and increased coinsurance under SMI of 25 percent. These proposals were estimated to result in a savings of $1.3 billion in FY 1975, their first full effective year. Congress has widely criticized the Administration for seeking to reduce program benefits, and actual legislation has not been introduced. Standing alone, the proposals have little, if any, chance of passage. On the other hand, the budgetary pressures of the current Medicare program are enormous. Given existing legislation, including the addition in 1973 of coverage of the disabled population and renal disease patients, Title XVIII expenditures are expected to increase from $9.8 billion in FY 1973 to $24.5 billion in FY 1979. At the same time, there are pressures for significant program expansion including coverage of outpatient drugs, the inclusion of persons with specific costly illnesses similar to the kidney disease provision, and a reduction in the 24-month waiting period before a disabled social security cash beneficiary can become eligible for Medicare.

We believe the rationale for last year's proposed cost-sharing provisions to be substantively sound. However, options for increasing cost-sharing should also be examined in the context of parallel proposals for broadening benefits, e.g., outpatient drug coverage, better catastrophic coverage under Medicare, and maximum liability for cost-sharing. This set of proposals could be designed to achieve better program balance within the existing budget framework, or to achieve a net budgetary savings.

Recommendation

That SSA and P jointly develop alternative proposals which would combine revised cost-sharing with selective liberalizations. Agree ____ Disagree _____.

2. Consumer awareness

Many aged are not fully aware of the out-of-pocket payments that they face under Medicare and do not consider fee differentials in choosing physicians. Under Part B, these out-of-pocket payments arise from two sources. First, patients face the standard deductible and coinsurance. Second, Medicare reimbursement is based on "reasonable and customary" fees. Where the physician's charge exceeds the reasonable and customary fee recognized by Medicare, the patient must pay the difference in addition to the usual cost-sharing. We believe that improved consumer information about cost-sharing and the extent to which the charges of specific physicians would be fully covered could result in improved consumer choice, less resentment and confusion about large unexpected bills, and lower costs to both beneficiaries and the Federal government. Possible measures include SSA providing beneficiaries better information on cost-sharing and on the basic concept behind the fee screens and requiring that the physician provide information regarding the relation between his fee and what Medicare will cover.

A second step would be to limit the charges of participating physicians to the customary fee recognized by Medicare. Until now, Federal policy has been to allow physicians to charge Medicare beneficiaries whatever they like and still receive reimbursement for 80 percent of the customary fee. As Medicare has become more restrictive in determining the customary fee, a greater proportion of physician fees charged to Medicare recipients has been higher than the customary level, thus effectively increasing the cost-sharing paid by Medicare beneficiaries. This policy would have the effect of reducing out-of-pocket expenditures for Medicare recipients, although it may induce some providers not to serve Medicare patients.

Available options, then, are to:

a. Retain current policy.

b. Request P, H and SSA jointly to develop a proposal to increase consumer awareness of physician fees and cost-sharing.

c. In addition to Option 2, require that physicians who participate in the Medicare program charge patients no more than the fee recognized by Medicare as customary.

Option b. Agree ____ Disagree _____.

B. Health special revenue sharing

The H Forward Plan recommends increasing the 314(d) formula grant (general purpose health formula grants to States) from $90 million to $150 million in FY 1975 while folding in current formula grants for alcoholism and narcotics addiction. This would amount to an increase in 314(d) funding of $15 million, since alcoholism and narcotics addiction grants already total $45 million. H is now preparing a paper on health special revenue sharing which will be submitted separately.

The H Forward Plan did not discuss the reasons for the proposed $15 million increase in 314(d), nor did it discuss the role of the States in relation to the Federal and private roles in terms of health special revenue shar-

ing. Assuming that some form of national health insurance will eventually become the prinicpal Federal mechanism for financing health services, the issue addressed here is which activities funded through current Federal services programs should continue to receive Federal support through a "special revenue sharing" mechanism, which should be cashed-out through health insurance, and which should be continued as project grants.

Federal grant programs pay for two types of activities:

Protection, prevention, and disease control, and

Provision of medical services.

1. Protection, prevention, control

Formula and project grants and direct Federal operations in this category support for the most part public health activities such as programs for rodent control, lead-based paint poisoning, communicable diseases, alcoholism, and drug abuse. These activities are funded and administered through State and local health departments that usually provide the services *directly* rather than contracting with private agencies. Federal funding support for these activities is shown as $370 million in the President's FY 1974 Budget.

Some of these public health activities, such as communicable disease control, are a legitimate Federal responsibility because of spillover effects that cross State lines; however, most of the other activities in this category provide benefits that are strictly local in nature. Most States spend far more in support of these activities than the amount they receive from the Federal government. Additional Federal support is provided, presumably because of past precedent or because States do not support the activities to the extent deemed desirable by the Federal government.

The Administration's FY 1974 Budget proposed continuing the formula grants and the project grants for VD, communicable diseases, lead-poisoning, and rodent control, and phasing-out project grants for alcoholism and drug abuse.

There are two basic options for dealing with the programs in this category:

a. Retain at the Federal level a broad grant authority for supporting certain Federal "crisis" efforts, such as communicable disease and VD control, while *terminating* categorical support for all other public health activities.

General revenue sharing legislation authorizes the use of funds for health activities if State and local governments desire. This option recognizes (1) the local nature of these public health activities and (2) the need to reduce categorical (health) support when general support is available.

(b) Phase out project grant support for alcoholism and drug abuse, as proposed in the FY 1974 Budget, and fold support for all other public health activities into health special revenue sharing.

Recommendation

That you choose option *a*. We recognize that this option is inconsistent with previous Administration statements on health special revenue sharing; however, we feel that Federal categorical (health) support for health activities which are local in nature and for which other, more general support is available should be reduced, especially in view of increasing Federal budget constraints. But there is also a need to retain at the Federal level a broad grant authority for supporting certain crisis efforts in a limited way and for a limited period of time. We recommend that current Federal support for public health activities be phased out over the two-year period FY 1975–1976. Agree ____ Disagree _____.

2. Payment for basic medical services

Formula and project grants within this category support services for particular target groups, such as mothers and children, migrants, and the poor residing in certain "underserved" areas. Included are family planning programs, neighborhood health centers, and CMHC staffing grants. Their total budget level in FY 1974 is approximately $735 million. The purposes of these grants are both to develop and to pay for services. Third-party financing was anticipated for some of the services offered but has not fully materialized. As a result, funds have not become available for new starts, and present funds are used primarily for the continued financing of existing service programs.

The basic issue is how best to coordinate the termination of Federal payment for services through grants with the assumption of Federal payments for services through health insurance. Three options are available:

a. All grants which pay for services could be folded into health special revenue sharing.

The major advantage of this option is to simplify Federal administration by turning all programs over to the States. There are, however, several potential disadvantages. First, as national health insurance is enacted and assumes payment for services covered, freed-up funds would go to States for use in other ways, rather than revert to other Departmental priorities.

Second, some grants pay for services in private health centers, whereas others are used to provide services directly in public health clinics. Since the services are similar in the two kinds of clinics, some States may decide to stop funding private projects and use the funds to expand public health services. Do we want health revenue sharing to support possible State and local biases in favor of the direct provision of services, or should Federal funds be used to subsidize the payment for services delivered by the private sector? The concern is not with who *controls* these programs, but who *provides* services?

b. Include in health revenue sharing only those grants which are presently funded and administered through State and local health departments, while retaining at the Federal level those grants which pay for services in private centers.

As national health insurance assumes payment for services, Federally-retained grants would be terminated. This option has the advantage of eliminating State and local discretion in shifting funds to public clinics at the expense of private clinics. However, the budget question presented in Option *a* above remains.

c. Retain at the Federal level all grants which pay for services, terminating these grants as national health insurance assumes payment for the services.

This option eliminates the disadvantages in the options given above, but would result in a smaller health revenue sharing package.

Recommendation

Option *c*. It would be very difficult to reduce the funding level of health special revenue sharing grants to States as national health insurance assumes payment for services. Freed-up funds would thus be available for other State and local health activities for which other Federal funding sources are available. In effect, a form of "double payment" would exist. Funds freed-up by the national health insurance should be retained at the Federal level to be used for other Departmental priorities. Agree ____ Disagree _____.

C. Services reimbursement

If Option *c* of the previous section is chosen and project grant programs are retained at the Federal level after June 30, 1974, there will be a continued effort to increase reimbursement income for the projects. The Forward Plan submitted by H would reduce 314(e) project grant funds for neighborhood health centers by $20 million (or ten percent) in FY 75. This reduction would be offset "in part" by funds from third-party payers and other sources. Funds for family planning and maternal and child health grants would remain at FY 74 levels.* The National Health Service Corps, discussed in the plan as "the major strategy for dealing with health problems in rural scarcity areas," would receive a $4.7 million increase (or 42 percent over FY 1974).

H's Forward Plan is a departure from last year's in several important respects. Both plans emphasize increased third-party reimbursements for services projects. Last year, however, the plan stated that "funds 'freed-up' as a result of the increased third-party payments to the centers would be used to develop additional Family Health Centers in rural and urban areas." In this year's plan, money freed-up by increased third-party payments will go to reorient hospital outpatient departments under a new primary care initiative which will be discussed below.

Recommendations

a. Reducing 314(e) funds by 10 percent is within reasonable estimates of "long-term" reimbursement potential. However, the statement that the 10 percent reduction will be offset only "in part" indicates that budget reductions are in excess of estimates of potential reimbursements for FY 75. It is P's position that reductions should approximate increased reimbursements. P therefore recommends that yearly budget reductions approximate yearly estimates of increased reimbursements. Agree ____ Disagree _____.

b. Further, it is P's position that *if* reductions in excess of reimbursements are mandated as a matter of policy, program management should be required to develop criteria for reductions for individual centers based on evaluation of performance. The rationale behind this policy is that the Department should support projects which are taking steps to maximize reimbursements. Projects which are poor performers should suffer reductions first, rather than a straight percentage cut affecting all projects equally. Agree ____ Disagree _____.

D. Manpower

Because all the legislative authorities dealing with health manpower expire at the end of this fiscal year, H and P have been conducting a comprehensive analysis on the major issues. This section briefly describes where the analyses have led us to date in terms of changing the Federal role in the financing of health education. Since a separate document on this issue will be presented to you in September, you may prefer simply to comment on the general thrust of the policy directions recommended, rather than indicating specific decisions.

1. Adequacy of total supply

In the first years of the health manpower legislative authority (early 1960's), Federal expenditures were used to assure that existing health education capacity (student places) would be maintained. In the later 1960's, the Federal government, responding to an alleged "50,000 doctor shortage," became more concerned with increasing enrollment capacity, conditioning capitation of health professions and nursing schools on

* Amendments to Title V of the Social Security Act (passed on June 30, 1973) do, however, show increases in the maternal and child health *formula* grant. Project grant authority was extended for one year. Thereafter, project money will be folded into the formula program.

expansions of enrollment. Major enrollment expansion has occurred: for example, between 1950 and 1965 first year medical places rose by only 1,000—from 7,000 to 8,000. Since 1965, first year enrollment has risen by over 50 percent to some 13,000 in 1972.

Maintenance of this growth together with continued net inflow of foreign-trained providers (physicians and nurses) and increasing employment of paramedical and dental assistants is expected to result in an adequate aggregate supply of health providers by the next decade. This projected balance results from large projected increases in the number of health professionals relative to less rapid population increases:

	Total active		Per 100,000 population	
	1970	1980	1970	1980
Physicians	323,000	440,000	158	196
Dentists	102,000	125,200	50	56
Registered nurses	723,000	1,050,000	353	468

The only potential source for greatly upsetting the projected balance is major demand stimulation due to an unlimited national health insurance plan.

The large-scale entry by community and junior colleges into allied health training in the absence of major Federal stimulation suggests that we should limit our support in this area to capacity building and quality improvement research and development.

Physician extenders (PE's) appear to offer significant potential for rationalization of task distribution among health care team members, thus increasing practice output through the use of lower cost personnel. In addition, there is evidence to suggest that PE's could make a major contribution to alleviating geographic maldistribution. For example, the University of Washington MEDEX program (which provides post-military medical training for Corpsmen) places all of its graduates with overworked, rural physicians. However, the concept is so new and evidence sufficiently fragmentary that we conclude that the educational system is not yet prepared to undertake a broad training initiative alone, and that the Federal government should continue its support.

Recommendations

a. That the Department alter its initiatives from expansion of health professions production to the maintenance of current educational capacity. Agree____ Disagree_____.

b. That Federal support of allied health education be confined to quality improvement through research and development. Agree____ Disagree_____.

c. That Federal support of PE's receive modest expansion, that Medicare statutes be expanded to permit reimbursement of PE services, and that impact evaluation of mid-level medical workers be continued. Agree____ Disagree_____.

2. Financing health education

In 1966, the Health Professions Act was amended to provide institutional support in the form of Special Project Grants. From 1966 to 1971, financial distress absorbed an increasing share of special project funds: of the $76.8 million awarded in 1971, two-thirds went for financial distress. In 1971, the Comprehensive Health Manpower and Nursing Training Acts divided institutional support into capitation, financial distress, construction, and special projects. Capitation support sought to do two things: substitute for financial distress grants (to be phased out) as a mechanism for placing schools on sound financial footing, and second, to encourage schools to expand their enrollments. Total institutional support for the health professions increased from $150 million in FY 1971 to $320 million in FY 1972.

Students have not been called upon to pick up a larger share of their educational costs. Rather, their tuitions were maintained on a par with those of other university programs despite the much higher cost of such programs and the very high post-graduation income potential. The classical justification for the unnecessarily low tuitions has been that to raise tuitions would discourage applications from the economically disadvantaged unless massive scholarships were available.

The large Federal investment has resulted in the desired enrollment increases. However, the schools have not gained a sufficiently sound financial footing to permit unrelated withdrawal of both capitation and financial distress grants.

In view of high physician and dentist earnings (1970 median net income for both was approximately $40,000), it appears that it would be feasible to shift a greater portion of the cost-sharing to the student. This would permit reduction on a dollar-for-dollar basis of Federal capitation.

Total elimination of Federal capitation support seems undesirable at this time for several reasons:

State schools' tuitions are set by State legislation, and abrupt increases of a magnitude sufficient to completely replace capitation is not likely to be quickly or easily approved.

The political confrontation with the medical establishment claiming a moral Federal commitment would cast the Administration in an anti-health role. (Students admitted under the current program in FY 1975 will not graduate until FY 1979.)

Capitation ensures some Federal leverage through which health professions schools can be stimulated to respond to societal objectives. Disaggregated student influence can exert little such direction.

Similarly, elimination of the financial distress category would remove our flexibility for providing support to schools which: (1) are in transition to, but have not yet arrived at financial stability, or (2) have special problems such as the abrupt loss of research training dollars or heavy remedial education responsibilities because of large minority enrollment.

Recommendations

a. That capitation be retained for medical, dental and osteopathic schools with the level falling from the present $2,000 per student to $1,200 per student in and after 1977. Agree ____ Disagree _____.

b. That eligibility for capitation support be conditioned upon agreement to:

Maintain FY 1974 enrollment levels unless directed otherwise;

Provide interdisciplinary team training—particularly utilizing physician extenders;

Expand primary care training programs emphasizing outpatient clinical services; and

Reserve 10 percent of student places (or those places increased pursuant to 1971 capitation requirements) for students who morally commit themselves to practice medicine for underserved populations. Agree ____ Disagree _____.

c. That eligibility for financial distress support be conditioned upon a reasonable level of tuition. Agree ____ Disagree _____.

3. The student's financial role

If we decide to shift a significant portion of educational support from the Federal government to the student, we can expect the following:

Total applications may fall slightly, but are likely to continue to exceed educational places given the continued attraction of high post-graduation earnings. Currently, there are about three qualified applicants for each first-year place in medicine, dentistry and veterinary schools and two qualified applicants for each place in schools of podiatry and optometry.

The need for loans and the average level of the loan needed (the present limit is $2,500) will rise sharply.

The economically disadvantaged student (including minorities) could be further inhibited from applying because such large borrowing is foreign to his "economic nature."

If graduates continue to earn at least $40,000–$50,000, there seems little justification for donating to them free educational money in the form of scholarships or interest subsidies. They will be able to afford to pay it back, and should be expected to do so. Baccalaureate degree health graduates cannot expect these high earnings, and some scholarship funds should be available through the Office of Education for disadvantaged students at that level. For health professions graduate students, however, a total shift to loans is a viable option. These loans could be funded through the private market with Federal participation limited to guaranteeing the loan.

If we go to loans, however, raised tuitions will necessitate raised loan ceilings. Such ceilings should be high enough to cover not only educational costs but living expenses. This will permit the student from an economically disadvantaged background to participate without requiring parttime employment, and place him more on a par with middle- and upper-income students. A reasonable level would be $7,000 to $8,000 per year. Resulting aggregate loans of $20,000 to $30,000 (versus the present $7,000) would have the additional benefit of providing strong stimulus for participation in the loan forgiveness program for service in underserved areas.

Two additional provisions would make this level of borrowing more acceptable to students from economically disadvantaged backgrounds:

Middle- and upper-income students can borrow money from their families at or only slightly above the rate of interest such money would receive in savings institutions—around 6 percent. A Federal subsidy of the interest difference (between savings account interest and straight loan interest rates) of perhaps 3 percent for economically disadvantaged students would encourage a more equal participation.

Loan repayment could be conditioned on income. The fear of flunking out, becoming disabled, or failing to earn the typically high income might lead low-income background students to reject the loan strategy. A loan policy that would gear the rate and amount of repayment to post-graduate income should help remove this inhibition.

Recommendations

a. That the medical education student support program be transferred to the Office of Education. Agree ____ Disagree _____.

b. That scholarships be confined to pre-baccalaureate education for those from economically disadvantaged backgrounds. Agree ____ Disagree _____.

c. That maximum loan ceilings for graduate health professions education be raised to $8,000 per year and the total loan ceiling to $25,000–$30,000. Agree ____ Disagree _____.

d. That the Department strengthen its effort to locate loans for economically disadvantaged students. Agree____ Disagree_____.

e. That the Federal government subsidize the loan interest rate for students from economically disadvantaged backgrounds and guarantee all loans. Agree ____ Disagree _____.

f. That the Department agree to condition loan repayment on level of future earnings. Agree ____ Disagree _____.

4. Accessibility to health providers

With increased aggregate health manpower supply on the horizon, should the Federal government make a concerted effort to alter the distribution (geographic and specialty) of health providers? There are wide varia-

tions in the health provider to population ratios between rural/ghetto areas and suburban/preferred urban areas. The physician/population ratio between States in 1970 varied from 233 per 100,000 population in New York to 90 per 100,000 in South Dakota. For dentists the spread is even worse: in 1970 New York had 81 dentists per 100,000 population while it was 27 per 100,000 in Mississippi.

The Federal actions of the last five years to increase the overall supply of health professionals should have a trickling down effect on underserved areas. As it gets harder to find suitable employment in more desirable areas, physicians and dentists will probably begin to move more towards underserved areas. However, it is very questionable whether distributional problems can be completely solved by normal market forces.

Federal efforts to alter the geographic choice of providers have been limited to loan forgiveness. However, economic incentives applied to licensed health providers have not been very effective. Although it is still too early to count the loan program as a total failure, one must wonder when only 60 of the 142,000 loan recipients have used the forgiveness arrangement. In fact, States with a physician loan program without forgiveness have been more successful than those *with* one in getting physicians to practice in underserved areas.

The appropriate place for increased concern seems to be during the graduate training process. Graduate training determines the specialty of a physician and for many it is the most important event in determining area of practice. Since there are twice as many first-year residencies as U.S. graduates, medical school graduates have great flexibility in determining specialty and location. The movement of physicians away from primary care has been directly related to the growth in specialty residencies and geographic imbalance has grown with medical school affiliation and the average size of the residency program. The distributional problems are interrelated—residencies are developed by hospital teaching staffs in larger hospitals to provide training in inpatient care fields. Even if hospitals and teaching staffs wished to alter their residency plans, reimbursement from third-party insurance plans often do not cover the training cost of outpatient-based residency programs.

To the extent that residency programs become more outpatient oriented, we can expect a more even distribution of physicians to emerge. One study comparing location choices of GP's and fulltime specialists found over 70 percent of GP's settling in towns under 25,000, while this was true for only one-quarter of the fulltime specialists. More even distribution will not, of course, mean that every community can support or should have their own doctor. Of the 120 counties without a physician in 1970, 40 percent had populations of less than 2,000, which is a minimum for supporting a physician. Many areas could be adequately served with paramedical personnel tied into a more complete medical system.

Recommendations

a. Direct H to initiate a major study as to how these distributional issues can be most efficiently dealt with over the long run. Agree ____ Disagree _____.

b. Increase efforts in the upcoming manpower legislation to shape geographic and specialty distribution more in line with community needs. Agree ____ Disagree _____.

If you agree with this recommendation, any of the following steps might be appropriate:

(1) With respect to student incentives:

Make scholarship support for undergraduate education conditional upon a service commitment to an underserved area;

Permit loan cancellations of interest and principal (up to 25 percent) for those taking residency in areas with a low resident/population ratio;

Permit interest forgiveness and delay in loan repayment for those going into primary care residencies.

(2) In the area of undergraduate training:

Tie institutional support of medical, dental and osteopathic institutions to their setting aside 10 percent of their classes for students willing to serve in underserved areas;

Tie institutional support to the setting up of primary care clinical training centers as a part of undergraduate training;

Tie institutional support to the specialty composition of graduated students; and

Increase special project money to medical and dental schools that take students from States with none or an inadequate number of such educational places.

(3) With respect to hospital training programs:

Make a more extensive use of seed money for training programs in out-patient-based primary care residencies in large teaching institutions;

Urge that community hospitals in areas with a deficiency of approved places be brought together with nursing and medical schools to start "outreach"-oriented residency programs, particularly in primary care fields. Direct funds should be provided, preferably through AHEC's for faculty, overhead and residency stipends.

(4) In terms of residency planning:

Require all residency programs to obtain local planning approval for new residency programs in order to receive Federal third-party reimbursements. This would work towards linkage of community needs and physician output.

(5) Other mechanisms to equalize access to care:

Increase the Federal role in the matching of providers with communities, going beyond the current programs of the National Health Service Corps. This could be done by having a Federally/State-established or funded data profile instituted describing areas desiring more physicians, dentists and other health professionals.

Inform underserved areas not capable of supporting a viable number of physicians/dentists of alternative manpower types capable of providing such care;

Require all physician extender programs to set up a clinical and placement linkage with underserved areas. In areas found capable of supporting just one overworked physician, provide stipend support of a physician extender for up to two years.

c. Assuming your support of recommendation b, H and P should prepare detailed recommendations and legislative proposals for the steps outlined which would appear most appropriate. Agree ____ Disagree _____.

E. Primary care

H has proposed a $25 million "primary care initiative" in FY 75 to improve the availability and efficiency of primary care resources in underserved areas. Suggested by H as one possible approach to this end is the use of grants to help hospital outpatient departments (OPD's) in underserved areas convert from crisis-oriented care to a health maintenance approach for their communities, and to established linkages between hospital OPD's and other community services resources. Consistent with a "seed money" approach to the use of project grants, funds would not be used to pay for services under the primary care initiative, nor would they be used to pay for construction or renovation. These would be encouraged under HUD mortgage insurance programs. Funds *would* support staff to plan and manage the necessary restructuring and reorganization of the OPD's, maintain linkages with other community providers, and expand training opportunities in the area of primary care. Funds for this activity would come from 314(e) and manpower project grants.

P strongly supports an initiative in the area of primary care. However, we would suggest that in its further analytic development of the initiative, H include alternatives to hospital outpatient departments as the locus for the provision of basic primary care.

Hospital emergency rooms and outpatient departments have by default become the prevailing source of primary care for many urban dwellers. Yet, primary care is not a hospital's principal function and the prevailing organization of many OPD's tends to reflect inpatient needs. The hospital has thus tended to be a high cost setting for the delivery of primary care. Some have suggested that hospitals should be encouraged to provide a prepaid (HMO) type of care. This could create problems, however, as the HMO management attempts to cut costs through decreased inpatient utilization while the rest of the hospital's management attempts to fully utilize existing bed capacity. These considerations and the heavy emphasis that the Hill-Burton program already places on outpatient facilities lead us to question whether *non*-hospital-based outpatient centers might be considered a possible alternative for funding under a primary care initative.

Free-standing centers could increase access by providing a neighborhood-based locus of care. They are traditionally organized to facilitate a health maintenance team care approach and will not face conflicting motives regarding use of inpatient capacity. They provide an alternative to hospital-based care for communities which cannot draw private practitioners. They also have had a better record of community involvement. They have traditionally had greater problems getting third-party reimbursement, but assurance of such reimbursement would be a prerequisite for funding new projects. The Department is already taking measures to help centers obtain reimbursement from Medicare and Medicaid, including a legislative amendment to mandate Medicaid reimbursement for clinical services in the 15 States which do not cover them. This will place free-standing centers in all States on a par with hospitals in terms of primary care services for which reimbursement can be obtained. If reimbursements do not match costs, free-standing centers will be less able than hospitals to absorb the burden and seed money may have to be provided initially for this purpose.

Recommendations

The above considerations lead us to believe that free-standing centers offer an additional approach to that of improving hospital outpatient departments which should be considered more fully before decisions are made regarding the primary care initiative. The two approaches may not be mutually exclusive, although limited resources may force a choice between them. Continued analysis by H should deal with both alternatives. Agree ____ Disagree _____.

F. Health planning

H recommends $58.3 million for support of comprehensive health planning agencies in FY 1975. However, they do not discuss any changes in the CHP program or the likely possibility that Congress will propose combining CHP with other Federally-supported planning agencies such as Hill-Burton, RMP and EHSDS into some form of regional health authorities.

At the present time, the Federal government provides support for five different approaches to local health planning—Comprehensive Health Planning (CHP), Hill-Burton, Regional Medical Programs (RMP), Area Health Education Activities (AHEA, funded through RMP), and Experimental Health Services Delivery Systems (EHSDS). These health planning approaches were developed

at different times, and their activities have been focused on various individual components of the health care system rather than the whole system.

Currently, there are about 250 State and local CHP agencies in the nation—50 Hill-Burton State agencies, 56 RMP's (mostly Statewide), 57 areawide AHEA's, and 19 EHSDS. Staff and administrative costs, including costs of special studies and other staff activities, currently approximate $35 million for CHP, $21 million for RMP, $5 million for Hill-Burton, $7 million for AHEA, and $4 million for EHSDS. Total current Federal support for all five activities thus approximates $72 million, $14 million more than H recomends for CHP for FY 1975.

Legislative authority for each of the five planning groups expires June 30, 1974. In the FY 1974 Budget, the Administration proposed termination of Hill-Burton, RMP (and thus RMP-funded Area Health Education Activities) as well as EHSDS. The Department proposed a simple, three-year extension of CHP. On the other hand, the Congress appears to be considering the concept of a regional health authority which would replace all five and have greater powers than any of them currently possess.

Within the context of expiring legislation, this appears to be an appropriate time to improve upon present health planning arrangements. No planning model has yet included all five components of the health care market: consumers (both institutional and individual), providers (both institutional and individual), third-party payers, health educational institutions, and government. As a result, each has failed to address problems of the total health care system, e.g., facilities, manpower and services. Instead, each of the present groups conducts activities in only parts of the system. It is generally agreed that planning is best done by considering the total health care system rather than only parts of it.

Recommendations

We recommend that a plan be drawn up to consolidate the five current programs—CHP, Hill-Burton, RMP, AHEC, and EHSDS—into a single health planning consortium, with due regard for interrelationships to overall human resource planning initiatives. Agree ____ Disagree _____.

G. Research

1. Program balance

Perhaps the outstanding issue involving biomedical research has been referred to as the "problem of program balance." As stated in H's Forward Plan, the issue is essentially as follows: Should cancer and heart programs continue to receive an increasing share of NIH biomedical research funds? Relying on "reason and good judgment" H indicates that the answer is "No." However, reasonable men differ as to what constitutes good judgment. For example, some might suggest that "good judgment" would call for the application of demonstrable indicators of "social cost" as the primary factor in allocating resources to biomedical research. As an illustration, one might compare the number of deaths, hospital days, days of disability, or any combination of these effects of diseases directly related to the mission of the National Heart and Lung Institute, to the total of such effects caused by the most widespread and serious disease categories. If funds were allocated strictly on the basis of such ratios (and keeping the total budget for biomedical research the same), the NHLI FY 1975 budget would, in fact, be *higher* than that proposed by H—from $128 to $926 million higher, depending on the mix of indicators used.

Such an approach is clearly simplistic and unacceptable, but it does reveal the dangers inherent in suggesting "program imbalance" in the absence of clearly articulated criteria. Several important questions must be answered before there can be a final determination as to whether NIH programs are in balance. One is how even to *define* a "biomedical research program." Another relates to *disease importance* and *scientific readiness*, which must also be considered as a part of the resource allocation process. Of the various possible ways of dealing with the issue of "program balance," the following are three principal options:

a. To acquiesce in the present method of resource allocation (which has been variously described as "political" and "unsystematic"). In this case the Department would be forced to rely on its collective intuition to detect program imbalances. This option would include supporting the budget recommendations advanced in H's Forward Plan.

b. To use available statistics on the incidence and severity of disease as the principal guide for allocating resources to competing biomedical research programs.

c. To adopt as a Secretarial initiative the establishment of a biomedical research priority-setting process which formally and explicitly incorporates consideration of the following kinds of factors: (1) the readiness of research areas (i.e., how likely is it that some directly or indirectly useful product will result from spending research funds on specific health program areas?); (2) the societal significance of health problem areas (i.e., how widespread are the various diseases and how severe are the problems they cause?); (3) the possible indirect benefits to other areas that research on a fundamental life process might be expected to have; and (4) the likely social costs of using the knowledge acquired through research in a particular area.

However, the capability does not now exist to establish a process like this on a routine, recurring basis throughout NIH. Therefore, *it would be necessary under this option to assign to H the task of planning for the development and implementation of the process.* It ought to be possible to begin implementation of such a process within twelve to eighteen months after a decision to proceed is made.

Recommendation

Option *c* is recommended as the most appropriate Departmental approach. This option is preferable: first, because of the major conceptual difficulties inherent in any attempt to deal with the issue of program balance; and second, because further progress needs to be made in several preliminary activities now underway, activities which include development of the National Cancer Operational Plan. Agree ____ Disagree ____

H. Protection

The Food and Drug Administration has been consistently underfunded in terms of its legislated responsibilities and expanding scope of work. Food processing plants, for example, are still being inspected only once every seven years. Even given the possibility that existing resources might be allocated more efficiently, a major increase in funds is clearly needed and is recommended.

H's Forward Plan does, in fact, recommend an additional $31.4 million in FY 1975, but even that increase will provide only a fraction of the funds which could profitably be used.

Another option for consideration is the establishment of user charges to pay some of the costs of FDA regulatory activities (e.g., the filing of new drug applications by the drug industry, or inspection of food plants), and those of the CDC (e.g., licensing of interstate laboratories). In a letter of January 25, 1973, to HEW, OMB requested that:

A legislative proposal . . . be prepared by the Department under which the costs of FDA regulatory activities that benefit industries will be paid for by those same industries. It is anticipated that, in the future, funds made available to the Food and Drug Administration for its regulatory functions would vary with the size of the industries regulated and user charges collected.

In general, OMB's intention seems to be that this would be a means of substantially contributing to the agency budget.

The chief argument *for* this proposal is that the functions pertaining to regulation are a necessary part of conducting the affected businesses, and should, therefore, be a component of the costs of those industries. H, although opposed to the imposition of user charges, has done much of the preliminary analysis for such an allocation. Its analysis, however, has been focused on the imposition of such charges on an industrywide basis, which tends to magnify the difficulties and minimize the advantages of user charges. This approach focuses charges on sales rather than on the basis of the work generated for the agency by each firm.

Arguments against the imposition of user charges center chiefly around the role of FDA and CDC as being that of consumer protection rather than industry benefit. Regulation is a well-established government function from which the general public benefits; the public should, therefore, bear the costs from tax revenues. It can be expected that the affected industries, which do not take too kindly to regulation, would oppose legislation requiring them to pay directly for such regulation.

Recommendation

That H continue its staffing of the user charge issue with a final package prepared for Secretarial decision by September 30, 1973. That activity should include an economic analysis assuming an imposition of user charges at the level of the individual firm, varying with the intensity and scope of surveillance. Agree ____ Disagree _____.

ARKANSAS GOV. DALE BUMPERS SPEAKS AT ENERGY SEMINAR

Mr. HUMPHREY. Mr. President, on June 5, the Senate by a wide margin passed the Emergency Petroleum Allocation Act of 1973. Included in that legislation was my amendment calling on the 50 State Governors to establish offices of fuels and energy conservation in their States. Subsequently, I corresponded with them to notify each State of the intent of this legislation, and I have been heartened to receive over 25 replies reporting on the Governors' efforts to confront our energy crisis.

One of the letters that was especially informative came from Gov. Dale Bumpers of Arkansas. Governor Bumpers included in his correspondence a speech he presented to the Seminar on Power and Energy Needs in Little Rock on June 22. I urge my colleagues to read this speech, for it contains a thorough analysis of the problem currently being discussed all over the country. Not only does he pose the crucial questions which require comprehensive answers in dealing with the energy crisis, but he posits some steps that can be taken at both the State and the national levels in response to the various shortages.

I ask unanimous consent that Governor Bumpers' letter and speech be printed in the RECORD.

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

OFFICE OF THE GOVERNOR,
Little Rock, Ark., July 11, 1973.

Hon. HUBERT H. HUMPHREY,
U.S. Senator,
Washington, D.C.

DEAR SENATOR HUMPHREY: Thank you for your recent letter on gasoline conservation. We in Arkansas share your concern and are beginning a number of steps aimed at both long and short-term fuel conservation.

I have doubts about the effectiveness of voluntary guidelines. I also feel fuel conservation is an area in which the states could operate effectively and constructively. I would have no reluctance in insisting upon numerous fuel conservation measures within my State if we knew the fuel saved by belt tightening in one sector would be available for priority needs (such as farming) in other sectors. I do not think it is feasible nor workable to call upon the citizens of Arkansas to voluntarily conserve fuel if the savings accrue to a different state or a different region of the country.

I am taking the liberty of enclosing a speech I made at an Energy Seminar here in Little Rock, sponsored by the Southern Governor's Conference. I am also enclosing a summary of our Energy Studies for the near term (3 to 8 years). I hope you find these of some interest.

Kindest regards.

Sincerely,

DALE BUMPERS.

ADDRESS BY GOV. DALE BUMPERS

The fuels which presently supply our economy and which can be expected to supply us over the next 3 to 8 years are, as you know, nuclear and hydroelectric power, coal, natural gas, and petroleum. We began a study in our Department of Commerce well over a year ago to determine how dependable these resources would be in the near future. The answer to this question was first sought on a statewide basis, but it was quickly realized that the distribution of energy resources is a problem of national scope. So the study was expanded to a national scale. The results are based on studies by the federal government and on interviews with governmental officials and persons representing a number of industrial organizations. The information used has been checked and cross-checked. The study, "Energy in the Near Term," is enclosed. Here, I will briefly summarize the results and conclusions and offer at least one possible response for appropriate state action if the conclusions are correct.

For convenience the expression, "near term," is used here and indicates the next three to eight years. As a practical matter, the exact length of this period seems to be determined by the period of time required for substantial new refinery construction and for the supplying of those new refineries with crude oil.

The results of the Arkansas study are as follows:

1. The contributions of hydroelectric and nuclear power in the near term are well known because of the length of time required to build generating facilities.

2. Natural gas is production-limited and not expected to grow at a rate greater than 1% per year.

3. Coal use is limited by mine shortages, shortages of railroad cars, and facilities to burn the coal. In the near term, coal use will decrease, perhaps as much as 6% per year.

4. Crude oil must be refined to be used, and the refining facilities in the United States will process an almost constant 12.2 million barrels per day of crude oil in the near term.

The conclusions which must be drawn from correlating these results are that the net production of energy in the United States in the near term will be almost level and may even decrease slightly and that energy growth in the United States now depends solely on imported refinery products.

Let me reemphasize this point! The Arkansas study indicates that the energy growth of the United States over the next three or four years, and possibly longer, depends almost completely on products refined in foreign countries from crude oil produced in foreign countries.

Here are the very disturbing factors associated with our energy picture. Americans now use more energy every year than they did the year before. For the past several years, the United States has had to import energy to supply this increasing demand. In April, we imported about 2.8 million barrels per day of crude oil to bring our domestic refinery production to near capacity—or capacity, whoever you believe. We imported about 3 million barrels per day of the output of foreign refineries. Since increased imports of crude oil serve only to make up the difference between domestic crude production and domestic refinery capacity, the energy growth of the country is now wholly dependent on annual increases in imported refinery products.

To sustain our present rate of energy growth, our study indicates that the annual increase of imported refinery products will have to average about 1.6 million barrels per day. In 1972 we imported an average of 2.5 million barrels of refinery products per day. This year, 1973, in order to meet demand, we would have to average 4.5 million barrels per day, next year 5.9 million, and the following year 7.5 million. However, even an optimistic estimate indicates that only slightly more than 3 million barrels a day of products will be available to the United States from exporting refineries in other countries in any of those years. That amount gives us a higher fraction of the world's exportable capacity than we enjoyed in 1972. The total world's exportable capacity, which is primarily in Italy, the Near East, and the greater Caribbean area, is only expected to reach 7.5 million barrels per day by 1975, compared to the present 6.5 million barrels per day. Bidding for that capacity are Europe and Japan, both with import product growth rates greater than the United States. If the dollar loses strength, we may not be able to purchase even the optimistic 3 million barrels per day.

Since the amount of foreign refinery products available to us in near term is limited, the energy growth of the United States must halt in the near term.

The Arkansas Study indicates that actual product imports have fallen below product needs since March of this year. It was in late March that gasoline stations first started closing. It may well be that supply will not equal need for growth until massive steps are made to increase energy supplies. I believe the President was unduly optimistic in his speech of June 13, when he said the energy shortages should disappear after a "little belt tightening." All the belt tightening measures "proposed to date" (July 2) by the President will only cut down on average energy use, they do not deal with reducing energy growth. Thus the gap between requirements for growth and supply will inexorably widen. The President's suggestions to date amount to little more than treating only the symptoms of a progressive disease.

The results and conclusions of the Arkansas Study may be wrong. But if they are wrong, how on earth do we account for the fact that when refinery capacity throughout the world is generally running above its rated output, the United States is out of oils to provide electricity and gasoline for transportation? For example, U.S. refineries are running at an average of 92–93% of capacity this year which is above design specifications. This high performance level is occurring even when some refineries are having difficulty obtaining crude oil.

If the study has errors within it, it is at least sufficiently comprehensive and tightly structured that those errors can be sound. I am aware of no similar Federal study of the near term although the federal government seems to have more than adequate facilities to provide such a study.

But if the analysis is right, how did the United States, the most prodigious consumer of energy in the world, the country which taught the world to use energy, get itself into such a predicament?

I hear all sorts of theories of conspiracy: conspiracies between various levels of the petroleum producers, refiners, distributors, manufacturers, environmentalists, and consumers.

I can't believe the discussion of conspiracy theories is very productive. The time spent leveling blame could better be spent in addressing ourselves to a description of the energy problem upon which we can all agree and to the offering of possible solutions to the problem.

If any aspect of the problems we face is clear enough that we can all agree upon it, I believe it is that the federal government has been woefully inadequate in developing a comprehensive definition of our difficulties and in dealing with those facets of the difficulties we already know about such as severe shortages in agriculture, transportation, and public utilities.

If the gasoline and fuel oil shortages we now are experiencing mark the end of energy growth in this country for three to four years, then the time to admit the problem and deal with it is now.

I am sure that most of you are plagued constantly with the question that I hear many times a day, "What can a state do?" That question arises with respect to every aspect of energy problems and the problems seem to be coming from all quarters: from how to save independent gasoline jobbers and dealers to—how to assure fuel supplies for our public utilities to—how to assure gasoline and diesel for planting and harvesting.

Apart from saving energy in government buildings and vehicles it is very difficult to know what to do. Most states have no real power aside from persuasive power to redistribute energy to critical sectors of the economy such as agriculture. If by some means we manage to institute programs for savings of energy by the community, we not only can't redistribute that energy within the state, but the state can confidently expect to lose that energy. The recently announced voluntary allocation program has no incentives for the conservation of energy and no way to assure compliance. President Nixon recently announced the possibility of a Federal energy "Czar." Such a person would have power entrusted to him far beyond that which the Founding Fathers envisioned for a non-elected official. Can you imagine the drafters of the Constitution agreeing to a provision that allowed the appointment of a man who would prescribe when, where, and for how long a man could ride his horse?

I'm fearful that any Federal system can be expected to enforce general guidelines in the same slow, inefficient, and inadequate manner we have all experienced in other programs. We can expect the same guidelines to be applied to all states whether or not they are suitable to the problems of that state.

In the event matters are as serious as they appear, I suggest an alternative possibility. I suggest a state allocation plan wherein an allocation of energy to the states would be made on the basis of energy-use patterns of 1972 or 1973. Appropriate adjustment would be made where excessive hardship was demonstrated. Each state could then devise its own conservation and distribution programs to support its critical industries. Certain guidelines could be devised which would assure the continuance of interstate activities. Arrangements could be made for redistribution of surpluses which could result

from conservation practices in some states. This is one matter I have asked the reporters of this seminar to explore.

With the Federal voluntary allocation program, no state can plan for its future because no state has any idea of the amount of energy it will receive in the future. No such problem exists with the state allocation plan. The state allocation plan also has the merit of incentive. A state conserving energy could transfer its conserved energy to critical needs. The plan allows a wide variety of experimentation which could not be present in a monolithic Federal program. It assures local control and local response to local problems since priorities would be set by each state. There is no dangerous national concentration of power, particularly in the hands of non-elected officials. There is a reduced possibility of dangerous national excursions in fuel patterns of the type which led to our present dependence on petroleum.

It is relatively simple to think of measures which states could take that would reduce energy use within the states. We are still using the rate structures which were developed during the years of surplus energy, and which encourage increased consumption by what amounts to volume discounts. Thus a household that is an "energy waster" pays less per unit consumed than does the modest user. Reversing this rate structure to penalize the user when he commences to consume inordinate and unnecessary amounts could save upwards of a million barrels of oil a year according to estimates by the Office of Emergency Preparedness. Extremely large users, such as the industries that provide essential services and jobs, could remain on rates keyed to the cost of providing the energy.

Carrot and stick methods could also be devised to force larger users to switch to fuels which are not in short supply. Revenues raised from taxes on energy and derived from excessive usage could be used to support free public transportation systems so that persons on lower income would have alternatives to the increasingly more expensive and scarce gasoline for transportation. Rates could support free public satellite parking lots in the suburbs from which free bus service would travel the freeways into the cities. This would serve the additional purpose of reducing traffic congestion and improving air quality in the cities. Meanwhile, tax incentives could be used to encourage train transportation between cities. For every 10 percent reduction in automobile use, we save between ½ million and one million barrels of oil per day. It is difficult to see how the federal government can expect to bring about such savings in energy without incentive programs. The alternative Federal approach for gasoline savings, aside from the suggestion that the states reduce maximum speed limits, which might save from 10,000 to 100,000 barrels of gasoline per day, is gasoline rationing. Those of us who remember rationing in World War II know that it didn't work too well. And in a time when Americans are used to plenty, and particularly plenty of automobile travel, the policing of such a system to prevent abuse by the influential would probably be impossible.

I note that such obvious savings as the reconversion of present oil burners which used to burn coal—back to coal—have not been advanced in any of the President's messages. About ½ million barrels of oil per day would be saved through reconversion of these burners to coal. And a great many of the oil burners are in the northeastern corridor which is over 80% dependent on imported refinery products.

But whatever means the nation employs to save energy, whether it be through a state allocation plan, a Federal voluntary allocation plan, or a Federal compulsory allocation plan or rationing plan, if the energy growth of this country truly now depends on imported foreign oil, we will be buying time with our energy savings which must be immediately and creatively used by the federal government to (1) immediately begin research seeking methods to recover over 50% of the oil we leave in the ground; (2) bring in oil and gas from Alaska with the least environmental impact; (3) tap the oil and gas reserves off the Atlantic Coast; (4) provide refineries to process that reserve in an environmentally acceptable manner, more realistic attitudes must be taken over what is and what is not environmentally acceptable; (5) find more creative ways to mine, transport, and use our coal reserves. The commitment to non-nuclear energy research on short-range palliatives to our energy problems is simply going to have to be increased over the paltry $135 million which the federal government has assigned for 1974.

And while short-range solutions are sought, a NASA-sized commitment is going to have to be made toward developing long-ranged solutions which will utilize solar energy, geothermal energy, fusion energy, and breeders.

If a man can walk on the moon in this decade, surely he can find an acceptable substitute for fire in the next.

EDDIE RICKENBACKER, WORLD WAR I ACE DIES AT 82

Mr. GOLDWATER. Mr. President, yesterday one of the great men of this century passed away in Switzerland. He was Capt. Eddie Rickenbacker, our leading World War I ace and the wearer of the Congressional Medal of Honor. I do not ask that this account of his life be made a matter of the record because of a mutual interest in aviation, but because of the many years I knew this man, I learned the facets of his life that made him great; made him great without the luster of war or success in business. He was a kind, decent, thoughtful man whose total dedication was to his country. He is going to be missed by all of us who called him friend and it will be many a year before another Captain Eddie ever crops up in our midst again.

I ask unanimous consent to have the article printed in the RECORD.

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

[From the Washington Star-News, July 23, 1973]

EDDIE RICKENBACKER, WWI ACE, DIES AT 82

(By Richard Slusser)

Edward Vernon Rickenbacker, 82, America's fabled World War I combat airman who was called the ace of aces, died today in a Zurich, Switzerland, hospital after a heart attack.

Capt. Rickenbacker, usually called "Captain Eddie," retired in 1963 as chairman of the board and general manager of Eastern Airlines, the company he salvaged from oblivion in the late 1930s.

His life was as filled with success as it was with adventure and danger. Ten years ago he said he believed "no man living today . . . has been face to face with death as often as I have in the last 35 years.

"But when I have crashed in a plane, turned end-over-end in a racing car, or was adrift in the South Pacific, felt hunger and thirst tearing and burning at my vitals, a boyhood thought never deserted me: I was part of progress and life. Some power was taking care of me."

All the accidents and perilous adventures, he said, "added to my sense of security."

He was born in Columbus, Ohio, his last name spelled Reichenbacher, which he changed to Rickenbacker during World War I. He also added the middle name.

Capt. Rickenbacker was described as a young hellion, a boy who smoked cigarettes when he was in the first grade and a leader of a gang of hoodlums.

His father died when he was 12 and Capt. Rickenbacker quit school to work in a glass factory for $3.50 a week. He even walked the four miles to work to save car fare and gave all his salary to his mother.

Later he worked in a foundry, a tombstone factory, a brewery and for a railroad before beginning a career that would take him into the world of transportation and speed.

INTEREST IN MECHANICS

Always interested in motors and mechanics, Capt. Rickenbacker went to work for the Frayer-Miller Cooled Car Co. in Columbus.

"As early as 1906," he said, "while serving as a riding mechanic with Lee Frayer (a builder of the air-cooled auto) I had my first accident."

A front tire blew on a turn during the Vanderbilt Cup races on Long Island, N.Y. Capt. Rickenbacker received a dislocated shoulder.

"I turned over in racing cars many times after that," he said. "But I always had the sneaking suspicion that perhaps it was my fault, that I was not in control of the machine or myself, that my faith was not great enough."

In the 1915 100-mile auto race at Indianapolis, two tires of Capt. Rickenbacker's car blew and he "finally stopped, after spreading rubber and wheels all over the track."

CLAIMED MIND CONTROL

He claimed he then realized he "could control that machine with my mind, that I could hold it together with my mind, and that if it finally collapsed, I could run it with my mind. It was a feeling of mastery, of supreme confidence."

Between 1910 and 1917 he was associated with Firestone Duesenberg, Mercer Co., Maxwell Motor Car Co. and Peugeot Motor Co. In 1917 he contracted to prepare a racing team for Sunbeam Motor Co. of England, and was in England when the United States entered World War I. That also ended his negotiations with Sunbeam.

Capt. Rickenbacker then was one of the world's leading figures in auto speed—set a world record of 134 mph in a Blitzen-Benz at Daytona Beach, Fla.—with an estimated income of $40,000.

Less than two months after the U.S. entered World War I, he enlisted as an Army sergeant. He had hoped to organize racing drivers into a squadron of fighter pilots, but the plan received no official backing and Capt. Rickenbacker was sent to France as a staff driver for Gen. John J. Pershing.

FLIGHT TRAINING

He was then 27, two years over the age limit for airmen, but he said he was 25 and was accepted for flight training and transferred to the Air Corps in August.

He received preliminary training in Tours, France, and then was transferred to the Issoudoun Aviation School as a lieutenant and chief engineering officer. He wanted to get into action at the front, but was told he was needed elsewhere.

Showing more of his resourcefulness, Capt. Rickenbacker feigned sickness and, demonstrating his presence was not required, was assigned in early 1918 to the 94th Aero Pursuit Squadron, the first U.S. air unit active on the Western Front. Six months later, he was a captain and commander of the 94th.

Capt. Rickenbacker shot down his first plane a month after joining the 94th and his fifth (making him an ace) within two more months. The morning after he was promoted to captain he scored his first of six double-kills.

By the end of the war he had downed 21 German planes and five observation balloons. The 94th Squadron served at the front longer than any other unit. It ranked first in the number of planes downed and in the number of aces.

Capt. Rickenbacker described his wartime experiences in "Fighting the Flying Circus," the German air unit led by the celebrated Baron Manfred von Richthofen, who was credited with downing 80 Allied planes.

"I scarcely needed their color to tell me who they were," he said of his first meeting with the Flying Circus, "for the skill with which they all came about so suddenly convinced me that this was no place for me. I had blundered singlehanded into the Richthofen crowd." He eventually outran them "with motor full open and nose straight down."

Capt. Rickenbacker received so many medals, people said he was awarded most of the decorations attainable. These included the Croix de Guerre with four palms, the Legion of Honor, the Distinguished Service Cross with nine oak leaf clusters and the Congressional Medal of Honor.

After a hero's return, Capt. Rickenbacker said: "You're a hero today and a bum tomorrow—a hero to zero. Never count on the crowd to take care of you."

Capt. Rickenbacker took care of himself, turning down many business offers, including $100,000 to appear in a film. He and several Detroit backers started the Rickenbacker Motor Co. in 1921 to manufacture the Rickenbacker automobile. The company failed after about five years, and Capt. Rickenbacker said the car was too good and cost too much to build. (Even its advanced four-wheel brakes were criticized as dangerous and called visionary.)

SPEEDWAY INTEREST

In 1927 Capt. Rickenbacker obtained controlling interest in the Indianapolis Motor Speedway and was its president until selling it in 1945.

Capt. Rickenbacker joined Cadillac Motor Car Co. as assistant sales manager in charge of the La Salle division in 1928, but was transferred the next year by General Motors to its General Aviation Manufacturing Corp. as vice president and director of sales.

In 1932 he joined Aviation Corp. as vice president of American Airways, and a year later became vice president of North American Aviation, Inc. Two years later he was general manager of North American's Eastern Airlines.

When Eastern became a separate entity in 1938, Capt. Rickenbacker was named president and general manager. He became chairman of the board in 1953.

He became Eastern's president soon after raising the $3.5 million needed to buy the company he had joined when it was considered the ugly duckling of the aircraft industry—a General Motors subsidiary that no one wanted to buy at the then-asking price of $1 million.

EASTERN MARKS GROWTH

Under Capt. Rickenbacker's leadership, Eastern grew to become one of the nation's largest air carriers. (Once Capt. Rickenbacker had the luggage of a group of Eastern managers flying to a meeting removed from a plane and locked up. He explained that this was to show the managers how passengers felt when their luggage was missing.)

In 1941 he was seriously injured in the crash of an Eastern plane near Atlanta in which eight persons were killed.

Capt. Rickenbacker was hospitalized for four months, about half the time doctors had predicted. While doctors were discussing his case, Rickenbacker surprised them with "Oh, hell, get me a good osteopath and I'll be out of here in three days."

The morning after the crash he drank three bottles of beer and ate two ham and egg sandwiches.

"I suspected I was unkillable," he said.

MAROONED IN PACIFIC

The next year he was a passenger aboard an Army plane on a mission over the Pacific to inspect air stations. The message he radioed—that the B–17 was lost and had one hour's fuel supply—was thought by many to be his last.

It was his last message for 24 days. He and six other men were rescued a day after they were spotted by planes. They had survived in three rubber rafts with little food and water. An eighth member of the group died of exposure and starvation.

After two weeks of rest, Capt. Rickenbacker boarded another plane to continue his mission. He later made more flights for the military.

Always outspoken on a variety of subjects, Rickenbacker criticized the United States' aviation policy after World War I and in the 1920s. He was a stout defender of air warfare advocate Brig. Gen. Billy Mitchell who was convicted of insubordination by a court-martial. That Capt. Rickenbacker said, was "a crime against posterity."

OFFERS WAR STRATEGY

During World War II, he condemned strikes and absenteeism in war industries and once said that returning troops to factories and putting war workers in their place at the fronts would guarantee that production would be increased and even doubled within 30 days.

In recent years Capt. Rickenbacker spoke frequently to business groups, veterans organizations and boys clubs throughout the country in support of the conservative view.

His frequent speech topic was "Conservatism Must Face Up to Liberalism."

He was an ardent backer of Sen. Barry Goldwater, R-Ariz., for the presidency in 1964.

Upon retiring from Eastern, Capt. Rickenbacker said he did not plan to be idle—"Not in the face of the current challenges to civilization. I am going to expand my crusade to save the American way of life for future generations."

Three years ago he remarked that in his adventurous career, "I've cheated the old Grim Reaper seven times I know of."

An Eastern spokesman said funeral services will be later this week in Columbus.

NEED FOR EMERGENCY TELEPHONE NUMBER, 911

Mr. HUMPHREY. Mr. President, on March 28 I introduced legislation to provide for a single, nationwide emergency telephone number, 911. My bill would assist States and local governments in financing the costs incidental to establishing this emergency service.

This legislation is now pending before the Commerce Subcommittee on Communications. I hope this committee will act soon on this simple, practical proposal. A nationwide three digit telephone number is an idea that could be implemented almost immediately. It is in effect in some areas. It could save vital seconds that are so crucial during an emergency, whether it be crime or illness.

Recently, I received a letter strongly supporting this legislation from the Director of the Hennepin County Criminal Justice Council in Minneapolis, Minn. This council is a LEAA city-county planning unit for all criminal justice system agencies in Hennepin County. The council is currently engaged in a major effort to establish modern communications systems for public safety agencies and related emergency services within the city of Minneapolis and throughout the rest of Hennepin County.

The council feels that a 911 emergency telephone number is "a must" if Hennepin County is to really have an effective public safety program. As the letter indicates—

Within Hennepin County and the city of Minneapolis alone, there are in excess of 170 emergency telephone numbers listed on the front page of the current telephone book.

Mr. President, this confusing situation is duplicated in many other cities and counties across the Nation. For example, the St. Louis directory lists 161 emergency numbers on one page alone.

Our Capitol area, the District of Columbia, has at least 45 emergency numbers. Los Angeles County has 50 numbers just for police. It is impossible for most Americans to memorize the many emergency numbers in their area. Even if they could, the 25 million Americans who move every year would have to go through the process all over again.

Dialing "O" for operator may be the most simple way to get assistance, but it is not fast enough, nor reliable enough. Emergency calls constitute only about 1 percent of the operator's daily work. Consequently, operators cannot be expected to respond as quickly nor as intelligently as someone trained especially for emergencies.

In 1970, the National Science Foundation and the Franklin Institute Research Laboratories made an in-depth study in the need for a single nationwide emergency telephone number. The conclusion: Such a number is needed, feasible, and should be implemented.

Three years after this study was made we still have no action on this simple, but very important, proposal. I urge the Commerce Committee to report my legislation. It would be an important tool in protecting people.

I ask unanimous consent that the letter from the Hennepin County Criminal Justice Council be printed in the RECORD.

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

HENNEPIN COUNTY CRIMINAL JUSTICE COUNCIL,
Minneapolis, Minn., July 5, 1973.

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

DEAR SENATOR HUMPHREY: Recently my attention was directed to the March 28, 1973, issue of the Congressional Record. Contained therein was a record of your statement introducing S. 1403, a bill to amend the Communications Act of 1934 by providing grants to States and units of local government for the establishment, equipping and operation of emergency communications centers to make the national emergency telephone number 911 available throughout the United States.

I would like to take this opportunity to advise you that S. 1403 is of particular interest to me and the members of the Hennepin County Criminal Justice Coordinating Council. The Hennepin County Criminal Justice Council is a Law Enforcement Assistance Administration city-county planning

unit for all criminal justice system agencies in Hennepin County. The 19 members of the HCCJC are representatives of the criminal justice system in the county and I serve as the executive staff director.

The Council is currently engaged in a major programming effort relative to the provision of new public safety communications systems for all public safety agencies and related emergency services within the city of Minneapolis and Hennepin County. A key element in this new system will be the utilization of the national emergency telephone number 911. As you well know, a 911 emergency telephone number is a must in terms of being able to provide a higher level of integrated public safety emergency services in more urban areas. For example, within Hennepin County and the city of Minneapolis alone there are in excess of 170 listed emergency telephone numbers on the front page of the current telephone book. This confusing situation must and can be corrected through the provision of a national emergency telephone numbering system.

For these reasons, I would like to take this opportunity to congratulate you on submitting S. 1403 and to further offer the support of the Hennepin County Criminal Justice Coordinating Council in endorsing this particular piece of legislation. Additionally, I would appreciate any information your office may have relative to the progress of S. 1403 subsequent to the initial introduction of the bill.

Cordially,

JOHN O'SULLIVAN,
Director.

EMERGENCY POWERS STATUTES

Mr. CHURCH. Mr. President, the Special Senate Committee on the Termination of the National Emergency held hearings this morning investigating further the issue of Presidential proclamations that place the United States in states of national emergency, and the enormous body of emergency statutes now in force. Witnesses were former Attorneys General Justice Tom Clark, Mr. Nicholas deB. Katzenbach, and Mr. Ramsey Clark. Unfortunately, two other former Attorneys General who were invited, Mr. Herbert Brownell and Mr. Richard Kleindienst, were unable to attend but will testify before the special committee in the Fall.

The following joint statement was read by the cochairmen of the Special Committee on the Termination of the National Emergency, Senator CHARLES MCC. MATHIAS and myself. I ask unanimous consent that the statement be printed in the RECORD.

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

STATEMENT

"The testimony which we will hear shortly marks the beginning of the second series of hearings conducted by the Special Committee on the Termination of the National Emergency. Pursuant to Senate Resolution 9, the Senate directed the Special Committee to investigate both the Presidential proclamations placing the United States in states of emergency and the enormous body of emergency statutes now in force.

"In response to severe economic depression, President Roosevelt in March 1933 proclaimed a national emergency. From that time on, the United States government has been operating in an unrelieved state of emergency.

"Last April, the Special Committee held hearings which examined Constitutional questions raised by emergency powers delegated to the Executive branch, as well as the historical background of emergency powers legislation. Testimony was heard from distinguished political scientists and legal scholars, one of whom was a participant in the preparation of President Truman's December 1950 national emergency proclamation issued at the height of the Korean conflict.

"Recently, the Special Committee has been engaged in compiling and analyzing the hundreds of significant emergency statutes now in force. The compilation will, we hope, provide law-makers and the public with a comprehensive catalogue of governmental emergency powers; this will be ready for distribution when Congress resumes its work after Labor Day.

"The Special Committee on the Termination of the National Emergency is honored this morning to have as witnesses three former Attorneys General of the United States, Justice Tom Clark, Mr. Nicholas deB. Katzenbach and Mr. Ramsey Clark. Unfortunately, two other former Attorneys General who were invited to be here today, Mr. Herbert Brownell and Mr. Richard Kleindienst, were unable to attend but will testify before the Special Committee in the Fall.

"All three witnesses before the Committee today are eminent public servants; all three have held public office during times of great crisis. Justice Tom Clark was involved in implementing emergency powers in 1942, both as the Coordinator of Alien Property Control of the Western Defense Command and as Chief of the Civilian Staff for Japanese War Relocation. He was Attorney General from 1945 to 1949, a period when various emergency powers exercised by the Executive during World War II were repealed. In these years, President Truman established emergency boards to settle airline and railroad strikes and ordered government seizure of private industries. Appointed Associate Justice of the Supreme Court in 1949, Justice Clark wrote a concurring opinion in the historic Youngstown v. Sawyer decision which prohibited the government seizure of the nation's steel industries.

"Mr. [Nicholas deB.] Katzenbach was first Assistant and later Deputy Attorney General from 1961 through 1964, and subsequently Attorney General. There were few major crises in the 1960's in which Mr. Katzenbach did not participate. He was a key legal and political strategist during the civil rights struggles, and personally led U.S. Marshals in opening the University of Mississippi and the University of Alabama in 1963. In the area of foreign affairs, Mr. Katzenbach is well known for his contributions as a constitutional theorist and for his efforts to achieve sound foreign policy. He wrote the legal brief defending the U.S. blockade of Cuba in 1961, and acted as a principal advisor to the negotiators who secured the release from Cuba of those who survived the Bay of Pigs invasion. As Under Secretary of State from 1966 to 1969, he served his country with distinction at a most difficult time.

"During Ramsey Clark's term as Attorney General, he dealt with two very different areas of emergency powers. First, he was one of President Johnson's closest advisors during the very difficult decisions over whether or not to use federal troops to restore order during the urban riots of 1967 and 1968. Secondly, to meet the international monetary crisis of those same years, the emergency powers of the Trading with the Enemy Act were used and Mr. Clark wrote the official justification of their use. In addition, Mr. Clark has been one of the foremost defenders of civil liberties against the arbitrary exercise of government authority—an area of critical concern to this Special Committee.

"Current revelations of power abused by certain executive branch officials give rise to new concerns about the potential exercise, unchecked by Congress or the American people, of enormous executive powers. Like a loaded gun lying around the house, the plethora of delegated authority to deal with almost every kind of conceivable crisis could readily be used for purposes other than originally intended.

"Since the failure of the Roman Republic, historians and philosophers have analyzed the problem posed to a democracy by extraordinary executive powers. Their writings teach us that liberty is fragile, and vulnerable to those who exercise power purely for its own sake. Machiavelli, in his *Discourses on Livy*, acknowledged that great power may have to be given to the executive if the state is to survive, but warned of the grave dangers in doing so. He cautioned:

'Nor is it sufficient if this power be conferred upon good men; for men are frail, and easily corrupted, and then in a short time he that is absolute may easily corrupt the people.'

"Rousseau also discussed the question of delegated emergency powers in his *Social Contract*. He wrote:

'However this important trust be conferred, it is important that its duration should be fixed at a very brief period, incapable of being ever prolonged. In the crises which led to its adoption, the State is either soon lost, or soon saved; and the present need passed, the dictatorship becomes either tyrannical or idle.'

"Despite this ancient advice, frail men continue to succumb to the temptations of great power. These are times when we can ill afford to let that power go unchecked."

PUBLIC FINANCING OF ELECTION CAMPAIGNS

Mr. CRANSTON. Mr. President, tomorrow or the day after tomorrow, after the Federal Election Campaign Reform Act Amendments of 1973—S. 372—is laid down, a group of Senators will discuss the need to move beyond these reforms to a system of public financing of election campaigns.

A substantial amount of leadership in the drive for public financing is being exerted by the Center for Public Financing of Elections, which was established in June 1973, to advocate public support for public finance of election campaigns. The Center has prepared a summary of questions and answers about public financing which I believe serves as an excellent agenda for our consideration of proposed changes in how we pay for election campaigns.

I commend it to my colleagues' attention and ask unanimous consent that the summary be printed in the RECORD.

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

PUBLIC FINANCING OF ELECTION CAMPAIGNS

What is meant by Public Financing of Elections?

Some form of direct Federal assistance—in money or services—to candidates for Federal office (the House, Senate and the Presidency) to help them meet the legitimate expenses of political campaigning. Public financing could either replace or supplement existing forms of Federal aid (such as the recently implemented tax incentives for small political donations and the "checkoff" system, under which taxpayers can divert $1 of their Federal taxes to help finance the 1976 Presidential campaign).

What are the objectives of Public Financing of Elections?

Honest elections
Competitive politics
Public participation
Responsive government

Democratic politics cost money (an estimated $500 million in 1972)—increasing amounts of it as the population expands and the means of reaching the voters becomes more expensive.

The central problem, however, arises not from the amounts of money spent, but where the money comes from. The bulk of it comes from wealthy and powerful contributors, most of whom stand to reap enormous benefits from the decisions government makes and the laws that are passed. Those donors gain special influence with their huge gifts—an influence that the average voter who gives little or nothing to politics cannot have.

In addition, campaign money tends to be concentrated—in the campaigns of incumbents or powerful, sure winners, and in a very few close, highly visible races. Thus, while some candidates have too much money, many do not have enough to run a credible campaign.

In short, the way we now finance campaigns makes a mockery out of one person/one vote democracy and makes money, rather than merit, the key to election.

At issue is the integrity of our political process and public confidence in that process.

Only by assuring candidates for Federal office (the Presidency, U.S. Senate and House of Representatives) adequate resources to conduct effective campaigns, can we—

Liberate candidates from their present inevitable dependence on "interested" political contributors—that is, contributors who have a stake in governmental decisions and who gain special access to policy makers and special influence over those policy decisions in relation to the size of their campaign contributions.

Elevate the influence of the average voter on the political process to that of the large contributor, making the concept of one person/one vote a democratic reality.

Encourage candidates of quality and independence to run for office, and give the people a choice, by eliminating the barrier of big money—money raised from large vested interest givers, with its potential, if subtle strings attached; money borrowed, with the prospects of huge personal debts for the future; or money drawn from the rich candidate's own personal or family fortune.

HOW ARE CAMPAIGNS FINANCED NOW?

75 percent of campaign money comes in the form of large contributions and the funds rich candidates are able to put into their own campaigns.

25 percent comes from small contributors.

In 1970, *Time* magazine reported that 90 percent of all money raised for politics comes from (the richest) one percent of the people. Most of the large contributors to Federal campaigns have a special economic interest which they try to protect with their contributions. The great bulk of this money helps incumbents, who generally far outspend their challengers. Incumbent Senators in 1972, for example, outspent their challengers by an average of two to one. Additionally, incumbents have the perquisites of office to help them win re-election, including virtually unlimited free non-political mailings to their constituents, government-paid staff and office facilities and easy access to the news media.

In 1971, Congress enacted new tax incentives to encourage larger numbers of people to give small contributions. But even with these incentives, only about 25 percent of the money raised in 1972 came from small givers. The prospects for increasing the proportion of small givers are not encouraging because this is an expensive and difficult way to raise money. For example, administrative costs of raising small contributions by mail are as high as 40 percent of what is raised.

What's wrong with this current system?

Just about everything. It discourages competition. It gives contributors more political influence than voters. It encourages chicanery and secrecy. It throws a cover of cynicism and suspicion over all political institutions.

It is also undemocratic. According to *Time* magazine, 90 percent of all political contributions come from one percent of the population. Large donations to candidates give that small, rich element of the population a big say in who can be a candidate and, subsequently, easy access to and undue influence on officeholders. The result is a devaluation of the voice and vote of the average citizen, which helps explain why it's so hard to pass pro-consumer legislation and a special-interest amendment slips through with ease.

Senator Long summed it up in 1966 when he said, ". . . I sometimes gain the impression that when you are talking in terms of large campaign contributions—I do not mean the $100 type. I mean the big ones, $5,000 and above—the distinction between a campaign contribution and a bribe is almost a hair's line difference. You can hardly tell one from the other."

The current system of political financing discourages competition since incumbents, special interests, and rich candidates hold a virtual monopoly on money available for politics. Since many candidates are unable to raise enough money to run a respectable campaign, many elections are over before they begin. Debate on important issues is silenced and some individuals of quality and independence are either automatically defeated or discouraged from even trying.

People with easy access to office holders are usually those who make it possible for them to run and win—their financial backers. The average voters—who are not able to give very much to politics—look on and know that they do not have the same amount of influence.

The current system of public financing, the ways in which money is collected, laundered and moved to candidates, breeds cynicism and contempt for politics among the givers and the general public.

Who are the victims of the current system of financing campaigns?

The average citizen is.

He is paying—usually in hidden, indirect ways—the costs of the present system.

The average citizen is paying higher milk prices, for example, because the milk producers, dissatisfied with the price the government originally set for milk, funneled huge contributions to the party in power—and the government price of milk was increased.

The average citizen is paying higher prices for oil because President Nixon rejected a recommendation of his own Cabinet to abolish oil import quotas—which his Cabinet told him would save oil consumers *five billion dollars a year in lower oil prices*. The President sided against tens of millions of consumers in favor of an industry that had contributed hundreds of thousands of dollars to his 1968 election campaign, to Democrats before that, and to Congressional candidates of both parties.

The average taxpayer is paying higher taxes because of multi-billion dollar tax loopholes that favor only a relative handful of very rich people and huge corporations—even though ordinary citizens who don't benefit from these special loopholes outnumber those rich people at the polls many thousand to one.

Isn't public disclosure and reporting enough to cure the abuses and evils of the present system?

While disclosure requirements have some purifying effects on political fund-raising practices, they do not eliminate or even reduce the cardinal evil of the present system: the need for candidates to raise huge amounts of money from private givers. Experience has shown that they can do so only by relying to a large extent on special-interest donors who gain special influence on government decision and law-making as a result of their large contributions. Public disclosure does not correct the imbalance of fundraising which exists in the present system and heavily favors incumbents by two-to-one, and under which many would-be candidates of quality are barred from effective challenges because of lack of funds. Only some form of public financing of campaigns can restore real competition to American politics and substantially reduce the special influence enjoyed by a few large contributors that is inherent in the present system.

Won't remedies less drastic than public financing cure the present evil?

No, because other solutions (e.g., disclosure, spending limits, tax incentives for political gifts or the "checkoff" system alone) do not address the central problem: how to liberate candidates from their existing dependence on large special-interest givers. Essential to achieving this is the assurance, *in advance*, that candidates be able to organize a respectable campaign without going "hat in hand" to anyone.

Experience to date with lesser solutions (the checkoff—which only 3 percent of taxpayers have used—or tax incentives) indicates that they are unlikely to produce the amount of funds required to finance what most candidates believe is necessary to adequately communicate with the voters. (Even with tax incentives, only 25 percent of campaign funds in 1972 came from gifts of $25 or less.) As long as that's true, candidates will be tempted—or forced—to accept special-interest contributions, and the present problems will persist.

Does the public favor public financing of elections?

The Gallup Poll reported on June 23, 1973, that: "A clear majority of the American people favor the use of federal funds to pay election campaign costs of candidates for the presidency and for Congress. At the same time the public favors prohibiting contributions from private sources."

Actually, respondents to the Gallup Poll favored public financing by a two-to-one margin: 57 percent favored the idea compared with 29 percent who thought it was a poor idea. (13 percent had no opinion.)

In addition, viewers of an *Advocates* television program on public financing voted *three to one* in favor of total public financing of campaigns (76 percent in favor, 21 percent opposed).

Has public financing been supported by leading public officials?

Yes. It has been endorsed repeatedly—and by leaders of both political parties—through the years.

President Theodore Roosevelt first proposed public financing of elections in his State of the Union Message in 1907.

A special Senate Committee investigating campaign spending in the 1936 elections recommended total public funding of campaigns and a ban on all private contributions.

Two forms of public financing have actually been enacted into law by the Congress in recent years (one in 1966, which was suspended in 1967; and a "tax checkoff," enacted in 1971 and put into effect for the first time in 1973).

Vice President Agnew has said he favors some form of subsidy for candidates for Federal office (Newsweek, June 1973).

In June 1973, the Democratic members of the United States Senate unanimously passed a resolution calling for public financing of elections.

More than 100 members of Congress have introduced or sponsored legislation to effect public financing of elections.

Have any countries tried public financing?

Yes. Germany, Sweden, Norway, Finland, and the Commonwealth of Puerto Rico all provide public financing for their political campaigns. The systems differ in detail, but generally they assure all legitimate parties and candidates the resources they need to run campaigns.

When they adopted public financing, none of these countries banned private contributions. However, the role of private contributions has declined sharply in all of them. In fact, with the availability of public funds, some parties have refused to take special interest contributions. The Liberal Party in Sweden, for example, has announced that it will no longer accept contributions from corporations even though that is still legal. Before public financing was available, corporations were a principal source for money for the Liberal Party in Sweden.

In all these countries, the exact level of public support available to a particular party or candidate is dependent upon that party's popular support. In some, the party's performance in the last election is used to set its level of entitlement. In others, part of the subsidy is paid after the election and the amount is adjusted to correspond with the actual performance of the candidates at the polls.

Will public finance help incumbents?

No. The current system so heavily favors incumbents that more than 90 percent of them win re-election every time they run.

For one thing, incumbents are far more successful at raising private contributions than are challengers: a survey of Senate races in 1972 showed that incumbents outfinanced challengers by a margin of two-to one. That is why public financing is absolutely essential to restore true competition in American politics.

Incumbents enjoy other inherent advantages: they are better known than the challengers; they have virtually unlimited free postage to communicate with their constituents; and they have full-time staff to help them plan their campaigns.

Public financing would protect incumbents—and the public—in one way: incumbents as well as challengers would be relieved of the tedious and often demaining task of raising funds every two, four or six years. Moreover, since public financing would relieve the pressures for breaking the law (particularly regarding spending ceilings), incumbents would enjoy greater protection against the danger of an opponent whose only asset was access to enormous private funding.

How much would a public financing system cost?

That will depend largely on the form of the system adopted, the amounts of Federal assistance Congress writes into the public financing law and on the conditions of eligibility that such a law provides.

However, a 1971 proposal* that would have provided generous amounts of Federal assistance in both general elections *and* primaries called for an expenditure amounting to just $93 million per year—*or 69 cents for every adult American of voting age.*

Will primaries (or other forms of candidate selection) be included in public financing?

In the long run, primaries should be included. Not only is the candidate selection process a crucial and integral part of the election process, but (a) in many areas, the primary is tantamount to election; (b) if primaries were not included, much or all of the special-interest money now going into general-election contests would simply be diverted to the primaries, heightening the problem and special-interest gifts in candidate selection; and (c) assistance to primary candidates is essential to open up true competition in politics.

Will the candidates of all political parties receive the same amount of Federal assistance? Or will established parties receive more assistance than new or merging parties?

Most public financing proposals call for varying amounts of Federal assistance for the candidates of "minor" as distinct from "major" political parties, the amount of the assistance depending on the degree of popular support a party has exhibited (either via past election performance or the submission of petitions, in the case of new parties).

Some, however, argue that differential treatment as between the candidates of various parties is unfair—that Congress should determine the minimum amount of money required to organize an effective campaign and give that amount to the candidates of all parties. To do otherwise is either (a) to short-change the minor parties or (b) to give needless amounts of the taxpayers' money to the major parties.

Will public finance go to the candidates or to the political parties?

The Presidential Campaign Fund Act of 1966 (suspended in 1967) provided for funds to the parties. The Presidential Campaign Fund established by the 1971 Tax Act directs the money to the candidate. It is obviously possible to do it either way.

Those who support giving public finance to parties want to prevent their further deterioration. They believe that if the parties had the money they will play an important role in building strong coalitions of voters and in keeping candidates responsible to the voters. If candidates are totally free from any party restraints, they argue, there may be temptation to use any tactics to win. They also believe parties have crucial non-electoral functions which may deteriorate if all the support goes to individual candidates.

The supporters of grants directly to candidates argue this procedure would be closest to the pattern that exists today because most candidates raise their money independently of parties. They fear that putting the money in the hands of parties will return the United States to unfettered party boss rule.

There is a middle position reflected in several of the proposed programs. It would give public support for campaigns directly to candidates but would make parties eligible for some form of aid as well. This position recognizes the important functions of parties but keeps campaigning more closely associated with the candidates themselves. Public support for parties might well be based on either the parties' own small fundraising programs on a matching basis or reflect the number of actual members of the parties.

Will the Federal assistance be in the form of cash or services or both?

Congress would have a number of options: it could provide assistance in the form of money, services or both.

The most flexible system would be to provide money assistance (perhaps in the form of a "drawing account," either in the Federal Treasury or in a local bank). That would allow candidates to use the funds in whatever way he determined most suitable to his own constituency.

The Federal assistance could also be effected by giving all candidates some of the basic services they need. For example, recent studies by the Twentieth Century Fund have recommended that all candidates for Federal office be provided with free television and radio time and free use of the mails. Other services like printing, telephones, and office space and equipment could be added to this list. Buying these things now consumes the bulk of the money spent in campaigns. If candidates were assured of these communication facilities, they might be able to rely on small individual contributions to raise the rest of the money they need.

It would also be possible to provide a mix of services and money-assistance to candidates.

Will private contributions be permitted under a system of public finance?

Probably. Most of the proposals for public financing now under discussion would permit (and, in many cases, encourage) small contributions, while prohibiting large contributions.

Many people believe that if public financing were enacted, and an alternative to accepting large contributions were available to candidates, limits on the size of individual contributions would become enforceable for the first time.

Why shouldn't people be allowed to give whatever they want to candidates?

It's not fair. The current system of campaign financing virtually restores the property tax as a qualification to voting. The people with lots of money who make contributions to campaigns have more votes—and influence—than the average person who just has one vote on election day.

Congress clearly has the power to protect the integrity of the election process. The current system in which big contributions by some increases their influence and decreases the influence of the average voter clearly threatens the whole process. Further, the right of the public to full and unfettered political debate is threatened by a campaign financing system that prevents many people from running effective campaigns.

Why is it right or fair, through public financing, to compel a citizen to help the campaign of a candidate to whom he is opposed?

Citizens are already compelled to do just that—in that their tax money pays for all the machinery of elections (voting machines, ballots, registrars, poll watchers, etc.)—half of which may be said to help elect "the opposition candidate." In fact, some argue, political campaigns are the only example of governmental or public business *not* paid for with taxpayers' dollars. So public financing of election campaigns establishes no new principles, breaks no new ground. It simply recognizes that campaigning is just as integral a part of the election process as are ballots and voting machines.

In fact, there is a parallel: just as voting machines and poll watchers are financed out of tax money to ensure honest elections free of improper influence, the same objective is fulfilled by public financing of campaigns: freeing elections (and candidates) from undue influence that now is inevitably involved in large campaign contributions from wealthy donors who have an axe to grind.

Will public financing change our two party system?

No. The two party system in America has shown remarkable durability. There are many reasons for its continuity and they would not be affected much by the availability of funds to pay for the legitimate expenses of campaigns.

Significant third party movements have periodically arisen because the major parties failed to respond to strong political demands. Third party movements enlisted manpower, money, and other resources because they offered popular answers and had effective leadership. They faded when the major parties responded to their issues. This cycle would continue.

Will third parties be prevented from emerging?

No. Most proposals now under Congressional scrutiny grant public support to new parties as they show some minimal public support. The intensity of issues, leadership,

See footnote on page 25646.

and public dissatisfaction will continue to allow new parties to raise funds in its initial stages of development. The basic dynamics in the political system which cause new parties to come and go will not be affected by public financing for campaigns.

Don't we already spend too much for politics in America?

No; several other Western democracies (Sweden, Israel and Germany, for example) * spend many times more, per capita, on politics than we do.

While the cost of political campaigns has been rising rapidly in America, and every effort should be made to stop the explosion in campaign costs, the central problem is not the *amount* that's spent, but where it comes from. The bulk of it comes from contributors who have an axe to grind and who gain special influence with their contributions. If most or all of the money came from people who had no special axe to grind, as would be the case if public finance were enacted, then the evils of large spending would be substantially reduced.

Wouldn't Public Financing of Campaigns merely escalate the cost of campaigns—by piling public money on top of the existing private giving?

No, not if a public assistance law included (a) *enforceable ceilings* on total spending and (b) a *stringent limit* on the amount a private individual could give a candidate for Federal office.

Various suggestions have been made that would make overall ceilings truly enforceable for the first time. These include requiring all campaign receipts and expenditures to be routed through a single bank account; prohibiting anyone from furnishing goods or services to a political campaign if he were paid in cash or in any manner other than through the approved single-bank-account (or, alternatively, requiring the purveyor to report promptly and publicly any payments made other than through the single-bank-account).

Such safeguards would be an effective bar to the violation of legal ceilings, campaign spending by illicit gifts and expenditures, including cash. And the availability of Federal assistance would reduce the pressures on candidates (and donors) to circumvent the law.

Won't the prospect of a Federal "subsidy" encourage a rash of frivolous candidates who enter just to get the subsidy?

Any sensible public financing plan should certainly include safeguards against nonserious or "frivolous" candidates, and a number of such safeguards have been suggested. These include:

Limiting the Federal assistance to candidates able to present petitions signed by a large enough percentage of the electorate to show the candidate's seriousness and a significant degree of popular support.

Making the Federal assistance conditional on a candidate's ability to raise a certain percentage of the Federal assistance in small private contributions—again indicating both his seriousness and a significant degree of public support.

Requiring candidates receiving Federal assistance to post a bond that would be forfeited if they failed to gain a certain percentage of the vote.

What's more, faith in the democratic process and the good sense of the voters suggests an additional safeguard: any Federal assistance that might go to a purely nonserious candidate would be used to expose his or her presumably frivolous views to the voting public and would thus contribute to his or her rejection at the polls.

Will Public Financing give the party in power a strong weapon for discriminating against its opponents and for staying in power?

No. All public financing proposals suggested in Congress thus far provide that the Federal assistance be granted in accordance with automatic formulas (such as cents-per-eligible-voter or matching grants) that call for treating all candidates on a uniform basis. Under such automatic formulas, the party in power could only reduce or cut off funds for the opposition at the expense of damaging its own candidates. Moreover, all public financing bills thus far proposed call for an independent Commission to administer and enforce the program, and provide for the adjudication of complaints of abuse of the system by the courts.

Under a Public Financing System, could the taxpayers' money be used for the personal enrichment of the candidate?

No. Any reasonable public assistance law would of course prohibit the use of the Federal assistance for the personal enrichment of the candidate, and several means have been suggested for making the enforcement of such a prohibition feasible and effective.

For example, it has been suggested that the Federal assistance be made available in the form of a "drawing account," either in the Federal Treasury or in a local bank, with payments made only to the purveyors of goods and services (on the basis of invoices approved by the candidate) *so that none of the Federal funds would go directly to the candidate himself.* That is, the payments would go directly from the Treasury (or bank) to the radio or TV station or newspaper or printer or billboard company, rather than to the candidate.

Most public assistance bills provide that all campaign receipts and expenditures—public as well as private—be routed through a single bank account, another means of assuring full public accountability and of preventing the abuse of campaign funds.

Whichever system is adopted, the Government Accounting Office will have full power to audit the uses of public funds and investigate abuses.

* These figures do not include the free TV time given to candidates in those countries.

A TRIBUTE TO THE MORMON PIONEERS

Mr. CHURCH. Mr. President, today marks the 126th anniversary of the arrival in the valley of the Great Salt Lake of the Mormon pioneers.

It was on this day—July 24—in 1847 that Brigham Young looked out from his sick bed in one of the lead wagons and announced to his band of followers an end to their long search for sanctuary:

It is enough. This is the place.

These brave men and women, followers of the prophet Joseph Smith and members of the Church of Jesus Christ of Latter-day Saints, had left their comfortable homes for the rigors of the Rocky Mountains and an uncertain future to escape the religious persecution which had marked their early years together. In the first 20 years of the church's history, the faithful were forced to move more than six times. From New York to Ohio, Missouri, Illinois, and finally to Utah.

Their arrival in Utah, however, did not end the persecution, for the Saints were the object of punitive legislation and discrimination on many occasions in the 19th century.

But today, the LDS occupy a prestigious position in American life. They have served in all walks of life, and have occupied prominent roles in both the legislative and executive branches of government.

This prestige now enjoyed by the Latter-day Saints was not achieved by accident. It was achieved by hard work and good habits.

Upon arriving in the Great Salt Lake Valley, the Mormon pioneers set out with characteristic determination to establish a distinctive community based upon the Bible and the teachings of the prophet, Joseph Smith. These dauntless men and women pitted themselves against a hostile environment, and in the struggle to exist, they prospered and grew in numbers.

The LDS were the first to irrigate their land, thus making maximum utilization of their precious water. As they grew in numbers, they turned their attention to building new settlements to accommodate those who joined them from the ends of the earth. The pioneers seeded the mountain west with towns and cities—indeed, the Mormons were the first to settle in Idaho, where they founded Fort Lemhi in 1855. Five years later, they established the first permanent community in Idaho—and the first school at Franklin, named for a noted Mormon pioneer, Franklin D. Richards.

Today, the spiritual descendants of the pioneers continue the tradition. The faith has spread throughout the United States and abroad, where Mormon missionaries have proved outstanding citizen-ambassadors of good will for America as well as for their church.

And like their forebearers, today's LDS continue the tradition of close-knit families. They are quick to help those suffering from illness or want, and the excellence of their programs for young people is especially well known.

One of the most remarkable characteristics of the LDS is their commitment to education. The most Mormon State in the Union—Utah—is also the most extensively educated. The keystone of the church's education programs is Brigham Young University, known for its excellence. In Idaho, the church operates Ricks College, a fine school on a beautiful and growing campus at Rexburg. Throughout the world, the church operates numerous other institutions of learning in an educational system that is ever expanding.

On this anniversary day, it is therefore fitting that we pay tribute to the Mormon pioneers—and to their descendants. Theirs is an example of Christian living and community service which deserves only the highest praise. I am very proud to join with the people of Idaho and with those of our sister State of Utah in paying tribute on this day to a unique and remarkable people.

Mr. President, I ask unanimous consent that a story on the pioneers, which appeared July 23 in the Salt Lake City Deseret News, be printed in the RECORD.

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

THIS IS THE PLACE
(By Harry Jones)

They were covered wagon people.

They had followed narrow Indian trails westward, and then broke new trails. Sometimes they plodded on by compass only, or following the sun, hacking their way through brush and uncharted land.

Yet, the roster of this band struggling

across prairie and mountain, through heat and howling blizzard, showed them to be strange-looking pioneers.

It was faith that urged them on from Nauvoo across the Mississippi and the Missouri. Faith led them along the placid Platte and then down the Weber where it flows like an unbraided rope.

It was faith that carried them across the mountains. Time and history scribble with a careless hand, but not the entry into the valley of the Mormon pioneers. It is faithfully recorded.

Orson Pratt and John Brown had left camp on Monday, July 19, to explore a route into the valley.

"We found a wagon trail, left the year before by the Donner party on their way to California.

"We passed over a mountain and down into another narrow valley, and thus avoided the canyon on the left," said Pratt.

Today, the mountain is known as "Little Mountain" and the narrow valley, "Emigration Canyon."

In the heat of summer, Pratt headed to the cooling of City Creek where it flowed across the valley floor where the City and County Building now stands.

As the sun was slowly sinking, he wrote in his journal that "I gazed on the surrounding scenery with peculiar feelings in my heart. I felt as though it was the place for which we had so long sought."

A later journal reports that President Young said, "It is enough. This is the right place, drive on!"

Now thousands of sunsets later, 126 years to be exact, one can stand at the "This Is the Place" Monument at sunset, and believe. This is the place!

TRIBUTE TO JOHN KAMPS

Mr. METCALF. Mr. President, when I first went to Helena, Mont., as a legislator and later as an assistant attorney general and associate justice of the Montana Supreme Court, the newsman who covered the activities of those bodies was John Kamps. A native of Froid, Mont., John had wide experience in political reporting before he came to Washington.

One of the first persons to greet me when I came to the House of Representatives 20 years ago was my friend John Kamps. He has faithfully and accurately covered congressional activity relating to the West. His knowledge of the problems of the West, his understanding of the special needs of Western States, water, minerals, forests, national parks, Indians, public lands, and the like has resulted in superb reporting of congressional activity in these areas. As of June 30 John has retired.

John has told me that he is going to Florida. However, he will always be welcome in Montana and any summer he wishes to wet a line in a trout stream there are still some of his familiar creeks and rivers still unpolluted awaiting him.

On behalf of my entire staff and myself, I wish John many happy years of retirement and the well-earned leisure he so richly deserves.

OEO LEGAL SERVICES

Mr. MONDALE. Mr. President, 8 years ago, the Federal Government embarked on an experiment to insure equal justice to low-income Americans. That program—the OEO Legal Services program—in those 8 years has proven its effectiveness beyond all doubt.

The Legal Services program has served more than 1 million clients annually, and has performed an outstanding job for those clients. Recent figures show that 83 percent of the matters handled by Legal Services attorneys have been disposed of without litigation and 85 percent of those matters in which litigation resulted have been won for their clients by Legal Services attorneys.

In addition, a GAO survey of Legal Services earlier this year clearly indicated that the vast bulk of Legal Services attorneys' time is spent on handling the day-to-day problems of poor clients. For example, 42 percent of matters dealt with domestic relations, 18 percent with consumer and job-related problems, and 20 percent with housing and welfare problems. And that small proportion of time which has been spent by Legal Services attorneys in attempting to win collective rights for the poor has resulted in hundreds of millions of dollars, as well as expanded human rights—to which the poor were legally entitled—from Federal, State, and local governments which had been violating the law.

I believe this program has demonstrated a greater cost-effectiveness than virtually any other program in Government today. It has prevented unlawful reductions in welfare payments, helped extend the Federal school lunch program, and participated in many other important efforts to enhance the rights of the Nation's poor. It has attracted dedicated, motivated, able lawyers to its programs in a manner which has strengthened our ability to achieve peaceful change within the American system.

Using any standard, this unique program has been an outstanding success. And perhaps the most significant proof of that success has been the fact that the organized bar throughout the country has led the fight to preserve an independent and effective Legal Services program.

Without this leadership by the bar and by the leaders of the organized bar, this program would have been dead long ago.

Yet the sad truth is that despite the success of the Legal Services program it has been subjected from its inception to attacks from those who believe that lawyers should not be too aggressive—or too effective—in defending the rights of their clients.

No one who has had contact with the Legal Services program would deny that there have been some abuses in that program over the past 8 years. No one who has maintained any association with any Federal program operating over that period of time could deny that such a program would have some abuses of its own.

Yet the overwhelming record of achievement which the Legal Services program has realized in a short period of time is in danger today. The abuses of a few are being used as an excuse to weaken a program whose only real "problem" is its record of enhancing justice for millions of Americans.

The House-passed Legal Services Corporation bill, is in my view, a hollow shell of what a truly independent and vibrant Legal Services program must be.

The President has recognized the vital role that Legal Services must play. In August of 1969, he stated that—

> It [the Legal Services Program] will take on central responsibility for programs which help provide advocates for the poor in their dealings with social institutions. The sluggishness of many institutions—at all levels of society—in responding to the needs of individual citizens, is one of the central problems of our time. Disadvantaged persons in particular must be assisted so that they fully understand the lawful means of making their needs known and having their needs met.

The House-passed bill makes such assistance virtually impossible. And, this bill substantially changes the debate over legislation to create a Legal Services Corporation.

Twice the Congress has passed Legal Services legislation; neither time has it become law. Yet in those instances there were fundamental differences of policy regarding institutional structuring of the Corporation, differences which prevented the enactment of an independent Corporation bill, but which were nevertheless within the boundaries of genuine political debate.

The recent action on the House floor fails to meet this test, however. For the crippling amendments adopted on the House floor were not the product of those administration officials who maintain an open mind on the most desirable form for the Legal Services program. Indeed, the nominee for the Director of the Office of Economic Opportunity, Alvin Arnett has told me that he supports the bill which emerged from the House Education and Labor Committee, and which was subsequently gutted on the House floor.

Rather the House floor amendments were the product of days of back-stage whispering by those who have consistently tried to destroy the effectiveness of the Legal Services program. Their chief spokesman was Howard Phillips, former Acting Director of OEO, who at the very time the House bill passed was in his way to being removed from office by a U.S. district court judge.

Those of us who have been through the battle to create an independent and responsible Legal Services program cannot allow that program to be eroded by such tactics. We must repair the damage inflicted by one man who held office illegally and whose view of the world of the poor was as misanthropic as his perceptions of the Legal Services program were inaccurate. We must not let that distorted view of reality undo nearly a decade of responsible activity by Legal Services attorneys on behalf of America's poor.

We cannot allow a program in which backup centers have provided the type of research assistance overworked attorneys in local offices could never hope to provide, to be stripped of its research arm. Yet the House-passed bill would do just this.

We cannot allow a program which has successfully challenged the illegal and arbitrary actions of Federal, State, and local governments to be emasculated by allowing these governmental units to

maintain political control over or operate Legal Services programs. Legal Services attorneys must be free to adequately represent their clients, and political domination over the program by Government will undoubtedly interfere with this objective. Yet the House-passed bill would do just that.

We cannot allow a program which needs involved and motivated attorneys—to be hampered, because of unreasonable restrictions on the private and personal lives of those attorneys. Yet the House-passed bill would do just that.

Finally, we cannot allow Legal Services attorneys to be restricted in representing the interests of their clients before legislative and administrative bodies. Yet the House-passed bill would do just that.

The bill passed by the House would result in second-class law for the poor, which few corporations or governments would stand for.

A number of crucial issues stand out as deserving the attention of the Senate. These issues must be the cornerstone of our attempt to shape Legal Services Corporation legislation which will meet the goals which the President has set for the program. These issues must take priority if we are to meet this Nation's commitment to equal justice under the law.

These are the goals toward which we must work. Together, we must insure a viable and truly independent Legal Services program.

First, we must eliminate the possibility of State and local governments becoming recipients of legal services funding. Political control at any level of Government is highly dangerous for the Legal Services program, since funds may be controlled by potential defendents in actions initiated by Legal Services attorneys. We need an independent program able to challenge Government illegality wherever it exists.

This, of course, is not to deny elected officials their proper role in consultation on matters in which they are intensely interested. However, to allow Governmental units to operate, or be a funding conduit for, Legal Services programs is to run a grave risk that no effective means of legal redress within our system will be preserved.

For as the President himself noted in 1971:

"Much of the litigation initiated by legal services has placed it in direct conflict with local and State governments . . . . However, if we are to preserve the strength of the program we must make it immune to political pressures and make it a permanent part of our system of justice.

No clearer evidence could be offered on the need to insure that recipients are truly independent of State and local political and governmental ties, and able to act freely without fear of political reprisal.

Second, we must insure continued operation of backup centers, which were eliminated by the House bill. As Robert Meserve, president of the American Bar Association, stated in March of this year:

I don't see how with any efficiency the individual lawyers in the field can do all the types of research which these back-up centers can do in specific and particular areas.

These 16 centers provide invaluable assistance to lawyers whom the General Accounting Office earlier this year characterized as overworked with heavy workloads of individual cases. Provision for these centers must be maintained as a part of any independent Legal Services Corporation bill, and Mr. Arnett has indicated his support for this position.

Third, representation by Legal Services attorneys before legislative and administrative forums should not be restricted so as to deny the poor the types of legal assistance which any citizen should be able to obtain. In years past, we have accepted certain compromises on the scope of these vital activities, without which no lawyer can fully serve his clients. But there must be a limit. We must preserve the essential ability of the poor to obtain the same type of legal representation which others in our society can afford.

Testifying in 1971, Edward L. Wright, former president of the American Bar Association, stated that the program must enable a Legal Services lawyer to "serve his clients to the extent of his professional responsibility and the ethical mandates of the profession." In short, we must avoid setting up restrictions on Legal Services attorneys which no large American corporation—whose legal fees are subsidized by the Federal Government through tax deductions—would tolerate for its attorneys, and Mr. Arnett apparently agrees with his position.

Legislative and administrative representation limited to responses to formal request from members of a legislative body is virtually no representation at all. Like any attorney, Legal Services attorneys must be able to carry out legitimate representational activity on behalf of any eligible client before Federal, State or local bodies.

Fourth, we must insure that there are no broad categorical restrictions on the types of cases in which Legal Services attorneys can participate. Such restrictions violate the ethics of the legal profession and place attorneys for the poor in an untenable position.

President Nixon stated in 1971 that—

The legal problems of the poor are of sufficient scope that we should not restrict the rights of their attorneys to bring any type of civil suit. Only in this manner can we maintain the integrity of the adversary process and fully protect the attorney-client relationship so central to our judicial process.

In short, we should no more attempt to limit the types of cases which a Legal Services attorney can bring than we should attempt to restrict the scope of practice of any attorney admitted to the bar.

Fifth, we must attempt to preserve the constitutional rights of Legal Services attorneys by not placing undue restrictions on their personal lives and off-time activities.

Sixth, we must resist attempts to bankrupt the program by requiring the Legal Services Corporation to pay legal fees and court costs for those cases lost by attorneys employed by the Corporation or a grantee. If these provisions become law, they could well require the Corporation as a matter of financial survival to direct recipients not to engage in any but the safest types of litigation. This would prevent precisely the types of litigation and other representational activity through which Legal Services attorneys have won many new substantive rights for clients over the years.

Clearly, this provision is an attempt to bankrupt the Legal Services Corporation and is a departure from the principles on which our legal system rests.

Finally, we should maintain in the law the presence of a National Advisory Council, to act as the chief contact point between the program, the organized bar and those affected by the program's activities. The National Advisory Council has played an important part in winning and maintaining acceptance for the Legal Services program on the part of the local bar. The abandonment and dismantling of the Advisory Council by OEO earlier this year should not be allowed to be perpetuated in our legislation for a Legal Services Corporation.

These are only some of the issues which require the careful attention of the Senate. Together, the many restrictions embodied in the House bill hopelessly impair or prevent much of the most valuable legal services representation. And, if the value of that representation is depreciated, the program can no longer be truly effective in providing the type of service to millions of poor Americans which enables them to find equal justice under our Constitution.

In the coming weeks, the Senate will consider legal services legislation. We must attempt to preserve fully the independence and integrity of legal services lawyers' relationship with their clients, consistent with the requirements of the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association.

In our search to find common principles, we must not be unreasonable, but we must maintain the essential integrity of the program and the integrity of the legal-judicial process.

I hope all those who believe in equal justice under the law, and all those who believe that the poor are entitled to the same standard of justice as all others in our society will join in this search for shared principles.

And I hope and trust that in this search we can breathe new life and a new sense of independence and security into a program desperately in need of our continued support.

COMMITMENT TO PRINCIPLE IS THE GUIDEPOST OF LEGAL SERVICES CORPORATION LEGISLATION

Mr. CRANSTON. Mr. President, the Senator from Minnesota (Mr. MONDALE) has, as usual, made a fine statement. I fully associate myself with all of his remarks, which I have had the opportunity to study prior to their delivery today.

There is little I need to add. He has laid it out very clearly. I will continue to stand at his side along with Senator KENNEDY and others, as I have since we first introduced National Legal Services

Corporation legislation more than 2 years ago.

I associate myself completely with all the principles about which he has spoken so eloquently and with his plea for a reasoned approach to this legislation. I plan to continue to collaborate with him in developing amendments and provisions to carry out our shared goals, principles, and values.

Mr. President, I would like to add one bit of additional support for the very forceful comments which the Senator from Minnesota has made about the vital importance of retaining active and effective legal services backup centers, which the House-passed bill would eliminate. It seems clear that the administration itself recognizes the importance of these centers to the provision of effective legal services since its own proposed legislation would impose no restrictions on the continued funding of such legal research and technical assistance programs.

In addition, Mr. President, I have copies of three letters from high officials of the Department of Housing and Urban Development, as well as an excerpt from the March 1972 HUD publication Challenge, entitled "Special Counsel for the Poor," which are unanimous in their praise for the effective and responsible activities of the national housing and economic law project in Berkeley, Calif., with respect to a variety of subjects, including litigation. I ask unanimous consent, Mr. President, that the text of these three letters and that article and the text of a July 5, 1973, letter to the House and Senate chairmen of the appropriate congressional committees and subcommittees from Dean Edward C. Halback, Jr., of the School of Law of the University of California at Berkeley, be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. CRANSTON. Mr. President, in closing, I call upon the President to let us know where he stands on this legislation and to identify a responsible administration spokesman to deal with the Congress on his behalf in support of the administration bill, the provisions of which are embodied in S. 1815 amendment No. 132 submitted for the administration by the Senator from New York (Mr. JAVITS) and others.

Mr. President, at his confirmation hearing before the Senate Labor and Public Welfare Committee last Friday, July 20, Mr. Alvin Arnett, Director-designate of OEO, answered questions regarding legal services from Senator MONDALE, myself, Senator KENNEDY, Senator TAFT, Senator SCHWEIKER, Chairman WILLIAMS, and others. The concerns of the committee were, I think, very clearly manifested to him. And he generally responded in a forthcoming manner on this issue, by twice pledging his support, if confirmed as OEO Director, for the bill reported to the House floor from the Education and Labor Committee. If he is confirmed, we expect him to stand by that pledge in the difficult days ahead.

Certainly, his defrocked predecessor was anything but a supporter of the principles and legislation to which Mr. Arnett pledged himself last Friday.

The President should put an end to the schizophrenic behavior which characterized administration activities on the House side—which can best be described as the Phillips Wrecking Co. and Bomb Squad making surreptitious sorties with devasting effect closely followed by the Laird/Garment/Richardson Fire Co. and Rescue Squad with scant water pressure, obsolete equipment, and an unclear mission.

This Keystone Cops routine must not be replayed in the Senate.

It has none of the humorous qualities of the original and has produced disastrous results for America's poor.

EXHIBIT 1

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., January 3, 1972.

Mr. ALVIN HIRSHEN,
Housing Law Project, University of California, Berkeley, Calif.

DEAR MR. HIRSHEN: As you know, I am leaving the Department on January 20, 1973, and wanted to personally thank you for the efforts in assisting the Department over the past four years. More particularly, the advice and counsel given HUD during the negotiations between HUD, NAHRO and NTO on developing the lease and grievance procedure which resulted in the Department issuing a policy agreeable to two very volatile national organizations.

Our General Counsel's office informed me that your representation during subsequent litigation was outstanding and instrumental in getting a favorable ruling for the Department. I hope that in the future, your organization will continue to exhibit the highly professional and responsible service to HUD as well as its consumers.

The association has been rewarding and I wish you all the best for the future.

Sincerely,

NORMAN V. WATSON,
Assistant Secretary.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., January 10, 1973.

Mr. AL HIRSHEN,
Director, Housing Law Section, National Housing and Economic Development Law Project, Berkeley, Calif.

DEAR MR. HIRSHEN: This letter is to express the appreciation of the Department of Housing and Urban Development both to you personally and to the Project for your assistance in the case of The Housing Authority of the City of Omaha, Nebraska, et al. v. The United States Housing Authority, et al. Your participation in this litigation, especially your involvement in the negotiations with the plaintiffs, as well as your excellent briefs and oral presentations, materially contributed to the successful outcome before the Court of Appeals for the Eighth Circuit.

As you know, this litigation posed a direct challenge to the Secretary's authority to issue regulations and more specifically the validity of the HUD model lease and grievance procedure circulars for low-rent public housing which we felt were essential to the stability and orderly management of the whole public housing program. We feel that the decision in the Eighth Circuit as well as similar decisions in the Seventh and Fifth Circuits have vindicated our position, and that your assistance has been of great benefit in this effort.

Sincerely,

DAVID O. MAXWELL.

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT,
Washington, D.C., October 16, 1972.

ALVIN HIRSHEN, Esq.,
Director, National Housing and Economic Development Law Project, Berkeley, Calif.

DEARD AL: We are deeply grateful for your taking time from your busy schedule to make such a fine contribution to our meeting of HUD Lawyers last Friday. The panel made a tremendous impression on everyone, and I believe that your candid and comprehensive approach was a particularly valuable experience for our lawyers in the field.

Many thanks again.

Sincerely,

DAVID O. MAXWELL.

THE UNIVERSITY OF CHICAGO,
Chicago, Ill., March 2, 1973.

Mr. ALVIN HIRSHEN,
National Housing and Development Law Project, Earl Warren Legal Institute, University of California, Berkeley, Calif.

DEAR MR. HIRSHEN: We are arranging to obtain copies of the comments of the American Bar Association Subcommittee on the Model Uniform Residential Landlord and Tenant Act. I expect to be able to send the material to you early next week. I think about the same time, or shortly thereafter, printed copies of the Uniform Act together with comments will be available. This process is, of course, a continuing one and I am sure that the Subcommittee of the National Conference (which under the rules of the Conference continues even though the Uniform Act has been adopted) will be interested in your reaction and will ultimately wish to meet with you and your associates.

I assume that at this time I can appropriately express my deep appreciation, and I am certain that of the Commissioners concerned, for the great and continuing assistance which you and your associates have provided. Few fields of law instruct our general population as thoroughly as that of landlord and tenant. It is in the forcible entry and detainer court and in the building and housing court that the average citizen is truly instructed as to whether our society is one of law rather than men and whether law is, in fact, responsive to the needs of the society which it is to serve. The tenant, for example, who is told that he must continue to pay rent even though all essential services have been deliberately lapsed must find it hard to believe that the law is other than "an ass." Although these hardships fall most heavily on the poor, the middle and upper class tenants are equally injured. The fact of the matter is, as you and I know, that only in recent years, largely through the influence of persons like you and your associates, have the courts of review for the first time begun to examine some of these issues.

The position of the Commissioners in this regard was difficult. It was essential that we hear from all sides and, moreover, that we hear not from abstract surrogates but from counsel who, like yourself, came from the battle of the courtroom.

Your contributions were indeed great. We all hope they will continue.

Sincerely yours,

JULIAN H. LEVI.

SPECIAL COUNSEL FOR THE POOR
THE NATIONAL HOUSING AND ECONOMIC DEVELOPMENT LAW PROJECT

That the law "intended residents of blighted areas to be the beneficiaries, not victims of urban renewal" was the observation of a Federal court in *TOOR v. HUD* last year as it entered an order enjoining a major San Francisco urban renewal project from demolishing the homes of more than 3,000 disadvantaged persons for whom relocation housing had not been planned.

In a wide range of cases such as this one, lawyers representing low-income people and their community groups, particularly OEO-funded Legal Services attorneys, are pressing the courts for enforcement of the legal rights of displacees under relocation statutes; of community organizations looking for citizen participation under HUD's Workable Program guidelines; and of tenants in public housing, HUD–FHA subsidized housing, and private housing. For the last group, new landlord-tenant laws better suited to the realities of a modern urban society, are an urgent necessity. One group spearheading this movement is a small organization of lawyers established three years ago at the Earl Warren Legal Institute at the University of California, in Berkeley, known as the National Housing and Economic Development Law Project.

The Project's staff consists of 12 lawyers, one planner, and one political scientist. It is supported by graduate students in Berkeley's Schools of Law and City Planning. The staff maintains close working relationships with a network of Legal Services attorneys in other cities, many of whom are also specializing in the area of housing law or economic development.

SERVICES PROVIDED

The Berkeley project, a grantee of the Legal Services Division of the Office of Economic Opportunity, was created to provide Legal Services lawyers with specialized legal advice and strategy-oriented guidance in the two-pronged areas of housing law and community based economic development. It developed and published *The Handbook on Housing Law*, which contains comprehensive practice materials for lawyers and planners representing low-income clients and their community organization.

Volume One, *Guide to Federal Housing, Planning, and Redevelopment Programs*, explains in detail the various HUD programs which affect the interest of low-income people and their organizations and recommends approaches and strategies for their use. Volume Two. *Landlord-Tenant Materials*, includes a detailed guide for lawyers representing tenant unions, as well as chapters on rent withholding, retaliatory evictions, actions for housing code violations, and lead poisoning of slum children.

The Project works closely with such organizations as the National Tenant's Organization (NTO), a coalition of low-income tenant unions in public housing and private housing; the National Association of Non-Profit Housing Organizations (NANHO); and the National Congress for Community Economic Development. Along with NTO it played an active role in deliberations leading to the issuance of HUD's new regulations governing public housing leases and grievance procedures. The regulations oblige all housing authorities to conform their leases to model documents which provide various tenant protections and insure impartial hearings on tenant grievances.

In its three years of operation, the Project's attorneys have achieved significant results in several important areas, one of which is relocation housing for all persons displaced by such Federal programs as urban renewal and highway construction. The Project, as co-counsel to Legal Services lawyers in several lawsuits instituted to compel compliance with statutory and regulatory requirements, has been effective in insuring realistic planning for displacees and the production of replacement housing. As in other areas of its operation, the Project supplies model complaints and briefs to attorneys challenging relocation plans.

The Project's relocation work illustrates its method of approach and operation: a combination of legal research, litigation, counseling, negotiation at the Federal, State, and local levels, and legislative effort. It has applied a similar variegated approach in its work in the area of public housing management. Here it has supported efforts of Legal Services units around the country, based upon the tenant participation requirements of the HUD modernization program, to encourage tenant participation in management decisions and to build tenant unions or councils.

The Project also played a major role in the development of the Brooke Amendments to the 1969 and 1970 Housing Acts. The amendments limit the rent payable by a public housing tenant to a percentage of income, provide subsidies to cover maintenance costs, and require significant tenant participation in management decisions.

FUNCTION OF POVERTY

The Project sees the housing problem as a function of poverty, not as a shortage of housing. As its Director, Kenneth Phillips, put it: "A slum is where poor people live, and if you tear that slum down and move them someplace else and they are still poor people, you are going to have another slum. You have to think about the total problem of low-income families, who may have no male adult; who, if they have jobs, are probably underemployed in the sense that they are unable to earn enough to support themselves and their families."

Phillips sees a system of housing allowances, to fill the gap between what the poor can afford to pay for housing and the costs of operating and maintaining housing, plus finance costs and property taxes, as the only promising approach. He recognizes that this would require increased Federal funding for housing, although he believes that over a period of time housing allowance programs would prove much less expensive than present approaches.

As to the functions lawyers can perform he says, "First of all we must be alert to every opportunity to document and dramatize the reality of the poverty situation. This can be done through litigation and administrative strategies. The country must not be allowed to forget the dimensions and realities of the poverty problem if we are ever to hope for realistically funded programs. Second, we must emphasize strategies that have the potential for the development and encouragement of local organization and leadership, such as community development corporations and tenant councils. Third, it means specific gains, wherever possible, whether that is more units of housing or the recognition of tenant councils in public housing, or whatever."

WORKABLE PROGRAM TASK FORCES

Possibly the most ambitious and comprehensive strategy the Project has developed to date has been based on the statutory requirement that every city have a Workable Program certified by HUD as a condition of eligibility for urban renewal and certain other HUD funds.

In some 20 cities across the country, citizen task forces, supported by Legal Services lawyers with Project assistance, have been organized for that purpose. These task forces include low-income community organizations from all parts of these cities, as well as local Urban Leagues, the local NAACP and the chapter of the League of Women Voters. The activities of the task forces and the administrative complaints filed in several cities have resulted in a variety of specific agreements including undertakings to build more low-income housing, to halt displacement pending the availability of relocation resources, and to rezone land for HUD-FHA subsidized housing.

Finally, the Project is assisting the growing tenant union movement through research and publication, litigation assistance, and the development of a detailed manual for tenant union organization and operation. Most of this work involves new law in the area of housing code violations, including the emerging legal doctrines of retaliatory eviction and implied warranty of habitability. The Project's latest effort in this area has been the development of a comprehensive Eviction Defense Manual for California attorneys, which covers the procedures and substance of eviction defense, from the receipt of first notice through appeal. The manual is in turn intended to serve as a prototype for other States.

ECONOMIC DEVELOPMENT

The Project's economic development section provides specialized legal assistance to approximately 30 Community Development Corporations (CDC's) and serves as legal adviser to their association, the National Congress for Community Economic Development. The Project sees the movement for community-based economic development as offering, more than any other antipoverty strategy, a potential for the mobilization of resources and the development of local leadership, and for building long term institutions that will be really responsive to community needs.

The legal assistance and related business assistance provided is often complex and sophisticated. It must take into account the many uncoordinated sources of governmental and private funding and technical assistance. Difficult problems of finance, tax, corporate, securities, and anti-trust law are commonly involved. Relationships of trust and confidence must be carefully developed with local community organizations and their members.

The Project's work with the East Central Committee for Opportunity, Inc. (ECCO)—a rural, primarily black organization which, with government and foundation support, is establishing a commercial catfish operation and other auxiliary enterprises—typifies its approach in this area. As special counsel to ECCO, a Project attorney recently negotiated a substantial loan from a private foundation, drew up articles of incorporation and by-laws for the several corporations, arranged for day-to-day legal services from a VISTA lawyer in Atlanta, and formed a minority enterprise small business investment company to permit ECCO to take advantage of maximum support available through the Small Business Administration programs. ECCO's catfish business is now underway. It involves some 250 low-income farmers as cooperative members and employs 32 people in its operations.

Related to its special counsel assistance to specific community development corporations and their counsels are two other important Project functions. Through its research, the Project is presently preparing a comprehensive, practical lawyer's manual on all aspects of community-based economic development. Second, working with OEO, the Project is meeting with representatives of various Federal agencies and bureaus in an effort to create a more favorable climate of response for CDC's.

A long term solution to the problem of deteriorated housing—interrelated as that problem is to the myriad and complex social and economic issues of poverty, welfare, employment, health, and education—will require a multi-faceted approach. It will have to insure, through some system of subsidy, the continuing availability of sufficient funds to cover operating and maintenance costs and to reduce the heavy burden of high rents in relation to income under which the poor now suffer. The Project is doing its part to support such a multi-faceted approach by aiding those pledged to solving the housing and community economic development problems of our time.

UNIVERSITY OF CALIFORNIA,
Berkeley, Calif., July 5, 1973.

Hon. HARRISON WILLIAMS,
Chairman, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.
Hon. GAYLORD NELSON,
Chairman, Subcommittee on Employment, Manpower and Poverty, Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.
Hon. CARL D. PERKINS,
Chairman, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.
Hon. AUGUSTUS HAWKINS,
Chairman, Subcommittee on Equal Opportunity, Committee on Education and Labor, U.S. House of Representatives, Washington, D.C.

DEAR SENATOR WILLIAMS, SENATOR NELSON, CONGRESSMAN PERKINS AND CONGRESSMAN HAWKINS: I am writing to you out of a sense of deep concern regarding the serious danger to the continuation of a meaningful Legal Services program posed by the recent action of the House in voting to prohibit continued funding of the "back-up centers" by the proposed Legal Services Corporation. As one of these centers, the National Housing and Economic Development Law Project of the Earl Warren Legal Institute, is closely affiliated with this law school, my concern derives from an experience of more than five years of close observation of the activities and effects of a Legal Services back-up unit.

I believe that enactment of this prohibition would constitute a major setback in our national efforts toward the goal of equal justice under law. A fundamental assumption of our legal system is that the courts and other institutions of government shall be open to rich and poor alike. Yet, as every lawyer knows, effective legal representation is essential to make this goal a reality. The plaintiff or defendant who cannot put on his case or prevent his defense will not prevail, however valid his position may be.

If our nation is serious in its purpose of offering meaningful access to the institutions of government to those who cannot afford to retain legal counsel, we must be realistic in assessing the means necessary to that end. Specialization and expertise are as critical in meeting the needs of the poor as in meeting those of the well to do.

Given the rapid turnover of lawyers in the Legal Services program, and the fact that many of them have had little or no prior practice experience, they are particularly dependent upon the technical assistance, training and support that the back-up centers provide. Thus, for example, in 1972 the housing law component of the Berkeley back-up center responded in writing to some 1400 specific Legal Services requests for advice and assistance and to perhaps twice that number of telephone requests. The Legal Services lawyer faced with complex problems of FHA eligibility, urban renewal relocation rights, warranty of habitability, public housing admission and eviction regulations, and many similar specialized subjects not only in housing law but in all the many poverty law areas in which he practices, would be at a loss to provide quality legal services to the great numbers of clients served without assistance of this kind. With such support, legal services can be provided relatively economically and on a large scale and equally important, Legal Services lawyers can and do assist in ensuring that special protections for the poor, carefully prescribed by legislative bodies at the federal, state and local levels, are heeded and given effect in the administration of government programs. Through the back-up center mechanism, the expertise gap for the poor client has been bridged in such chronic problem poverty law areas as consumer, welfare, employment, housing, economic development, education and health law.

The House prohibition admittedly would permit the proposed Legal Services Corporation to provide supportive services on an "in house" basis, disallowing contracts with law schools and other institutions for that purpose. It would be years, however, before the Legal Services Corporation could build a specialized competence comparable to that which the House bill would dismantle. Thus, three years of concentrated experience with community development corporations underlay the preparation of the *Lawyer's Manual on Community-Based Economic Development*, shortly to be published by the Center here and it is clear to us that this Manual could not have been undertaken without such extensive prior experience. The dissipation of capability painstakingly developed over years of effort at each of the back-up centers would be a serious setback for the Legal Services program. Moreover, it is important to recognize that the proposed Legal Services Corporation is to function in the role presently served by the O.E.O., that of a grantor of funds to Legal Services programs. As such, I seriously doubt that field lawyers could ever come to accept the Corporation or its lawyers, in the co-counsel capacity in which they now see back-up center attorneys, an acceptance which is absolutely essential to the lawyer-to-lawyer relationship that has permitted the effective function of the present system.

Finally, and perhaps more parochially, I would comment from my personal perspective as a law school dean, on the mutual benefits to Legal Services programs and to legal education that derive from the placement of back-up centers at qualified law schools. As to the first, through the participation of faculty members expert in such areas as constitutional law, property law, antitrust law, tax law and many other legal subjects, as well as nonlegal faculty from such departments as business, city planning and economics, the back-up centers regularly offer Legal Services lawyers a quality of competence they could not find in a government agency or elsewhere. This has been notably true in the work of our Economic Development Project which draws upon competences in all of the foregoing areas. Moreover, it is very much a two-way street. We have been greatly assisted by the Center here, and without cost to the government, in expanding our curriculum in respect of the legal problems of the poor. The Center's work, in addition, has formed the basis for the development of excellent teaching materials which are in use here and at several other law schools. The participation by our students in the Center's work provides it with high quality but inexpensive research capability while, at the same time, filling the increasing demand for socially related clinical education under the supervision of qualified attorneys.

I am enclosing, for your further information, several short pieces which expand upon the foregoing points. To many of us working in the field of legal scholarship and education, the developments of the last few years, in which a strong beginning has been made toward the goal of equal justice under law for minorities and the poor, has been encouraging. To dismantle the research and support centers at this time would not only jeopardize the gains that have been achieved, but, in my opinion, would permanently impair the ongoing capacity of the profession to serve indigent persons and to ensure due and fair consideration of their rights and grievances by our legal institutions.

Respectfully submitted,

EDWARD C. HALBACH, JR.,
Dean.

SECRECY AND THE PRESIDENCY

Mr. MUSKIE. Mr. President, Raoul Berger, a leading constitutional scholar and expert on the issue of executive privilege, has written an article in this morning's Washington Post which should be of interest to all Members of Congress. Mr. Berger rehearses the precedents for claims of secrecy and their dubious validity and boils the dispute down to one simple statement:

The Nation can no more tolerate Presidential withholding of documents when the executive branch is under congressional investigation than it can afford to let a bank president dictate to a bank examiner what books he may see.

Mr. Berger gave very helpful testimony on the question of executive privilege to our joint Senate hearings in April. I ask unanimous consent that his essay in the Post today be printed in the RECORD as a further contribution by Mr. Berger to our consideration of this subject.

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

SECRECY AND THE PRESIDENCY

(By Raoul Berger)

In the midst of the Senate investigation of participation by the White House staff in alleged criminal activities—branded by former Attorney General John Mitchell as "White House horrors"—President Nixon has barred access to "Presidential papers prepared or received by former members of my staff." This roster includes John D. Ehlrichman, H. R. Haldeman, John W. Dean III, Gordon C. Strachan and others, who have been implicated by testimony in possible crimes. The Nixon order would bar the possible confirmation of such testimony by documentary evidence available in White House files. The order, Mr. Nixon advised the Senate, is not based "upon any desire to withhold information relevant to your inquiry." But that is precisely its effect.

The issue rises above a jurisdictional quarrel between Congress and the President—important though such differences can be—and it presents as an issue in which every American has an immediate stake. Mr. Nixon would shroud White House activities behind the very curtain of secrecy which bred the "horrors" that have brought shame upon the President and the nation. It was the Johnson administration's addiction to secrecy that made possible the stealthy and calamitous escalation in Vietnam. Executive secrecy is at war with Madison's admonition that "the right of freely examining public characters and measures, and of free communication thereon, is the only effective guardian of every right." Suppression of information is a prelude to tyranny, a first step toward enslavement of the people.

The historical records fully confirm Henry Steele Commager's statement that:

The generation that made the nation thought secrecy in government one of the instruments of old world tyranny and committed itself to the principle that a democracy cannot function unless the people are permitted to know what their government is up to.

Concealment thus bears a heavy burden. To defend this concealment, President Nixon relies first on the "separation of powers." He himself recognizes that it was designed to defend each branch "against *encroachments* by other branches," thus assuming that the President was given a constitutional power to withhold information from Congress, upon which Congress may not "encroach." *But the "separation of powers" does not confer power; it only protects a power otherwise conferred.* The existence of withholding power must therefore be proven not assumed.

No such power is to be found in the Constitution. To this, presidential advocates retort that the congressional power of inquiry likewise is not mentioned in the con-

stitutional text. There is, however, a profound difference: congressional inquiry rests on a judicially recognized historical base. Looking to English practice at the adoption of the Constitution, the Supreme Court found that Parliament had long exercised a power of inquiry; that it was "an essential auxiliary . . . of the legislative function," an "inherent . . . attribute" of the "legislative power," which the framers intended to include in the "legislative power" committed "to the two houses." Like the Court, therefore, we may look to the parliamentary practice to ascertain the *scope* of that "attribute."

In an extensive sampling of parliamentary records stretching from 1621 to 1742, I found first that the inquiry power ran across the board, into every conceivable aspect of executive conduct. Secondly, I found not one instance of an objection by any minister to the right of Parliament to inquire or to the scope of the inquiry. The great English historian Henry Hallam confirms that no "courtier," that is, minister, "ventured to deny this general right of inquiry." It is safe to conclude that no minister claimed or enjoyed any right to withhold information from Parliament.

A number of historical facts indicate that the founders adopted this practice. Before the convention, James Wilson, one of the leading architects of the Constitution regarded it as one of the glories of the House of Commons that the proudest ministers had appeared before it to account for their conduct. On four or five occasions the founders referred to the House as the "Grand Inquest of the Nation"—so the inquisitorial power was known—without the slightest intimation that they intended to curtail the power in any respect. From this and yet other historical data we may deduce that the "attribute" with which Congress was endowed by the framers was the untrammeled parliamentary power of inquiry. Let the executive branch come forward with contradictory evidence. Until then, we should be guided by the homely maxim: you can't beat somethin' with nutin'.

No presidential advocate has ever brought forward any pre-Constitution precedent for a claim or right to withhold information from the legislature. Nor can the President lay claim to the immunity of the king, for as James Iredell proudly boasted, the framers made the President "triable" and repudiated the principle that the king was immune. Such royal immunity was again rejected by Chief Justice Marshall on the trial of Aaron Burr, wherein he declared that President Jefferson could be required to furnish a letter written to him by General Wilkinson.

Presidential claims are rested on a number of post-1787 refusals by some Presidents of relatively innocuous information. A bare assertion of a right to withhold can no more create constitutional power than a President can lift himself by his bootstraps. Presidents cannot change the Constitution by repeated self-serving assertions. The "precedent" adduced by Mr. Nixon, for example, was a refusal by ex-President Truman in 1953 to testify before a congressional committee, a very recently brewed "precedent." In sum the Senate request for White House files does not "encroach" on presidential prerogative because no such right to withhold was conferred by the Constitution on the President.

There is powerful confirmatory evidence that the "separation of powers" was not thought to limit congressional inquiry, to mention only the Act of 1789, which made it the duty of the Secretary of the Treasury to furnish to Congress all information appertaining to his office. Drafted by Alexander Hamilton, enacted by the First Congress, in which sat a goodly number of framers and ratifiers of the Constitution, and signed by President Washington, the presiding officer of the convention, the Act demonstrates that the "separation of powers" was considered no bar to the congressional requirement of information.

Second, Mr. Nixon relies on "the indispensable principle of confidentiality of presidential papers": "no President could function . . . (unless) his personal staff be able to communicate among themselves in complete candor." Not a trace of such a "principle" is to be found in our history until 1954, when President Eisenhower first announced it more broadly in belated recoil to the excesses of Sen. Joseph McCarthy. Before long, the "principle" spread to every level of government, and lesser functionaries were denying information to Congress lest it inhibit "candid interchange" among subordinates. In April, 1973, Attorney General Richard Kleindienst made the unprecedented claim that no one of the 2.5 million federal employees can talk to Congress without the President's permission. The "principle" has become the most frequently invoked ground of refusal of information by every branch of the government; it cuts far deeper than "confidentiality of presidential papers." Before we swallow such a crippling "principle" and permit the President to redesign the Constitution by pronunciamento, we should at least be sure that it is indeed "indispensable" to good government.

That government can flourish and prosper in the absence of such a principle is demonstrated by the fact that our federal government successfully functioned from 1789 until 1954 without the benefit of the "principle." When the "principle" was invoked by a ministry against a private litigant before the House of Lords in 1967, it was all but laughed out of court. A "principle" thus dismissed by a great court can not be assumed to be self-evident. Against the assumption that "confidentiality" is "indispensable" to the operation of the entire government must be weighed the undeniable need of Congress for information, the cost of concealing confirmatory evidence of a conspiracy to corrupt the political process, and the loss of confidence in the President which has shaken the nation. Concealment in these circumstances is too high a price to pay for the preservation of "confidentiality" in the White House.

Let President Nixon ponder the acknowledgment of the stiff-necked Andrew Jackson that: "*cases may occur in the course of [Congress'] proceedings in which it may be indispensable to the proper exercise of its power that it should inquire or decide upon the conduct of the President or other public officers, and in every case its constitutional right to do so is cheerfully conceded.*"

The nation can no more tolerate presidential withholding of documents when the executive branch is under congressional investigation than it can afford to let a bank president dictate to a bank examiner what books he may see. Unhappy are a people whose suspected officials can lay down the terms of investigation, for then the investigation becomes a dead letter.

THE FEDERAL PAPERWORK BURDEN

Mr. CLARK. Mr. President, yesterday, July 23 and earlier, on July 12, the Subcommittee on Government Regulation of the Senate Select Committee on Small Business held hearings on the Federal paperwork burden that weighs heavily on the Nation's 4,000 small, independent brokerage firms. The purpose of the hearings was to determine the extent of this hardship and to find ways for the Select Committee and the Senate to help alleviate it.

In Iowa, the small broker-dealers are a vitally important part of our business structure. They primarily serve the small investors, many of whom are self-employed farmers investing their small profits into future retirement programs. Nationally the small broker-dealer plays a unique and essential role in our economy. Historically, they have engaged in the marketing of securities to individual small investors. They provide local and regional securities facilities in many areas of the country not served by the large New York City firms. They raise capital for small businessmen who, because of their size, are often ignored by the Wall Street giants.

William McChesney Martin, president of the New York Stock Exchange, told his board of governors:

> The role of the small brokerage firm should not be overlooked. It has contributed to the health of the economy, by raising capital to finance new ventures, and by serving the needs of small investors scattered across the nation. In short, by broadening economic opportunity. In the course of the many changes which will inevitably take place in the securities industry, care should be taken not to cause the elimination of small, efficient firms.

At yesterday's hearing, the subcommittee heard a most enlightening statement from Prof. James S. Mofsky, of the school of law at the University of Miami, who succinctly states the extent and nature of the paperwork problem imposed on the small, independent broker-dealers. For the benefit of all the Members of the Senate, I ask unanimous consent that Professor Mofsky's remarks be printed in the RECORD.

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

STATEMENT OF JAMES S. MOFSKY

Mr. Chairman and members of the Subcommittee, I am James S. Mofsky, Professor of Law, University of Miami, Coral Gables, Florida. For the past five years, I have been teaching and writing in the areas of corporation law and securities regulation. My main area of research has been to analyze and isolate some of the adverse economic consequences of federal and state securities regulation. In that connection, I would like to offer, as a part of my statement, a copy of my article, "SEC Financial Requirements For Broker-Dealers: Economic Implications of Proposed Revisions," that was published in Volume 47 of the *Indiana Law Journal* at page 232 (1972).

I am certain many persons have testified before you with respect to the tremendous growth of the securities industry during the 1960's. During that period the volume of securities transactions swelled far more than had been predicted, and the number of shares outstanding, number of shareholders and amount of brokerage profits increased dramatically. In retrospect, it does not seem surprising that the expansion of the securities industry during that period would generate its own set of special problems. Yet those industry-wide problems either were not timely recognized or, if recognized, were not dealt with effectively as they occurred. It was not until the market decline of 1969–1970, when a large number of securities firms were liquidated, merged or ceased doing business, that those problems came into clearer focus for most non-industry observers.

Those persons engaged in the securities industry either failed to take immediate action to solve their problems or where actions were taken, they were inadequate under the circumstance; and as the rash of brokerage failures, forced liquidations and mergers proliferated, the political pressures for regu-

latory solutions imposed by government increased. Congress responded by enacting the Securities Investor Protection Act of 1970 and embarking on subcommittee investigations and studies. The Securities and Exchange Commission also responded with broad and far-reaching changes in several of its rules relating to broker-dealer financial responsibility, reporting requirements and recordkeeping procedures. Additionally, regulation by the National Association of Securities Dealers and stock exchanges increased. Thus in response to severe industry problems, new layers of regulation were added on top of the existing regulatory process that was already significant in terms of cost of compliance. Yet although the Securities Investor Protection Act has provided some insurance protection that did not exist before, the new legislation and increased administrative regulations have clearly not solved the brokerage industry's plight. Indeed, we are now witnessing, just a few short years later, another crisis in the industry.

The principal reason offered for the brokerage problems that began occurring in the late 1960's is the overburdening of then existing systems. As the volume of securities transactions increased, existing systems were overburdened. That, in turn, resulted in a breakdown of accounting control, and ultimately, failure of some firms. But when systems were expanded through computer technology to cope with increased business, volume declined and members of the industry were left with higher fixed costs but less revenues to support the increased overhead. Thus the problems proliferated.

While the foregoing explanation of the industry's crisis is undoubtedly accurate as far as it goes, it is, in my opinion, only partly true, because it fails to take into account the costs of compliance by brokers with the myriad of regulations to which they were and are subject. The administrative response to brokerage problems was increased regulation. Accordingly, the self-regulatory organizations, the Securities and Exchange Commission and more recently the Securities Investor Protection Corporation imposed additional and costly reporting requirements and record-keeping procedures as well as increased minimum capital and tightened net capital requirements. As regulation was piled on regulation, little attention was given to the economic consequences of the increased burdens and the overlapping reporting and recordkeeping procedures of the self-regulatory organizations and the Securities and Exchange Commission.

It is true that Congress has charged the Commission with the duty of providing investor protection in the securities markets. But one cannot view the benefits of regulation in a vacuum. They become significant only in a relative sense when weighed against the costs created by them, provided of course that the benefits sought are in fact achieved. When the costs become greater than the benefits, regulation may become socially undesirable, and at that point, it may be time to cut back on the amount of regulation. Applied to the securities industry, I believe we have reached a point of "overkill" with resulting consequences, albiet unintended, that are far more damaging than ever anticipated. In fact, the long range interests of investor protection, in whose name increased regulation is usually adopted, may very well be in less regulation rather than more. This conclusion is more readily apparent if we trace some of the adverse consequences of increased regulation of broker-dealers.

It is obvious that every new piece of regulation increases a broker's cost of operation and that there is always some person at the margin unable or unwilling to pay the extra cost. Thus increased costs of regulation necessarily adversely affect the number of participants in the brokerage industry. A securities dealer is like any other business man when he can earn more on his invested capital in a business other than operating a securities firm, he will leave the securities industry and maximize his profits elsewhere. There are of course many factors that affect a securities dealer's profitability, and profitability in the securities industry has declined in recent years for several reasons. But one reason that has not, in my opinion, received sufficient analysis and consideration is the increased costs of compliance with ever proliferating regulation. In this connection, I am referring to costs of regulation in their broadest sense, that is, all the economic costs including time spent in compliance that may not show up in financial statements.

If a person can employ his human capital—his time and labor—more efficiently in one business than another, he will opt for the more profitable. To put it another way, if a person can earn more spending his time selling real estate or insurance than assembling the complex information and completing the many reporting forms for the various regulatory bodies in the securities business, his choice becomes obvious. The thrust of my point is that time costs in complying with the regulatory process are very significant, and although difficult to measure, a major factor that should, I respectfully submit, be carefully considered by the subcommittee, especially in the context of these hearings. In that connection, I would like to emphasize the very high time costs spent by a small broker-dealer in educating himself with the vast expansion of regulation and new and far-reaching interpretations of existing rules. In this regard, economies of scale place small securities dealers at a serious competitive disadvantage with the large firms.

The most obvious implications of increased costs due to regulation are the anti-competitive ones. As costs increase without an accompanying increment in revenues, more securities firms are driven out of business. The Thirty-Eighth Annual Report of the Securities and Exchange Commission reported that at June 30, 1972, 4,734 broker-dealers were registered, compared with 4,940 a year earlier, a reduction of 206. At June 30, 1972, the net decline since fiscal 1970 was 490, and I would submit that the decline since the SEC's last annual report has increased even more dramatically. The decline has been disproportionately great among small broker-dealers. I would attribute this, in some cases, to an inverse relationship between the size of the brokerage firm on the one hand and the costs of operation on the other. That is, the costs of operation are a greater percentage of a small firm's revenues than of a large firm's. This is due to certain fixed costs of operation that remain relatively constant. One of those fixed costs is undoubtedly the cost of compliance with regulation. For example, with some exceptions, small securities firms must file as many forms and reports with the SEC and NASD as the large firms. The complexity of some of these forms and bookkeeping procedures lends itself to computerization, the costs of which are beyond the financial abilities of many small securities firms.

If the current process continues, we can look forward to relatively fewer securities firms, the remaining ones being of larger size. The anti-competitive effects of increased concentration in the securities industry are not difficult to predict. A diminution of competition will surely breed such harmful side effects as higher brokerage commissions, lower broker-dealer operating efficiency, decreased availability of securities firms to effect small transactions, a decline in quality and quantity of customer service and a reduction in desirable innovations in the broker-dealer industry. Witness, for example, the current state of affairs. First of all, we presently observe the New York Stock Exchange requesting substantial increases in the commission rate structure and return to fixed commissions on all transactions. Second, although there probably are New York Stock Exchange member firms that will fill small purchase orders, it is common knowledge that many of those firms try to discourage and avoid such transactions. To illustrate, Merrill Lynch, Pierce, Fenner & Smith. Inc., a firm that built its reputation and size on the philosophy of serving the small investor, will generally not accept orders to sell securities (not purchased at Merrill Lynch) when those securities are priced under three dollars a share. It is not very difficult today to find many stocks selling under three dollars per share.

As institutional domination of the market increases, there is reason to believe that small orders will probably be discouraged by large brokerage firms even more. Therefore, if small securities firms are forced out of business, who will be left to handle those transactions? But let us assume for the moment that not all but only some small securities firms will be forced out of business. Even those that remain may well be forced to change the nature of their operations, transferring their attention from small investors to large ones.

Another, perhaps less important point might be made in this connection. As the number of small firms willing to execute such transactions diminishes, it will be more difficult and costly for the small investor to locate firms with whom they can do business. The economic effect is to raise the transactions costs for small investors. That kind of discrimination against the small investor was never intended when Congress enacted the securities laws. Indeed, the more desirable objective—and the one announced by participants in and commentators on the securities industry—is to bring the small investor back to the market. There is no question that a rekindling of "investor confidence" is an important factor in doing so, but all the "investor confidence" in the world will be useless if there is no one to sell and service such investors or if the costs of finding a small broker are more than such investors are willing to bear.

There are related ramifications that could prove even more costly to the public. For example, how will a decline in the number of small securities firms affect the ability of relatively small manufacturing or service businesses to raise capital through the public markets? The small business attempting to raise public capital necessarily relies on the investment banking services of small securities firms, since large New York Stock Exchange members do not generally underwrite securities offerings by speculative companies or firms lacking a strong earnings history. Similarly, small manufacturing or service businesses sometimes raise capital privately with the help of securities dealers. Such private placements would be clearly unrealistic in connection with large brokerage firms. In the long run, the most significant loss to society occasioned by a reduction in the number of small securities firms may not be the loss of the small securities firms themselves. Indeed, the more significant losses may well be all the small businesses that could be capitalized only with funds raised through the effort of the small securities firms and the inability of the small investor to participate once more in this vital aspect of our country's economy.

There are other undesirable effects that can be traced, at least theoretically, to a reduction in the number of securities dealers. It is not my intention to offer a definitive list. In fact, it is impossible to predict all such consequences. It is enough to say that there are sufficient such effects to make us acutely aware of the problem and any steps that may be taken to lessen the demise of small securities dealers.

There is another point that may be profitably made in connection with those just

mentioned, and it is that if we are going to regulate in the interests of investor protection, the regulation should have some reasonable correlation to the objective sought. It is my firm belief that all the reporting requirements and recordkeeping procedures should be studied carefully with a view to elimination of those that are duplicative, excessively complex for smaller firms, and those that cannot be reasonably expected to accomplish an objective worthy of their cost. Otherwise, not only are we creating the undesirable anti-competitive effects previously mentioned, but we are also misleading the public and using their taxed dollars to create an illusion of protection that may not exist.

It is currently common for everybody to talk about lack of participation by the small investor in the securities markets as one of the crucial issues facing the industry. Obviously, no single panacea is available to immediately cure this problem. Clearly, a solution requires a combination of favorable economic conditions to warrant placing dollars in securities rather than alternative investments, a spirit of investor confidence in the securities markets, and a sufficient quantity of small securities dealers with adequate sales forces to promote small investor participation. The problems created by general economic conditions may be beyond the scope of this Subcommittee's business. However, these hearings relate directly to the federal paperwork burden that, in my opinion, adversely affects small securities dealers, and consequently as developed above, the entire securities industry. The issue is, in essence, whether many regional and local securities dealers are worth saving. I have argued that their loss to society would be a high cost to pay. Unfortunately, lacking substantial financial resources and a central organization, it is difficult for such firms to lobby effectively for relief from the high costs of regulation imposed on them. Certainly, the large New York Stock Exchange firms are not motivated by concern for the small securities firms, and accordingly, have not exerted influence in their behalf. If some relief is to be obtained, it will have to come from Congress' recognition of the full costs to society resulting from the demise of small securities dealers.

RECENT EVENTS IN BURUNDI

Mr. PROXMIRE. Mr. President, the events of the past year in Burundi represent a brutal testimony to the presence of genocide in today's world. An estimated quarter of a million people have been murdered in this small central African country as part of a campaign of terror conducted by the minority ruling tribe, the Tutsis.

Last summer this campaign was reportedly limited to the educated, leadership elements of the majority Hutu tribe in reprisal for an attempted coup d'etat. Apparently, the killings are no longer selective. Although reporters have been barred from Burundi, some news has been received from refugees who are now streaming into the neighboring African countries of Tanzania, Rwanda, and Zaire. These reports indicate that the ruling Micombero Government has resumed its slaughter of innocent Hutus and is now systematically killing Hutus of every age, sex, or educational level.

One frightening report in Newsweek of July 2, 1973, suggests that the Tutsis have plans for the extermination of approximately 3 million Hutus in order to achieve numerical parity. Thus, the savagery which has already shocked the sensitivities of the world now threatens to become a humanitarian disaster of truly incredible dimensions.

THE EFFECT OF RATIFICATION

On June 15, 1973, I stated on this floor my firm belief that passage of the Genocide Convention would have had a significant impact on the effectiveness of our Government's efforts to bring a halt to the slaughter in Burundi. I felt then and I do now that the failure of the U.S. Senate to pass this important treaty for 24 years has stamped all of our actions in the human rights area with the mark of hypocrisy. Although the United States has often opposed acts of genocide, the Senate has put off ratification of the Genocide Convention. As a consequence, our efforts in behalf of oppressed people throughout the world have been seriously hampered.

Mr. President, I especially believe that ratification of the genocide treaty by the Senate would have increased the chances for success of our actions with respect to Burundi. Last year the U.S. Government felt that the wisest and most promising approach to the killings was to enlist the aid of Burundi's neighbors, who it was believed would have more influence on the Micombero Government due to the inherent suspicion of non-African interference. Unfortunately for the suffering Hutus, these initiatives were largely unsuccessful in stimulating Burundi's neighbors toward forceful, effective action.

THE DEPARTMENT OF STATE RESPONDS

On June 29, 1973, I wrote to Mr. Marshall Wright, Assistant Secretary for Congressional Relations at the Department of State and thanked him for some remarks which he had previously made to me concerning my June 15 statement on the Genocide Convention and Burundi. I also posed the following question to him:

Last year the State Department was struggling with ways to meet its humanitarian obligations without antagonizing the Micombero Government or other African nations that considered the events in Burundi purely as an internal affair. In retrospect, do you think that passage of the Genocide Convention would have strengthened our hand in dealing with this sensitive situation?

Mr. President, I have just received an affirmative reply to this question from Mr. Wright which confirms the support of the Nixon administration for ratification of the Genocide Treaty. Although Mr. Wright notes that the State Department does not feel today that passage of the Genocide Treaty would have caused the U.S. Government to take different actions last summer, he does agree that ratification would have added needed strength to our policy of quietly urging neighboring African states to exert pressure upon the Micombero Government. Mr. Wright says:

The role of the United States last year and again this year was one of moral leadership in opposition to the killings in Burundi. The fact the United States was not a party to the Convention on Genocide weakened our position.

Mr. Wright also suggests that passage of the Convention by the United States might induce other nations to ratify the Genocide Treaty and demonstrate their contempt for acts of genocide. He said:

The Governments of Rwanda, Tanzania, Kenya and Uganda, who expressed concern over the events in Burundi, are also not parties to the Convention and this may well have been a factor in their reluctance to act. Hopefully ratification by the United States Government and our encouragement of others to do the same would strengthen the opposition to such crimes as took place in Burundi and would serve as a warning against such activities in the future.

MANKIND CANNOT AFFORD DELAY

I have long felt that Senate ratification of the Genocide Treaty would serve as a catalyst to action among those nations that are not yet signatories to this important document. I have also stated my belief on many occasions that ratification would induce stronger opposition on the part of all nations toward genocidal acts. Passage would also enable the United States to again assume the leadership role which it once maintained in the area of human rights and which has been hindered too long by the inaction of the U.S. Senate.

This leadership, together with the international support which would be generated, would present a powerful front to potential perpetrators of genocide in the world today and tomorrow. As a result tragedies such as those which are occurring daily in Burundi might be averted. Mankind cannot afford to pay the price of additional delay.

Mr. President, I ask unanimous consent that the informative reply which I have received from Mr. Wright be printed in full in the RECORD.

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

DEPARTMENT OF STATE,
July 16, 1973.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: The Secretary has asked me to reply to your letter of June 29, 1973, concerning Burundi and the Genocide Convention. As you know, the Department of State vigorously supports ratification of the Genocide Convention. We are pleased that President Nixon's initiative of resubmitting the Convention in 1970 is on the verge of resulting in consideration of this important treaty by the full Senate. The Convention defines the crime and declares it to be a crime under international law. The Administration could not support ratification more strongly.

With regard to the events in Burundi last year, it is doubtful that the United States having been a party to the Convention would have made any significant difference in our actions. We thought then (and still do) that the answer lay with the African leadership in persuading the Government of Burundi to cease the killings. Quite frankly, there was very little the USG could do to stop the killings while they were taking place. The sole opportunity for immediate action lay with the African neighbors of Burundi. For this reason, the focus of our efforts was the African leadership individually and at the OAU. Unfortunately, they failed to deal with the problem.

The role of the United States last year and again this year was one of moral leadership in opposition to the killings in Burundi. The fact the United States was not a party to the Convention on Genocide weakened our position. The Governments of Rwanda, Tanzania, Kenya and Uganda, who expressed concern over the events in Burundi, are also *not* parties to the Convention and this may well have been a factor in their reluctance

to act. Hopefully ratification by the United States Government and our encouragement of others to do the same would strengthen the opposition to such crimes as took place in Burundi and would serve as a warning against such activities in the future.

I hope that this information has been responsive to your inquiry. However, if you have any further questions please let us know.

Sincerely yours,

MARSHALL WRIGHT,
Assistant Secretary for Congressional Relations.

ALL-STAR BASEBALL IN KANSAS CITY

Mr. DOLE. Mr. President, tonight, the mid-season highlight of baseball, our great American pastime, comes to Kansas City.

This evening, in Royals Stadium, the best players of the American and National Leagues will meet in the 44th All-Star game.

Any All-Star Game is an exciting event, but this one holds special significance for baseball fans in the several States which share the Royals as their "hometown" team.

While this is the second All-Star Game to be played in Kansas City, it is the first ever played in the modern new stadium which is the pride of the Royals team and of their fans.

The Kansas City Royals have brought new excitement and enthusiasm for the sport of baseball to Kansas City. For the first time, major league baseball is a locally owned, community spirited operation. And the fans have responded with a degree of loyalty and dedication which is entirely without precedent.

Much of the credit for this situation must go to Ewing Kauffman, the Royals owner and his wife, Muriel, for they have reached out to the community and the fans in an effort to make the Royals a team for everyone to share and enjoy.

Not only are Mr. and Mrs. Kauffman outstanding Kansas Citians but they are also great baseball enthusiasts who have set their determination and energies toward making the Royals a championship team. Many skeptics viewed Mr. Kauffman's plans as just a little bit oversize when he announced them at the team's formation. A new team, starting from the ground up, was not supposed to have such big ambitions. But total dedication to finding and developing new athletic talent through a unique farm system and the "full speed ahead" attitude of the entire Royals operation have paid big returns.

Today, there is no question that Kansas City is big league all the way. The All-Star Game brings the best and biggest stars to the most attractive and best-designed stadium in either league. The Royals are solidly in command of second place in their division, and they make no secret of intending to be in first when the last half of the season is over. Millions of baseball fans, young and old, throughout the area are seeing what fun a genuine hometown team can be.

So I wish to take this opportunity to congratulate the Royals team, its management, and the fans for making tonight's All-Star Game an event which signifies the continuing strength and vitality of the great game of baseball in America.

SOUTH VIETNAM EXPELS JACQUES LESLIE

Mr. JACKSON. Mr. President, I deplore the action of the Government of South Vietnam this week in expelling correspondent Jacques Leslie of the Los Angeles Times from that country.

The Vietnamese Government has arrived at a most unique excuse in refusing to authorize the continued stay of Mr. Leslie. Their spokesman told him:

> We are not talking about accuracy or things like that. We consider that your stay in Vietnam is not necessary. We have decided that you have to leave Vietnam.

Mr. Leslie's visa was lifted on the basis that he had written articles that the South Vietnamese Government had determined to be "harmful to its image." He was given 3 days in which to leave the country.

Technically, his expulsion was ordered by the South Vietnamese Immigration Department, through the refusal of an extension of his visa. In practice, the Immigration Department was acting on orders from the Information Department authorities.

This final action was made despite representations on his behalf by the U.S. Embassy in Saigon. Our embassy people were told by the Foreign Ministry of South Vietnam that the decision had been reached at a higher level.

The Los Angeles Times declares that it is understood that the decision was personally approved by Hoang Duc Nha, the private secretary to President Thieu—a person who also holds the title of Commissioner General for Information.

Leslie, who was wounded by rocket fragments last year while reporting on the fighting northwest of Saigon, has covered Vietnam for 19 months.

He has been criticized by the Vietnamese Government for articles he has written on the treatment of prisoners, corruption, cease-fire violations by South Vietnamese Government forces, conditions among Montagnard tribesmen during the cease-fire period and other stories. The government also had earlier objected to a journalistic visit Leslie had made to a Vietcong-controlled area of the Mekong Delta. He was the first reporter to make such a visit.

Leslie is the fourth correspondent ordered out of South Vietnam this year. The others represented United Press International, National Broadcasting Co., and the Asahi Shimbun, Tokyo's largest newspaper.

I have made strong representations to the White House, urging that this government go to bat in the most determined way to permit Mr. Leslie to continue to work and write from Vietnam. It is in the interest of the foreign policy of this Nation that this be done. It is not in the interest of American policy that South Vietnam—our ally—be permitted capriciously to turn away from its country a recognized, fully accredited reporter for writing articles not to the liking of their government.

Mr. President, our press has had this kind of arbitrary treatment over the years from Communist bloc nations. We have protested and used our diplomatic weight. In the case of Jacques Leslie, I think the White House needs to step in hard and fast.

As a country, America has had an investment of years of spent lives and treasure in South Vietnam. The government there would have long since been overrun by the forces of the north without us. The American people are entitled to accurate and full coverage of the affairs of that area, and we should not be spoon fed reports that only meet the strict criteria of the South Vietnamese Government. Americans have a talent for determining the truth—without censorship by the South Vietnamese Government.

The United States and the Government of South Vietnam have again and again stated their mutual friendship.

Saigon continues to rely on our military aid. But as our troops have been pulled out of South Vietnam, there is a corresponding stricter regulation of the ability of western press to obtain information in that country.

We are well aware of the strong Government stamp to news stories and pictures emanating from North Vietnam. This has been glaringly revealed in the stories told by American prisoners of war on their release from captivity.

I don't believe that the American Government has fully exerted its influence in the case of Jacques Leslie. Our leaders have had ample warning of the Saigon plans to evict Leslie and our Government has not acted in a strong and timely enough manner.

Mr. President, for the benefit of my colleagues I ask unanimous consent for publication in the RECORD an article from the Los Angeles Times of July 23 on the expulsion of Mr. Leslie. I am also providing for publication some of the recent articles that have been objected to by the South Vietnamese Government.

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

[From the Los Angeles Times, July 24, 1973]

SAIGON WON'T RESCIND ORDER OUSTING LESLIE—TIMES REPORTER LEAVES SOUTH VIETNAM, DENIES CHARGES LEVELED BY GOVERNMENT

(By George McArthur)

SAIGON.—The South Vietnamese government Monday refused to rescind an expulsion order against Los Angeles Times correspondent Jacques Leslie and accused him of being "an enemy within."

Under government order Leslie flew from Saigon to Hong Kong Monday afternoon. He had been given a three-day expulsion notice Friday. Authorities Monday denied a request for an extension.

Leslie, 26, has been in South Vietnam for The Times for 19 months.

He has flatly denied the charges which have been leveled at him over the past several days by government spokesman Bui Bao Truc at the daily government press briefing.

"I stand fully behind the articles which I have written," Leslie said Monday. "I believe them to be entirely accurate and I believe that I have performed my work honestly. If doing such work means that one becomes an enemy of the South Viet-

namese government, then perhaps all journalists who are interested in writing the truth are the enemies of this government."

In earlier private meetings with Leslie, Truc has said that the accuracy of Leslie's stories was not the question. Truc accused Leslie of writing copy that was damaging to the image of South Vietnam.

Monday Truc cited several stories by Leslie to which the government objected.

The first was a story which Leslie wrote after visiting a Viet Cong area in the Mekong Delta. The government at that time had told correspondents they were free to visit anywhere they liked in South Vietnam. That policy has since been rescinded and, in effect, correspondents working from Saigon find it impossible to obtain permission to visit Communist-held areas.

Leslie was the first Western correspondent to make such a visit to the Viet Cong, and when he emerged he wrote a straightforward account of what he had seen and heard.

Truc said that when he returned, Leslie wrote articles "vilifying and degrading the South Vietnamese army."

Leslie had also recently interviewed a dozen former prisoners released from the penal island of Con Son. They all demonstrated limbs which they said had been paralyzed by mistreatment during their captivity.

Truc accused Leslie of "concocting a groundless article on the ill treatment of political prisoners by the South Vietnamese government."

Truc also objected to a story Leslie did on a scrap-brass scandal in Vietnam which amounts to many millions of dollars, Truc said:

"Leslie recently wrote an article concerning brass and gave no evidence to support his story. He said the prime minister's office was involved and many generals were also involved. He has made the image of the generals look bad. The office of the prime minister was slandered."

Truc admitted, however, that the government has ordered an investigation of the brass situation and that the investigation is still under way.

[From the Los Angeles Times, June 20, 1973]

VIETNAM GENERALS SUSPECTED IN BRASS SMUGGLING SCANDAL

(By Jacques Leslie)

SAIGON.—South Vietnamese officials are sitting on top of a potentially explosive multimillion dollar scandal involving the smuggling of scrap brass by a syndicate believed to include many ranking generals.

U.S. officials are concerned that the affair will affect U.S. aid to South Vietnam and the future of the country's economy.

An important Japanese businessman, two Americans and a Vietnamese have already been arrested and imprisoned. Two other Japanese were imprisoned and later released. Two people holding French passports have disappeared.

South Vietnamese generals are said to have illegally stored millions of used brass shell casings in military compounds around the country while waiting for opportunities to export them. An attempt to smuggle out $17.3 million worth of scrap brass was recently uncovered; many officials believed that represents only a fraction of the brass to which the organization has access. Some contend that the value of the brass is in the hundreds of millions of dollars.

PRIME MINISTER'S OFFICE

A Vietnamese judicial official said that the syndicate extends to the office of Prime Minister Tran Thien Khiem, and that Nguyen Tan Doi, a wealthy Saigon banker who was mysteriously arrested and imprisoned April 26, also was involved.

There appears to be conflict at the highest level of the South Vietnamese government. President Nguyen Van Thieu, who is not linked to the syndicate, is believed to have angrily cracked down on Doi after hearing of the smuggling attempts—at the same time he was trying to prevent the affair from becoming public knowledge.

The implications of the organization's existence and its control over scrap brass are vast.

Last December, without fanfare, the United States, which was the legal owner of all military scrap metals, agreed to turn over title to the scrap to the South Vietnamese government as supplemental military assistance. This deal, which has been previously unreported, at the very least will provide a modest boost to the declining South Vietnamese economy in the form of $10 million worth of scrap iron and steel already accessible to authorities.

But authorities have been able to collect practically none of the far more valuable brass, which would provide a great lift to the economy. By holding on to the brass, the generals seem to be trying to assure their own private fortunes while jeoparizing the future of their government.

JAPANESE MANAGER

Among the men arrested in the case are Tokuji Ishimura, manager of the Saigon branch of the giant Japanese trading company, Mitsubishi; Atsushi Sekizawas, another employe in Mitsubishi's Saigon branch; and Sigesato Hosoki, Japanese officer of the Saigon branch of the Chase Manhattan Bank. Before his arrest Ishimura also was chairman of the Assn. of Japanese Residents in Vietnam.

Ishimura has been in Chi Hoa Prison in Saigon since his arrest April 2. Sekizawas and Hosoki were imprisoned for a month and released on condition that they would not leave South Vietnam.

All three Japanese became involved in the case unwittingly and innocently, informed sources said. They apparently were arrested in an attempt to find out who was involved in the smuggling operation. Now Vietnamese officials may fear that if they release Ishimura, one of the Japanese will disclose details of the case damaging to the government.

REFUSAL TO COMMENT

The Japanese Embassy has refused comment on the case and has even tried to discourage interest in the story among journalists. A Japanese Embassy spokesman said he could not comment because Ishimura's "personal security" was involved.

A spokesman for the South Vietnamese newspapers covered Ishimura's arrest but did not follow it up, and few Vietnamese are aware of the case or its implications.

Closer to the center of the affair are two Americans, Russell M. Smith, 51, who has been in prison since March 9, and Thomas Dunmore, 30, who was imprisoned with Smith, released and imprisoned again May 2.

Smith is thought to be the instrument used by the syndicate to obtain necessary shipping documents in return for a cash payment. Dunmore's role is less clear, but he apparently was involved in smuggling items such as generators, tractors and other heavy equipment.

Dunmore also is accused of having illegally held three checks worth $34,000. These were believed possibly to have been payoffs for forgeries, and were signed by a Frenchman who has since disappeared.

Brass has been collecting in Vietnam since the beginning of the war. Until about four years ago, it was the main alloy in artillery casings. Since then, U.S. munitions manufacturers have used iron for heavy artillery shells, but small arms ammunition and light artillery shells are still made with brass. Scrap brass is now thought to be stored in warehouses in Vietnamese military compounds and even buried.

GETTING IT OUT

Scrap brass is in demand throughout the world. It now sells on the international market for $1,080 a ton, compared to $50 to $60 a ton for scrap steel and iron.

"If scrap brass gets out of Vietnam, it's going to be sold," said one scrap expert. "I don't think anyone would ask any questions. It's like gold."

The problem of those who had access to the scrap brass was how to get it out of the country and resold. The only legal possessor of brass until December 1972, was the U.S. government; then, in accordance with the agreement, title was transferred to the South Vietnamese government. Since issuance of a South Vietnamese government decree on December 12, 1970, it has been illegal for individuals in Vietnam to possess or transport scrap brass.

Syndicate operators apparently recently developed at least two methods to smuggle out the scrap brass, both centering on the U.S. Army Property Disposal Agency (PDA), which was the only authorized body handling scrap metal.

Since the cease-fire, the agency became known as the property disposal branch of the U.S. Embassy defense attache's office. Since title to scrap metal had been transferred to the South Vietnamese government, the agency's mission has been to locate and designate scrap to be turned over. At the end of this month the property disposal branch will stop handling scrap metal.

TRANSPORT DOCUMENT

To authorize domestic transport and export of scrap metal, the PDA customarily issued something called a Transportation Control Movement Document (TCMD). TCMD enabled an exporter to ship military scrap metal out of the country without paying an export tax. This made sense, since the metal had always belonged to the United States, and therefore technically had not been imported to South Vietnam.

As a PDA employe since February, 1972, Smith was one of about 10 men authorized to sign TCMDs. He is now charged by South Vietnamese authorities with illegally signing TCMDs that authorized exportation of scrap brass. It is believed that Smith was contacted by someone connected with the syndicate, but Smith has so far remained silent in prison.

Some of the TCMDs Smith is said to have illegally signed were dated before his job at the property disposal branch was terminated last February; he filled out others even after he was dismissed. Smith lost his job in the routine reduction of the property disposal branch's staff.

Sources said the false TCMDs were discovered when a Singapore businessman appeared in Saigon with one; he had come to ask authorities if it was genuine. At that point Smith came under suspicion. His house was searched March 9, and more false documents were found. Smith and Dunmore, who lived in the same house, were arrested.

Four of the TCMDs which Smith had signed authorized exportation of 16,000 tons of scrap brass, worth $17,280,000 on the international market, sources said. A man identified as Mr. Phuong, a Chinese with Vietnamese citizenship who was listed on one TCMD as the agent of the buyer, is believed to be the link to the syndicate.

Phuong was arrested in mid-March, and also has remained silent in prison The fact that police have not physically forced him to talk is taken as an indication that he is protected by highly placed officials.

According to informed sources, Ishimura was contacted about a brass deal in Hong Kong in March, and was shown a copy of one of the other TCMDs. Ishimura was interested in buying brass but wanted to make sure the

deal was legal. He returned to Saigon, and through his intermediaries, Hosoki and Sekizawa, asked authorities if the TCMD was bona fide.

Vietnamese officials reacted by imprisoning the three Japanese. Police may be holding Ishimura until the man who gave him the TCMD in Hong Kong is found. But it is unlikely that the man will be located, since he is believed to be a Vietnamese with a French passport now outside Vietnam

When the TCMD was blocked, syndicate operators apparently devised another plan to smuggle out the brass.

Early this month they applied to the South Vietnamese director of foreign trade for a regular exportation license. Included was a letter supposedly from Emil D. Sasse, head of the property disposal branch, approving the license. The forgery was discovered.

COPPER WIRE

The application requested a license to export 4,550 tons of copper wire. It is possible to transform scrap brass into wire, and it is theorized that syndicate operators did this to obscure the metal's origin.

It is reported that Nguyen Tan Doi, who was the owner of South Vietnam's largest bank and was one of the wealthiest men in the country, had a factory where such wire could be made from scrap brass. Doi is suspected also of having been a banker for the syndicate; records seized by police when Doi was arrested and his bank closed down April 26 included many anonymous accounts that may have been for generals.

Doi was known to be a friend of many generals as well as Prime Minister Khiem. It is speculated that the office of the prime minister, Doi and the generals involved were operating without the knowledge of President Thieu and Thieu's economic advisers. The position of prime minister entails the actual carrying out of many of the day-to-day activities of the South Vietnamese government. Some of these could have been concealed from Thieu.

THIEU INFORMED

It is possible that Thieu was informed of the presence of so much brass in Vietnam and the significance of the agreement on military scrap during his trip to the United States in early April. Then, according to the theory, when he returned to Vietnam, he discovered what was happening to the brass.

Twelve days later, he angrily cracked down on Doi and ordered Doi's bank closed, despite the inconveniences to the bank's 200,000 depositors. He also seems to have tried to keep the scrap affair hidden. Officials announced that Doi's arrest was for banking malpractices. The prime minister's office and the generals may have escaped punishment because they held too much power.

Officials think a huge amount of brass already has been smuggled out of Vietnam, and that even now smuggling continues. One ship was said to have steamed into Hong Kong last week with 360 tons of scrap brass from Da Nang. False customs declarations in Da Nang allegedly said scrap lead and aluminum were being exported.

Ships laden with scrap brass have been discovered before. In 1970, for example, a ship called the Dong Nai was found in the port of Saigon about to sail for Singapore with brass buried in its cargo. Several government officials were fired, but trials are still pending, and the affair is all but forgotten. Syndicate members may be hoping that the new case also will fade away. Despite all the recent arrests, no trial dates have been set.

One reason why generals are suspected of involvement in the syndicate is that they control military compounds, which are the logical and safest places to hide scrap brass. The syndicate may be loosely organized, with generals cooperating with each other.

Security against smuggling is relatively tight around Saigon. It is therefore surmised that most of the brass is smuggled from coastal ports such as Phan Rang, Nha Trang, Qui Nhon and Da Nang, where security is much looser. One technique the syndicate uses is to transport and load scrap each night after the curfew begins.

The agreement between the United States and the South Vietnamese government on the transfer of military scrap was effected in an exchange of notes between U.S. Ambassador Ellsworth Bunker and Minister of Foreign Affairs Tran Van Lam on Dec. 14, 1972. The agreement is said to have taken about a year to negotiate.

The transfer of scrap was seen as a partial substitute for U.S. economic aid. It was undoubtedly negotiated with awareness that South Vietnam's economy was sagging because of U.S. military withdrawals, and that South Vietnam faced an uphill fight in getting sufficient economic aid from the U.S. Congress. It is not known whether American negotiators included scrap brass in their estimate of the value of the agreement to the South Vietnamese government. They might have written off the brass as unrecoverable.

If, however, the South Vietnamese government could recover the brass and export it legally as the transfer agreement authorizes it to do, it would mean a substantial windfall, definitely worth millions of dollars and perhaps hundreds of millions. "It would be fantastic for the government," said a member of the U.S. banking community here. "It would boost the government's foreign exchange tremendously."

Meanwhile, Ishimura, Smith, Dunmore and Phuong wait in Chi Hoa Prison for the case to unravel.

"Life in prison is not so bad," said a Mitsubishi employe who frequently visits Ishimura. "He has money, so the food is comparatively good, there are no telephone calls and no business matters."

[From the Los Angeles Times, Mar. 4, 1973]

SAIGON'S POLITICAL PRISONERS TELL OF TORTURE

(By Jacques Leslie)

SAIGON.—Displaying their paralyzed and atrophied legs, political detainees from South Vietnam's Con Son Island prison said in interviews Friday and Saturday they were tortured, chained and deprived of food during captivity.

Thirteen prisoners from a contingent of 124, conditionally released by South Vietnamese government authorities more than two weeks ago, agreed to be interviewed despite being warned by police not to talk to foreign journalists.

The 13 prisoners all said they had lived in Con Son Island's "tiger cages" and told of being beaten with clubs, sprayed with lime, and having to drink their own urine because of thirst. "We were determined to live so that we could struggle for peace," one prisoner said.

The 13 prisoners said they ranged in age from 24 to 53 and has spent a minimum of five and maximum of 10 years in prison.

Asked why they had been arrested, a leader of the group said most "had demanded the right to live and the right to peace." This seemed an implicit acknowledgement that many prisoners supported the National Liberation Front (Viet Cong) At another point in the interview the leader referred to "our struggle to liberate Vietnam and bring about freedom and independence."

Although it is possible that the prisoners exaggerated the severity of their experiences in confinement their physical condition alone seemed to verify much of what they said.

The prisoners were examined by an American doctor, John Champlin, who was formerly associated in Saigon with Children's Medical Relief International, a charity organization which operates a plastic-surgery unit here.

"The prisoners are not only paralyzed below the waist," Champlain said, "but they are also insensate below mid-thigh level. I think their leg problems are due to disease, atrophy and malnutrition. A number of them have deep scars around their ankles which they said came from leg irons."

Champlin said some prisoners thought they had tuberculosis or intestinal diseases, but he could not verify this because he lacked proper instruments during the examinations.

With proper food, exercise, and physical therapy, Champlin said, "the younger prisoners have a better chance of fully recovering the use of their legs than the older ones."

Champlin said he had listened to them discuss their imprisonment and "nothing they said flatly contradicted the results of my examination."

The prisoners said 124 of them were flown to Bien Hoa, 15 miles northeast of Saigon, on Feb. 16.

Five days later they were taken to a Buddhist pagoda in Bien Hoa. They were then warned against going to Saigon and talking to foreign journalists but were permitted to visit families not living in the Saigon area.

They were released on condition that they return to Bien Hoa police headquarters 10 days later with two relatives who would then be responsible for their whereabouts.

The reason for their conditional release is unclear. The leader speculated that the South Vietnamese government was preparing for an inspection of Con Son in accordance with the cease-fire agreement and was therefore evacuating the most seriously ill prisoners.

"We were released so that the public would not be aware of the horrible conditions at Con Son," the leader charged.

In a separate interview last week, a political prisoner at the prison ward of Quang Ngai province hospital said he had heard that about 20 or 25 Con Son prisoners were transfered to the Quang Ngai prison in mid-February. He said he was told that many of these prisoners also were paralyzed below the waist.

Located about 150 miles south of Saigon, the Con Son Island prison is considered the least pleasant of South Vietnam's major prisons. It is a collection center for political detainees most firmly opposed to the government.

During the interviews, one man, apparently the group's leader, did much of the talking. His statements showed much political sophistication as well as a deep commitment to the NLF.

For example, at the end of the interview, reflecting the NLF's political line on the cease-fire, he said, "Although we were tortured and mistreated to a point near death, because of the peace agreement and the spirit of national reconciliation it calls for, we are willing to forgive and forget what has happened to us."

Through the interviews the prisoners were calm and matter-of-fact. They appeared anxious to tell their story, and asked visitors to feel their emaciated legs. They also showed scars on their hips and buttocks which they said were caused by beatings. The prisoners moved about by sliding along the floor on their hands, either dragging their legs behind them or holding them in front.

One prisoner pointed to a visitor, and smiling, said, "my leg is smaller than your arm."

The group seemed well-organized, for as the leader spoke, two other prisoners supplied dates and details for him when necessary.

The following account is based on descriptions by the leader and other prisoners of their experience in confinement:

Some prisoners said that immediately after

arrest they were tortured with electric shock or beatings. Prisoners were forced to drink water, then were struck on their bloated stomachs. Most were held at other prisons before being transferred to Con Son.

At Con Son they were sometimes beaten for not saluting the government flag. One prisoner said his hands were tied behind him and he was then suspended from the ceiling by his hands and beaten continuously for two hours.

He said he was then taken to a stone cell of about 17 square yards and was tied to a pole with 25 other prisoners. He was then beaten again, along with the others.

BEATEN BY TRUSTEES

The leader of the 13 prisoners said prison officials often let common criminals, whom he called "trustees," perform the beatings. He said there were about 10,000 political prisoners at Con Son, and that all received beatings.

During this period political prisoners were given two meals a day each consisting of a small portion of rice and fish paste which was rotten and generally covered with flies. "We forced ourselves to eat what they gave us because we were determined to live," the leader said.

Prisoners said they felt "a strong sense of solidarity" and tried to help each other survive. They said they massaged each other's sore muscles and even gave artificial respiration when necessary.

BECAME ENRAGED

"The trustees saw our solidarity," a prisoner said. "That enraged them. It moved them to do even more harm to us."

When on Feb. 22, 1967, prisoners refused to salute the government flag, they were moved to Con Son's "tiger cages"—cells of about 3 yards by 2 yards whose ceilings consisted of bars.

At first, they said, there were four prisoners per cell, but each week four more prisoners were added, until by the third week there were 12 prisoners per cell.

"This was the toughest period," the leader said. When prisoners wanted to lie down, they had to do so on top of each other. "When the people on the bottom couldn't stand it any further, we switched," one prisoner said. As he explained, other prisoners gave a physical demonstration.

The prisoners said at this time the supply of food and water was so small that they occasionally drank their own urine. Rice was given to them not in bowls but literally in handfuls, and they had to eat quickly or be beaten, they said.

Prisoners said that when they were taken out of their cells for beatings, they purposely fell down so they could quickly eat grass as they lay on the ground. Authorities then grabbed them by the neck and tried to take the grass out of their mouths.

The leader said that in February, 1972, the prisoners demanded medicine and better food and authorities reacted by pouring lime on them. As a result, "people started to vomit and sneeze blood. After a time there was (about half an inch) of lime in the bottom of the cage."

SEVERAL DIED

Prisoners said by this time they had seen several prisoners die as a result of beatings.

They said that after a visit by two U.S. congressmen to the tiger cages in June, 1970, they were moved to cells which had formerly been cattle stalls. These were made of cement and still contained animal troughs, the prisoners said. There were 10 inmates to each cell.

In October, 1970, the prisoners said, a group of American military doctors visited them and assured them that from that point on they would receive better treatment. Instead, the leader said, the next month the prisoners got one of their worst beatings: One lost an eye, another broke his arm, and many had head injuries.

Eighty prisoners were moved from Con Son to Chi Hoa, a prison in Saigon, in December, 1970—probably as a result of protest about conditions following the visit by the American congressmen, the prisoners believe.

At Chi Hoa prisoners said they were examined by an American doctor but were not given treatment or medicine.

In June, 1971, the prisoners requested permission to let their families visit them and to get medication. Instead, they said, police fired tear gas into their cells to force them out, then loaded them onto trucks and then boats and returned them to Con Son.

After demanding medical treatment and better food at Con Son in October, 1971, the prisoners were moved to "new tiger cages"—isolation cells which had recently been constructed inside the prison. The prisoners said the new cells were more comfortable than the old ones and food also improved. Beatings, sometimes causing death, continued, they said.

They said they did not know if the old tiger cages were still occupied. According to their reports, they are now being used as storage areas.

Prisoners said that on Feb. 15, 1973, prison authorities announced the signing of the cease-fire accord, and the next day 124 inmates were taken to Bien Hoa.

At the end of the prisoners long narrative, the group's leader made his statement about "forgiving and forgetting," and added: "We also want to thank the American labor and student movements for contributing their own blood and bones to our struggle to liberate Vietnam and bring about freedom and independence."

During almost their entire internment at Con Son, prisoners wore shackles, they said. They lost the use of their legs after five months to three years.

The prisoners said they were aware of one man still at Con Son who is now over 70 years old and has been imprisoned for 18 years without ever having a trial.

Although many observers in South Vietnam generally undergo a process of politization while incarcerated, the interviewed prisoners either said they did not have much chance to talk about politics or refused to discuss this subject.

The group leader said they could be beaten for talking too much among themselves, and while in the tiger cages they thus spent most of their time staring at drops of water on the walls.

[From the Los Angeles Times, Feb. 1, 1977]

"WE ARE FRIENDS," VIETCONG TELL U.S. NEWSMAN

(By Jacques Leslie)

NATIONAL LIBERATION FRONT-CONTROLLED TERRITORY, SOUTH VIETNAM.—Our official greeting came from Le Hoang Oanh, a Communist village representative in Cai Lai district 60 miles southeast of Saigon.

"We are happy to welcome the foreign correspondents to visit our liberation areas," he said Tuesday afternoon. "This is the first time the foreign press has come here."

Thus began our 18-hour stay with the National Liberation Front (Viet Cong), South Vietnam's "other side." During those 18 hours we watched an NLF "ceremony of peace" attended by several thousand Vietnamese, walked for more than two hours at night on trails used by NLF troops in mud sometimes up to our thighs, and talked at length with NLF political and military officials.

Once during our march South Vietnamese artillery shells exploded thunderously a few hundred yards away from us. "Now have you seen an example of a cease-fire violation?" an NLF soldier smilingly asked us immediately afterward.

Hoping to get inside an NLF-controlled village, Veronique Decoudu of Agence France-Press, our interpreter and I had walked in the direction of an NLF flag we had seen waving from a treetop several hundred yards from Highway 4, the main route from Saigon to the Mekong Delta.

We first passed a house with a government flag, then several with no flags, then many with NLF flags. Soon we attracted a group of about 25 people, some of whose startled glances showed that foreigners were not a common sight here. Still, most people were remarkably friendly.

We asked to see village leaders, were loaded into a sampan and taken down a stream. When word spread that we were journalists, people waved NLF flags as we glided by.

Suddenly we saw a few young barefoot soldiers in blue or black pajamas. The rifles they carried included American-made M-16s, carbines, and most notably, Chinese-made AK-47s. We knew that we had arrived.

Soldiers waved and called us ashore. We then marched along a path as the number of people trailing us constantly grew. They seemed pleased by the surprising catch they had made in the midst of their village. We were led to Oanh, the village representative, who asked for our name cards. After we turned them over, he gave his welcoming statement, which was greeted by cheers. We were stunned by our ease in moving to the other side. A woman handed each of us iced tea.

Everywhere we looked there were NLF flags. We were told we were in Binh Phu village, 100% NLF-controlled community of more than seven square miles and a population of 6,800.

Oanh quickly outlined an afternoon tour for us, then took us to see examples of destruction caused by American and South Vietnamese government bombing and artillery. We were escorted by an NLF soldier and a few children carrying flags on long bamboo poles as the tour's trail constantly grew longer.

Oanh showed us houses burned to their foundations, shattered rooftops and bomb craters. Though he said much of the damage had been done since the cease-fire began, this did not seem creditable. One bomb crater filled with brackish water obviously had not been made in the last three days, despite our host's claims to the contrary.

A few people spoke heatedly to us as we passed. We learned later that they had mistaken us for members of the International Commission of Control and Supervision set up in the Paris cease-fire agreements, and were demanding payment for war damage done to their houses. The ICCS has not yet begun working outside Saigon.

Most villagers were jovial and relaxed. They displayed no fear of being discovered or attacked even though we could see battle smoke twisting up a few miles away. They seemed proud when we took pictures of them with NLF flags.

Oanh asked us to sit down inside a pagoda partly destroyed by bombing or shelling. At least 50 to 60 people gathered around. Oanh then made what seemed to be a formal statement: "The people are happy to receive all journalists, including those who work for the rebel government of Saigon, but on the sole condition that they do their job fairly."

CAN TAKE NOTES

A man whispered in Oanh's ear, and he announced that we could now take notes. Then he said he was willing to answer questions.

We asked what his job as village representative entailed.

"My function is to command politically and militarily with the goal of conquering the American aggressors," he said.

Then we asked how many people were members of the NLF in the village. "Because this is a question of defense," Oanh said. "I can't say how many people there are. But I can say the front represents the whole population of the village, all religions, and also men who work with the Saigon government."

In the midst of our questioning someone handed Oanh a slip of pink paper. It had obviously come by messenger from higher-ranked cadres, who were informed of our presence. Oanh read it, then said, "The members of this village are very happy to invite you two journalists to spend the night here to celebrate together a ceremony of peace."

QUICKLY ACCEPT

Somewhat overwhelmed, we quickly accepted, and the people followed Oanh's lead in applauding. After another formal statement, in which we were told to write "what our conscience dictates," we left the pagoda and were hailed by another group of villagers. "Welcome the correspondents!" they chanted. "Welcome peace! We support peace! Welcome!"

The remarkably tight organization of the village was now becoming apparent. Wherever we walked for the next hour, people hailed us on a cue from a cadre with "Welcome!" Word of our presence had been passed throughout the village. Youths suddenly appeared to carry our packs and help us across gangplank-like bamboo crossings that stretched between mud walls retaining rice paddies.

Although it was obvious that the treatment we received was not spontaneous, it also seemed that no villager carried out his assigned duty with a sense of being put upon. People seemed cheerful and respectful to one another. They exhibited grace and confidence in their actions.

CHILDREN ENJOY IT

The children who it was now clear had been assigned to carry NLF flags at the front of our parade seemed genuinely to enjoy it.

As we walked to a villager's house where we would have dinner, Oanh explained a bit of his background to our interpreter.

Oanh, 43, had been a member of the NLF for many years. He said he had been arrested by government troops in 1969, and paid a 50,000 piaster ($125) bribe which resulted in his release from prison three months later. Villagers donated the money, he said.

Oanh carried a flashlight, radio and lighter, all of which he said he had taken off bodies of soldiers of the American 9th Division in 1969. Oanh lost his right thumb when it was struck by shrapnel in combat against that unit the same year.

Whenever the interpreter referred to the "VC" or "North Vietnam," Oanh corrected him, saying that the proper terms were the National Liberation Front and the Democratic Republic of North Vietnam.

With at least 20 villagers huddled inside the tiny earth-floored house, we and Oanh had a chat. Oanh stated what became a continual theme of our visit to the other side—would we write the truth?

"You came here unexpectedly," he said. "We have nothing to hide. We hope that what you see is the truth." He then asked us if we had believed what we had seen so far. We said we had been impressed.

He asked Veronique what the French Communist Party flag looked like, then asked both of us what parties we belonged to. I answered that as a journalist I did not belong to any party.

During our dinner I asked Oanh how he felt about eating with an American after having fought against the United States for so many years. "We consider that there are two kinds of Americans," he said. "One we call imperialists, who come with bombs and weapons to kill our people and destroy our land. They are our enemies."

NOT ENEMIES NOW

"However, the cease-fire is an agreement of reconciliation and we don't see anyone as our enemy anymore.

"The second kind of American we call peaceful and progressive. They do not come here to destroy or kill—they are people like Martin Luther King and the movie actress, Jane Fonda. We do not see them as our enemies, but as helping us. We really appreciate Americans such as those in the women's movement who prevent their sons from fighting in South Vietnam.

"You can recognize friendship easily. If we were not friends we would not sit down and eat at the same table. If we were not friends, we would not talk about the things we are talking about now," Oanh said.

We are outside on a tiny table, lit by a kerosene lamp. The food was substantial and tasty—chicken, beef, soup and rice. This, we were assured, was a "special" meal.

Already tired by our trudge through rice paddies early in the afternoon, we were deflated when told the "peace ceremony" was another two miles away. The two miles turned out to be four.

SLIPS INTO PADDIES

By the time we began our after-dinner walk, there was no more sun—only a moonless night. Our guides carried flashlights and the kerosene lamp, but they were not enough to prevent us from slipping off the mud walls into the paddies. To our companions, who seemed extraordinarily surefooted, our falls were amusing. They walked behind us ready to grab us if we slipped.

We started off with a group of 10 or 15, but after an hour at least 100 people were marching behind us single file. Oanh said the meeting was called only three hours earlier in honor of our appearance, but the news had obviously spread. People waited on the trail until we passed by, then joined the end of the column. No one seemed surprised to see two Westerners.

PIECE OF COPTER

Liaison cadres also waited at specific points on the route to direct us for a portion of the journey. We occasionally passed booby traps set for government soldiers just off the trail. The traps were marked by dead vines draped in front of the danger area.

There also were frequent breaks in the path, with only boards or poles to walk on for one or two yards. One gap was filled by a piece from a crashed American Cobra helicopter.

Commenting on the use of these difficult paths by NLF troops, one cadre said, "We have no airplanes. We have no tanks. All we have are men with legs of brass and shoulders of steel. Those are our tanks."

At one point on our trek South Vietnamese artillery shells exploded a few hundred yards from us. Everyone immediately hit the ground—I dove head first toward a ditch. "My God, what will we do now," a woman yelled. "Where will we run? Please help me."

Our guides led us to a nearby house where we rested. No one considered the shelling close enough to take refuge in bunkers.

Since the cease-fire began, "we never return fire unless they attack us," a cadre said. "But this is an outrage. I think they intend to provoke us."

The old man who lived in the house where we rested said it had been struck by shelling five times since 1965. Three times resulting in fires.

SINKS IN MUD

A few minutes later we resumed our trek. Gaps in the trail became too large to be bridged by bamboo poles. We had no choice but to wade through muddy water, sometimes we sunk in the mud to our knees and had to be pulled out.

We reached the Ba Rai River, which three years ago was the scene of a bloody battle between NLF troops and the American 9th Infantry Division. Our guides said the NLF had sunk more than 20 American boats in that battle. We quietly paddled across in a sampan.

We soon heard voices on loudspeakers and knew we were close to the site of the ceremony. Just before we arrived a speaker announced that two foreign journalists were coming. As we walked into the clearing, applause greeted us and photographers flashed our pictures.

Our guides said 6,000 people were there representing four villages and Cai Lay district town. It was impossible to tell whether that figure was accurate. The number was certainly in the thousands. People sat in trees as well as on the ground.

SITE CONTAINS STAGE

A month before, the ceremony site had been a rice field. Now it contained a makeshift stage with two sets of curtains. When we arrived, the curtains were open. An NLF flag—a yellow star against a Red and Blue field, provided the backdrop.

Our entrance marked the end of the meeting's political session and the beginning of entertainment. This consisted of songs and skits. Songs included "Liberation Troops Going to War," "Enjoying Peace," "In Memory of President Ho," and "Salute to My Liberated Country."

Music accompaniment usually consisted of a generator-powered electric guitar and mandolin. Both male and female performers wore lipstick and heavy rouge.

The performances seemed somewhat derivative of China's model revolutionary operas, but they still had their own unique flavor. In one skit a young girl who supports the NLF chases a "Saigon government" village chief around the room after he tries to force her to pay him for painting a government flag on her wall.

Making fun of the governments efforts to put flags in as many places as possible, the girl asks, "What kind of flag is this that must be put everywhere—in the front of the house, in the back of the house, in the bathroom, and even on the floor of the boat, so that when you sit down you get paint on your pants?"

Once sentries alerted the audience that a plane was approaching and NLF officials covered all lights so they could not be seen from the air. A few minutes later about 15 distant artillery explosions could be heard. In neither instance did anyone at the performance show apprehension. Asked if he feared the artillery, an NLF cadre said only, "If it comes, it comes."

The entertainment continued after midnight and showed no signs of stopping. Our guides suggested we leave so that we would have a chance to talk to some high-ranking cadres. We had already concluded that NLF supporters never sleep.

We went on another walk, this one only 15 minutes, to the cadre's house. When we arrived, two men, one dressed in white and the other in black, were sitting at a long table waiting for us. Though they identified themselves only as village level cadres, their demeanor and the deferential attitude of others toward them indicated they were high-ranking province officials.

ASK US QUESTIONS

Both rather stern and reserved, the men submitted to an interview only after asking several questions of us.

"The Saigon government claims that it controls 90% of the territory and 95% of the population," one said.

"When you write a story, do you report this statistic as fact?"

We answered that we gave sources for such statistics and tried to determine if they were true.

No matter how specific our questions were, the officials' responses invariably tended toward the rhetorical. For example, when we asked them to explain the elements of organization, one merely mentioned his own position, then said, "In this capacity, we would like to tell you that the fighting continues tonight when it was supposed to stop two days ago. We would like to tell you to

make the people of the world understand the situation of our people."

A vague sort of diplomatic sparring went on for almost two hours. At that point the discussion broke off and we were served yet another meal.

After eating, we were taken on another journey, this one mostly by motorized sampan on the Ba Rai River. As we puttered through the water, our NLF guide sang to himself and checked his position by shining a flashlight on the shore. In plain view of anyone who happened to be on either side of the river, we apparently were not in jeopardy.

The boat stopped at a house where we were to sleep for an hour before covertly being escorted back to the government side. Before crawling onto wooden sleeping platforms, the NLF soldiers gave us large glasses of hot sweetened canned milk.

Our plan for returning to the government side was to get up at 5 a.m., then take a sampan up the Ba Rai River almost to the district town. We would then disembark and walk along the river bank to the town. We wanted to reach it half an hour before the 6 a.m. lifting of the curfew, and before the sun came up.

NLF soldiers had told us that our car, which we had left on the highway, had been towed away. It therefore was probable that someone was aware of what we had tried to do and might be looking for us.

CURFEW TIME PASSES

Unfortunately, we overslept half an hour. By the time we and our escorts got into the sampan it was well past the lifting of curfew. Frightened, we knew we had no choice but to take the risk of being caught.

With sunrise rapidly approaching, the sampan's motor would not start for 15 anxious minutes. It finally came to life. But after a few minutes on the river the propeller became fouled by floating plants and the motor stalled. We tried to pull the plants away and paddle with our hands.

Finally the motor was restarted, then stalled again. Other sampan operators came to help us, and were surprised to find two Westerners in the boat. Fortunately, they said nothing.

We started the motor a third time, and made it to shore just as the sun was rising. Then on foot we walked by the last government checkpoint outside the government-held district town without being challenged.

From Cai Lay we took a bus to Saigon.

NATURAL GAS

Mr. FANNIN. Mr. President, it has become evident that the complex environmental protection apparatus established by Congress is in need of modifications if we are to solve our energy, economic, and environmental problems.

The absurdity of our situation was demonstrated last Wednesday when the Department of the Interior announced that it has drawn up a draft environmental impact statement regarding proposed legislation for the deregulation of natural gas prices.

This statement was sent to the Council on Environmental Quality and will be reviewed by 14 other Federal agencies.

Mr. President, we are in the midst of an energy crisis and this situation is aggravating our considerable trouble with inflation.

Each day that we delay in taking action to solve the energy crisis, we slip deeper into trouble. Each day we import millions of barrels of oil to make up for the shortage of domestic fuel supplies.

On April 18 President Nixon called for the deregulation of natural gas prices as a needed step to encourage the development of natural gas supplies and reserves in the United States.

Exactly 3 months later the Interior Department announced it was circulating to CEQ and 14 other Federal agencies an environmental impact statement which was to assess how such legislation would affect the environment.

This is a ludicrous situation. It demonstrates the need for us to evaluate the complex of environmental laws that we have thrown together in the Congress in the past several years. It is obvious that we have erected needless barriers which delay or prevent rational action to solve the energy crisis.

Natural gas is the cleanest of all fossil fuels, and there is no way that deregulation of wellhead price could have an adverse effect on the environment. An environmental impact statement is an exercise in bureaucratic nonsense.

Mr. President, we must have action to increase our natural gas supplies, and this must be accomplished quickly for the sake of Americans who depend on this fuel for heating, for cooking, and for jobs.

Between April 1971 and March 1972 interstate natural gas pipeline companies reported deficiencies of 453 billion cubic feet of gas. During the April 1972 to March 1973 period the pipeline companies reported deficiencies of 1 trillion cubic feet of gas. Schools were closed. Factories were shut down. Thousands of employees were out of work. Farmers could not dry their crops. All for want of natural gas. Arizona citizens were affected by the shortages, and we have been warned that there very likely will be more shortages this winter.

Between 1946 and 1970 proved reserves of natural gas increased by 63 percent while the amount of gas tapped from proved reserves increased by 344 percent.

In each of the past 5 years, five times as much gas has been taken from reserves as has been added to reserves.

These figures dramatize how desperately short of natural gas we are. One of President Nixon's key energy policy initiatives is the proposal for deregulation of gas in order to stimulate exploration and development for additional natural gas.

It is incredible that with the obvious need for this action we should be stymied while 14 Government agencies shuffle through unneeded environmental impact reports.

The bureaucracy fiddles while fuel supplies dwindle and the dollar fades in value.

This, of course, is not the fault of the bureaucracy, but of the Congress which established this bureaucracy and the labyrinth of procedures which hinders our efforts to solve the energy and economic problems.

Mr. President, I ask unanimous consent that the news release issued by the Department of the Interior for release on July 18, 1973, be printed in the RECORD.

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

DRAFT ENVIRONMENTAL IMPACT STATEMENT ON PROPOSED DEREGULATION OF NATURAL GAS PRICES SUBMITTED TO CEQ

The Department of the Interior yesterday sent to the Council on Environmental Quality a draft environmental impact statement developed in connection with an Administration bill submitted April 18 to Congress calling for deregulation of natural gas prices.

The proposed legislation would amend the Natural Gas Act of 1938 as interpreted by the Supreme Court in the 1954 Phillips decision.

In brief, it would remove the pricing of "new" natural gas in interstate commerce from regulation by the Federal Power Commission—and would give the Secretary of the Interior authority to impose ceiling prices of gas from new wells for 3 years after enactment as a means of mitigating the economic impact of deregulation on the consumer. Import of natural gas would also be removed from FPC regulation under the proposed legislation. The bill brings under FPC regulation direct industrial natural gas sales.

The impact statement, required under the National Environmental Policy Act of 1969, examines the potential results of the proposed legislation from the perspective of the future energy situation and the future gas situation under continued regulation and the various possible alternatives. It also analyses adverse environmetal impacts that cannot be avoided should the proposal be implemented, the irreversible and irretrievable commitments of resources that would be involved, the relationship between local short-term uses of the environment and enhancement of long-term productivity, and alternatives to the proposed action.

The statement, prepared within the Department of the Interior, will be reviewed by 14 other Federal agencies: the Corps of Engineers; Atomic Energy Commission; Department of Commerce; Department of Defense; Environmental Protection Agency; Federal Power Commission; Department of Health, Education and Welfare; Department of Housing and Urban Development; Tennessee Valley Authority; Department of Transportation; Department of the Treasury; Department of State; Department of Justice, and the Federal Trade Commission.

Mr. FANNIN. Mr. President, on several occasions recently I also have commented on the unrealistic and unreasonable regulations being proposed by the Environmental Protection Agency to restrict automobile travel in Arizona. An article in yesterday's Phoenix Gazette gives us some insight as to the feeling of our elected officials concerning the proposed regulations. I ask unanimous consent that this article be printed in the RECORD:

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

[From the Phoenix Gazette, July 23, 1973]

EPA IS TOLD WHAT CONSTRUCTIVE COMMENT IS—LOCAL OFFICIALS NOT ABOUT TO BOW TO FEDERAL DEMANDS THIS TIME

(By John Kolbe)

It was a poignant moment in last Friday's fiery confrontation between state officials and federal environmental authorities.

State folk had been ripping the controversial air quality regulations up one side and down the other and making it clear (even to a hard-headed bureaucrat) that they had no intention of enforcing the explosive restrictions. A frustrated EPA man leaned forward with a puzzled look and asked plaintively:

"Is anybody here prepared to say anything constructive about these rules and what we can do about the problem?"

To which House Majority Leader Burton Barr replied:

"If you've got bad rules, it's constructive to say so."

That, in a nutshell, is the position of state officials who developed a fairly comprehensive state plan for pollution control—only to be told by the feds last May that it wasn't enough.

If there's any validity left in the federal system of sovereign states, the EPA Polutocrats ought to head back to their drawing boards post haste.

That they plan to do no such thing makes almost certain the most explosive head-to-head clash between state and federal levels of government in a long time. It quite possibly could result in some landmark constitutional decisions.

The fact is that the EPA's rules for limiting automobile travel imposed on Arizona and other states represent a virtually unprecedented attack on the federal concept of coequal partners in the American system.

There's nothing new about the federal government telling local officials what to do. Over the years, a plethera of laws has developed requiring all kinds of state or municipal action on housing codes, highway design, welfare procedures, park development and the like.

In each case, it was a matter of carrot and stick. "Pass a building code we like, and we'll give you some housing money." "Take down your billboards, and we'll build you some roads"—and so on.

But always—and this is the crucial point—there was an alternative open to local officials: they could do nothing, and get nothing.

The EPA regulations, on the other hand, change the ground rules. There is only a stick. They threw away the carrot.

Listen to this ominous language: "Failure to comply with any provisions of this section shall render the person or governmental entity so failing to comply in violation . . . and subject to enforcement under . . . the Clean Air Act." Look up the relevant section, and you find something about $25,000 a day fines and the like.

Compliance, among other things, will require legislative action on a broad scale. Legislation appropriating the millions of dollars it will require to establish separate bus and car pool lanes; legislation outlining limits on motorcycle registrations; legislation allowing state officials to clamp the lid on gasoline sales and demand reports from distributors.

Yet, leaders in both the House and Senate have told the EPA experts—which is why Friday's meeting was so tense—that they have no intention of sacrificing their political lives by voting for such draconian measures.

Frankly, the chances for passage of such bills are roughly equal to my prospects for being the subject of next month's Playboy centerfold.

And the prospect of elected state legislators being fined for not doing the bidding of some appointed clean air experts is one which offends the constitutional sensibilities of a lot of folk around the capitol these days.

Of course, blustery rhetoric from local officials vowing not to knuckle under to the federal behemoth is nothing new, and neither is their surrender when push comes to shove.

But I have a feeling things are different this time. State and local officials believe, quite properly that their political lives are at stake, and that the time has come to draw the constitutional line.

MONROE TOWN COUNCIL RESOLUTION

Mr. RIBICOFF. Mr. President, the food price crisis is affecting all of us. Phase IV, rather than alleviating the food price crisis, is only aggravating the present situation.

Recently the Monroe, Conn., Town Council sent me a copy of its town council resolution urging a rollback in prices.

I share their view and I have supported such legislation with my vote on the floor of the Senate. On numerous occasions I have introduced amendments to place controls on raw agricultural products—the source of most food price inflation. It is time for the President and Congress to face up to the politically unpopular fact that inflation can only be controlled when controls are placed at the source of the problem—the farm.

I ask unanimous consent that the Monroe Town Council resolution be printed in the RECORD.

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

RESOLUTION

The Monroe Town Council at a recent meeting voted to support the following Resolution of the City of New Britain:

Whereas, with the expiration of Phase 2 of President Nixon's Economic Program and the price of food soared to astronomical heights, and

Whereas, the action of the President to freeze some food prices at their current level, affords little or no relief to the people who have to put food on their tables, and

Whereas, the least that could be expected in the way of relief from soaring food prices would be a rollback of prices to the expiration date of Phase 2, but more equitable would be a rollback to food prices of January, 1972, now, therefore, be it

Resolved, by the Common Council of the City of New Britain that the Senate of the United States and the House of Representatives of the United States in Congress assembled, be and they are hereby requested to enact the necessary legislation to roll back food prices to January 1, 1972, and be it further

Resolved, that the President of the United States be and is hereby requested to lend the influence of his office in support of such legislation, and to approve the same when enacted, and be it further

Resolved, that the City Clerk transmit a copy of this resolution to the necessary parties.

PRIVATE PENSION REFORM

Mr. ROTH. Mr. President, I want to bring to the attention of the citizens of Delaware, and throughout this Nation, the private pension reform bill which was ordered reported today by the Finance Committee.

Early this year, an ad hoc Subcommittee on Private Pensions was appointed to review an enormous amount of material relevant to the need for legislative reform. As a member of that panel, I was most interested in hearing suggestions which recognized the tremendous importance of pension income to individuals. Simple statistics on pension failures should be no consolation to us when we realize they are of no help to the families whose livelihoods are jeopardized by the sudden termination of their plan.

As a cosponsor and strong supporter of this legislation, I am delighted that our committee has taken this landmark step toward providing meaningful and long overdue safeguards for the Nation's 30 million workers now covered by pension plans.

After nearly 3 solid weeks of markups, our committee has written legislation which would stipulate that companies which have plans must conform to minimum standards for guaranteeing pension rights to their employees. All too often we hear of loyal workers who are summarily dismissed just before they are due to become eligible. And, the committee has also stipulated that companies must make adequate contributions to their plans in order to insure that there will be enough money to pay the guaranteed rights of retiring employees.

After all, the Federal Government long ago took steps to make sure that applicants for jobs not suffer discrimination in hiring, and that once on the job, reasonable health and safety standards would protect them from many occupational hazards. I feel it is high time we did something to protect the hard earned pensions which employees have come to depend on more as the high cost of living makes personal saving progressively difficult.

When I served on the Senate Banking Committee, we spent many hours reviewing the insurance funds which now protect the savings deposits and securities investments of the American public. Banks and brokerage houses contribute to Government supervised insurance pools, protect depositors and customers from the disaster of a bank or brokerage house failure.

I do not see how we can continue to neglect pension plans any longer. While we now protect the more than $300 billion in savings institutions, we provide no safeguard at all for the more than $200 billion in pension assets that now exist. In a highly mobile economy, as companies merge or liquidate, plan terminations can cause economic panic in the lives of those who worked under the honest assumption they would have a "nest egg" with which to retire; 12,000 employees last year forfeited pension benefits because the plans in which they were enrolled ceased to function.

I heartily support the call to strengthen the rules under which the administrators who control pension investments must operate. We must be able to believe in their integrity, but additional rules are necessary in order to safeguard people's savings from unscrupulous manipulation or imprudent risk.

I am happy that these constructive measures will not become a burden to the private economy. In recognizing only half of the American working population is covered under pension plans, we must make sure that the enormous growth of these retirement benefits is not stifled by unduly harsh regulations. I feel that we must do something to induce more people to rely on private savings and a foundation for retirement. Social security benefits can only hope to supplement income received from pension or annuity savings built up over a person's working life.

To this end, I have supported two liberalized provisions which would increase the amount self-employed persons could contribute, tax free, to a retirement fund. We have included further lan-

guage which would permit workers not covered by pension to set aside $1,000 per year, tax free, from their earnings. This contribution to their retirement would share the same preferential treatment that company contributions now enjoy.

American labor has provided the backbone of American prosperity. Our collective and individual rewards stem from a feeling that hard work provides not only short-term satisfaction, but also long-term security. We must recognize that future economic growth can only be as strong as the foundations we build today. I hope that Senate floor action will produce speedy passage of this most important bill.

THE ENERGY CRISIS

Mr. FANNIN. Mr. President, my good friend, the junior Senator from Wyoming (Mr. HANSEN) has been speaking out for several years about the mounting energy problems confronting the United States.

This morning he addressed a meeting of the National Petroleum Council here in Washington. What he told this group of petroleum industry and government officials concerned with our energy dilemma is, I believe, worthy of the attention of all of us and I ask unanimous consent that his remarks be printed in the RECORD.

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

REMARKS OF SENATOR CLIFFORD P. HANSEN

With the ever increasing proposals being offered by self-styled experts to end the energy crisis—or punish those responsible for it—, it is a pleasure and distinct honor to be here this morning with a distinguished group, the "Real McCoys" as far as the energy crisis is concerned.

And I am encouraged by the appointment of John A. Love. An outstanding chief executive, this three term governor brings in-depth knowledge of the energy business to the Office of Energy Policy in the White House.

When he talks, I hope the right people will be listening.

You are the realists.

You and your associates have discovered the oil. You know about the multitude of activities and investigations that take place prior to drilling. You know about borrowing money, the difficulty in persuading others not regularly in the oil business to invest their dollars in your ventures. You understand the motivation behind the doers in our economic life; the role the profit motive plays in choosing investments—and where to make them—North Dakota, North Africa, the North Slope or the North Sea. You've also learned that the Arctic deep freeze may extend thru several summers. Likewise the realities of life help determine for most Americans as to whether to be an oil man, a manufacturer, a farmer, or if your frustration with government is exceedingly high, a politician. Recent developments, I am told, would indicate that the last mentioned profession is losing some of its glamor. Don't assume I'm dismayed as a practicing politician. I've always felt there was too much competition anyway.

The other group of energy experts, albeit self-styled—have a head start on you.

They are not inhibited or restrained by the facts.

They have the support of environmentalists:

Those who believe we're using too much energy—and insofar as waste goes, I admit we are.

Those who believe our total energy sources are finite and may last, at best, not more than from one to a few hundred years.

Those who believe that we can and should change our ways and our life styles so as to use practically no energy.

Those who believe that despite all other considerations, the immediate improvement of the environment warrants and justifies the immediate implementation of all proposed environmental constraints and prohibitions, and others we may not yet have thought of. This group is not concerned about:

National security;

Industrial capability and output;

Economic stability and balance of payments;

Our standard of living;

Jobs for Americans;

America's role in world affairs—which includes foreign policy.

The self-styled energy experts have another distinct head start on you—while there are exceptions, generally they have the media with them.

Read any paper, watch and listen to any TV commentator, recall what you heard on your car radio:

The energy crisis is contrived.

Oil men have had years of unfair tax advantages.

All oil men are millionaires.

Oil men dictate federal government policy.

Oil men are polluters.

Oil men are responsible for the energy crisis because they knew it was coming and didn't do anything about it.

One more observation must be made about our friends, the self-styled energy experts.

Many of them are politicians.

Sometimes, it is more important to fix blame on someone else than it is to work for real solutions.

Other times the seeming advantage of proposing immediate action is compelling.

Examples.

Crash programs of research and development directed by newly created federal agencies and financed with billions of federal dollars.

Divestiture of operations if they include more than one of the following operations: production, transportation, refining, and marketing.

Public utility regulation of the industry.

Nationalization of the industry.

Politicians have one other advantage on you. In case of trouble, they'll fix responsibility.

Some pretty important members of the President's cabinet not too many years ago were saying close down all of the stripper wells, buy most of our petroleum abroad, save the American consumer at least five billion dollars annually. That was before they learned that others besides our Israeli friends in the Middle East could read English. And that, like the law of gravity, the law of supply and demand works in North Africa, too.

These are just some of the forces and background manipulating the curtains, lighting and props as the energy crisis moves on stage.

Political expediency is always important.

Phase IV which will soon become effective needs your close attention.

Should we hold prices down, thus demonstrating our earnestness in fighting inflation or, agreeing with Secretary Butz that "you don't get more by paying less" let petroleum, whether it be crude or refined product, rise in price.

Should we deregulate natural gas?

Should we weigh the wisdom of bonus bidding on O.C.S. leases in the context of the industry's need for capital?

This administration faces decisions that may outlive Watergate.

The wrong energy move now could make present day shortages pale in comparison to those ahead of us.

Phase IV as proposed with respect to oil and gas goes 180 degrees in the wrong direction.

As you comment, keep in mind: politicians are going to demagogue this issue for all it's worth. Only when most Americans understand the facts, will things be changed.

And you will certainly have the opportunity during the next few months of countering the charges that have been and will be made. When Senator Moss withdrew his divestiture amendment to the Alaska pipeline bill, Senator Jackson said there would be hearings, probably joint hearings by the Interior, Commerce and Antitrust and Monopoly Subcommittee of the Judiciary Committee. And Senator Jackson has already announced his investigation by the Government Operations Subcommittee.

So there will undoubtedly be a bloodbath in the coming hearings and you can be sure that these hearings will have preference over any administration proposals including decontrol of FPC regulation of natural gas production.

At least the industry has been forewarned and can be lining up its best troops in counterattack. Some of the treatment top-level industry witnesses have had in hearings this year should be a warning of what to expect and I would hope such witnesses would speak up loud and clearly.

The industry has been a convenient whipping boy for the candidate making his appeal to the Nader crowd and the environmental extremists. And you can be sure when the TV cameras are on, the candidates will be doing their thing. It will be no time or place for a timid witness or those of faint heart. And there is no occasion for intimidation. You have a plausible story to tell and certainly nothing to hide.

The late Dr. William Pecora, Undersecretary of the Interior and internationally honored earth scientist said just over a year ago that steps must be taken to assure the consumer that adequate domestic oil and gas reserves will be available. He also said that the potential oil and gas resources remaining to be found in and offshore the United States would meet our 1971 needs for those two fuels almost 100 times over.

The American Association of Petroleum Geologists in testimony before the Senate Interior Committee just a year ago generally agreed with Dr. Pecora's estimates.

The real crunch will be in the next 10 years, while we're developing coal gasification shale oil, and the breeder reactor. We can and should import some petroleum.

We shouldn't become so dependent upon any foreign source that we jeopardize our national security.

The National Petroleum Council was established to advise the Secretary of Interior.

I hope you have his ear.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the time for the transaction of routine morning business has expired.

ENDANGERED SPECIES ACT OF 1973

The ACTING PRESIDENT pro tempore (Mr. NUNN). Under the previous order the Senate will proceed to the consideration of S. 1983, which will be stated by title.

The bill was stated by title as follows:

A bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with an amendment to strike out all after the enacting clause and insert:

That this Act may be cited as the "Endangered Species Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(2) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range.

(3) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(4) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(5) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(6) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(7) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(8) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of terrestrial plants, the term means the Secretary of Agriculture.

(9) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(10) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(11) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(12) "Take" means to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(13) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(14) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) In determining whether or not any fish or wildlife is an endangered or a threatened species, the Secretary shall take into consideration those efforts, if any, being made by any nation or any political subdivision of any nation to protect within any area under its jurisdiction such fish or wildlife, whether by predator control, protection of habitat and food supply, or other conservation or management practices.

(3) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endangered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553 (e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republish- l to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretary shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scien-

tific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of this section, and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation, protection, restoration, or propagation of such species. With respect to any endangered or threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and progagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as approrpiate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him; and

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation, protection, restoration, or propagation of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the management, conservation, protection, and restoration of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs,

which are adequate, in the Secretary's judgment, for the conservation, protection, restoration, and propagation of species of fish or wildlife facing extinction;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation, protection, restoration, and propagation of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, research, censusing, law enforcement, and habitat acquisition or improvement. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the national significance of a species found to be endangered or threatened within a State; and

(C) the potential for preventing extinction of a species or for restoring a species to nonendangered or nonthreatened status.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year remain available for expenditure by such State until the close of the succeeding fiscal year.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the estimated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation of the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohibit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall

provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of his Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act 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 Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary 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 Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: *Provided*, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) 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 that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may notify 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.

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

SEC. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce specimens or products processed or manufactured in whole or in part from specimens of any such species;

(6) attempt to commit, solicit another to commit, or cause to be committed, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish, or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption or taken for recreational purposes in waters under United States jurisdiction or on the high seas. To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulations, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this Act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this Act for—

(1) scientific purposes in furtherance of the purposes of this Act; or

(2) the propagation of such species in captivity or in a controlled habitat.

(b) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person who enters into a contract with respect to a species of fish or wildlife before the date of publication in the Federal Register of notice of a proposed listing of that species as an endangered or threatened species if the failure to grant such exception will cause undue economic hardship to such person under the contract. The extent and duration of such exception shall be such as the Secretary deems appropriate. No such exception shall be granted unless such person applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove such hardship. No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of a proposed listing of the involved species, nor shall such exception apply to a quantity of fish or wildlife in excess of that specified by the Secretary. The one-year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in appendix I of the Convention which is to be used for primarily commercial purposes.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretary of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATIONS.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation of any lease, license, permit, stamp, or other agreement.

(c) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles,

aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) REGISTRATION. — (1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) ENFORCEMENT REGULATIONS.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and 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 provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in the court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 13. The Secretary of the Smithsonian Institution, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

"THREATENED SPECIES.—For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following:

"ENDANGERED AND THREATENED SPECIES.—For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460k–1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the protection of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section,

and are adjacent to, or within, the said conservation areas, except that as acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc–6) is repealed.

APPLICABILITY WITHIN STATES

SEC. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened pecies in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the

requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That the provisions of subsection (a) of section 10 of this Act shall be effective upon the date of enactment of this Act within any State which does not prevent the taking of any species listed by the Secretary as an endangered species. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the management and taking of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,930,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

The ACTING PRESIDENT pro tempore. The time for debate on this bill will be limited to 1 hour, to be equally divided and controlled by the majority leader and the minority leader or their designees, with 30 minutes on any amendment, debatable motion, or appeal.

The Senator from California is recognized.

Mr. TUNNEY. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. I only wanted to have stated the time situation. I shall handle the bill for the minority.

The ACTING PRESIDENT pro tempore. The Senators from California and Alaska, according to the understanding of the Chair, are the designees of the majority leader and the minority leader.

Who yields time?

Mr. TUNNEY. Mr. President, the Endangered Species Act of 1973 is a vital piece of legislation which is absolutely necessary to provide protection to our Nation's species of wildlife that are threatened with extinction.

The goal of the Endangered Species Act is to conserve, protect, restore, and propagate species of fish and wildlife, that are in imminent danger of extinction or are likely to become endangered within the foreseeable future. This bill employs several mechanisms to insure the accomplishment of this goal. They include provision of greater authority to the Secretaries of Interior and Commerce to list endangered or threatened animals, encouragement of further international cooperation for the protection of these animals, provision for the acquisition of habitat useful for the purposes of this act, and incentives for the establishment of effective endangered species programs by the several States.

There is an urgent need for this type of protective legislation. In our country alone, there are 109 species listed as endangered by the Secretary of the Interior. On his foreign list, there are over 300 species. Furthermore, the situation continues to worsen. The rate of extinction has increased to a point where, on the average, one species disappears every year.

This is an extremely disturbing trend. To allow the extinction of animal species is ecologically, economically, and ethically unsound. Each species provides a service to its environment; each species is a part of an immensely complicated ecological organization, the stability of which rests on the health of its components. At present, we are unsure of the total contribution of each species of fish and wildlife to the health of our ecology. To permit the extinction of any species which contributes to the support of this structure without knowledge of the cost or benefits of such extinction is to carelessly tamper with the health of the structure itself.

The existence of each species is also important to the growth of our scientific knowledge of man and his environment. Diversity of genetic types is necessary for thorough scientific knowledge. There is a yet unknown potential for investigation into these species' genetic structure which must remain unhindered if we wish to probe for further knowledge and the transfer of that knowledge into beneficial uses for man.

Finally, many of these animals simply give us esthetic pleasure. We like to view them in zoos and in their natural habitats. We, and our children, learn from these species about the diversity of our universe and the many forms of life which are necessary to support our bountiful and wonderful environment.

For these reasons, it is important that we adopt this act to protect our wildlife. In prior legislation we have taken several steps toward solution of the problem. In 1966 and in 1969, we provided the Secretary with the power to list species or subspecies of fish and wildlife that were threatened with extinction. Importation of these species from foreign countries was prohibited. Federal endangered wildlife reserves were encouraged by authorization of grants for land acquisition. However these provisions only gave limited protection to domestic endangered species; and the Federal grant program terminated last year. There is still no Federal prohibition against the taking of endangered species, still no widespread action to conserve and restore these animals, and the problem of the continuing extinction of species still exists.

The challenge before us now is to protect these species and their vital habitat and to restore their numbers to optimum levels. S. 1983 would accomplish this goal in several ways. First, it provides protection to a broader range of species by affording the Secretary the power to list animals which he determines are likely in the foreseeable future to become extinct, as well as those animals which are presently threatened with extinction. This gives the Secretary and the States which adopt endangered species management plans, the ability not only to protect the last remaining members of the species but to take steps to insure that species which are likely to be threatened with extinction never reach the state of being presently endangered.

The bill would thus, hopefully, prevent a crisis situation from occurring for a number of species which would otherwise come close to extinction in future years.

The two levels of classification facilitate regulations that are tailored to the needs of the animal while minimizing the use of the most stringent prohibitions. Since most of our resources for restoring and propagating species lie with the States, they are encouraged to use their discretion to promote the recovery of threatened species and Federal prohibitions against taking must be absolutely enforced only for those species on the brink of extinction.

To aid in the delicate and highly specialized task of listing these animals, the Secretary is required to appoint an advisory committee to assist him in the designation of endangered and threatened species. To insure that the States that may be affected by the Secretary's designation are fully active through the listing process, the Secretary must consult with the States affected prior to listing any species. Furthermore, half the members of the advisory committee must be employed by State governments.

Many species have been inadvertently exterminated by a negligent destruction of their habitat. Their habitats have been cut in size, polluted, or otherwise altered so that they are unsuitable environments for natural populations of fish and wildlife. Under this bill, we can take steps to make amends for our negligent encroachment. The Secretary would be empowered to use the land acquisition authority granted to him in certain existing legislation to acquire land for the use of the endangered species programs. The bill also eliminates the restrictive ceiling which was placed on funds available to the Land and Water Conservation Fund Act by the Act of 1969. Through these land acquisition provisions, we will be able to conserve habitats necessary to protect fish and wildlife from further destruction.

Although most endangered species are threatened primarily by the destruction of their natural habitats, a significant portion of these animals are subject to predation by man for commercial, sport, consumption, or other purposes. The provisions in S. 1983 would prohibit the commerce in or the importation, exportation, or taking of endangered species except where permitted by the Secretary for scientific purposes in furtherance of the purpose of this act, or for the propagation of such species in captivity in a controlled habitat. Amendments which will be offered today, and which would greatly add to the purposes of this act would permit otherwise prohibited acts when they are undertaken to enhance the propagation or survival of the affected species or to prevent serious and otherwise unavoidable threats to human health or the environment.

In order to minimize economic hardship on persons who entered into contracts prior to the passage of the act, such persons are permitted for a limited period of time to engage in activities which would otherwise be in violation of the act.

Alaska Natives are allowed, under regulations to be adopted by the Secretary, to take animals for consumption or use in a native community or for the production of authentic native articles of handicraft or clothing.

Under the bill, the taking of an endangered species for their sale or movement in interstate or foreign commerce is forbidden. Violators of any prohibition under this bill will be liable for a civil penalty of up to $10,000. Knowing violators of the law will be liable for a criminal penalty of up to $20,000 and/or imprisonment for up to 1 year. The most important protective provisions of this bill are those which will improve the condition of existing species. These will be actions taken by the Secretary, the States, and individual citizens. However, we must extend some protection to animals subject to unrestrained predation.

Among the greatest contributions that have been made to the conservation, restoration, protection, and propagation of endangered and threatened species are the contributions made by private citizens. Exceptions to the prohibitions could be made by the Secretary wherever possible to encourage individual actions which will further the purposes of this act. Recent activities by the Secretary to prosecute individuals involved in harmless violations of prior acts which were part of programs designed to restore endangered species appear to have been taken counter to the purposes of our earlier legislation. Penalty provisions of this act are intended to be used to prevent activity which may be actually harmful to a species or its individual members and not merely to employ the law enforcement divisions of the departments.

I would like to discuss what is perhaps the most important section of this bill. Important because I believe it provides the most effective means to achieve the purposes of this bill. Undoubtedly, the threatened extinction of our wildlife is a national problem, necessitating involvement of the Federal Government. Endangered animals are not limited to any one area or State of the Nation so it is impossible for the individual States to limit their movement in interstate or foreign commerce. Furthermore, no one State should be responsible for balancing its interests, with those of other States, for the entire Nation. Central authority is necessary to oversee endangered species protection programs and to insure that local political pressures do not lead to the destruction of a vital national asset.

On the other hand, it was well established in the hearings record that most of the States possess much greater wildlife management resources than does the Federal Government. Clearly, any effort on the part of the Federal Government to encourage restoration of threatened or endangered species would fail without the assistance of the State agencies. This bill is designed to permit and encourage State endangered species programs that act in concert with the purposes of this act.

Subject to the provisions of this act which provide maximum protection for species on the brink of extinction, States with active endangered species programs are given full discretion to manage threatened species which reside within their boundaries. Under the bill, the States are given 1 year to submit plans to the Secretary for the establishment of agencies for the promulgation, conservation, restoration, and protection of resident endangered species. Provisions of this act governing the taking and management of endangered species go into effect 15 months after the passage of this act governing the taking and the submitted plans have not been approved by the Secretary.

Further, States, whose plans have been approved by the Secretary, are eligible for a portion of the $10 million provided under this act for financial assistance to defer the cost of implementation. In the case where a State plan is not initially approved by the Secretary, and the Secretary must intervene to insure furtherance of the purposes of this act, a State may reapply at any time for approval of its plan. A State's power to manage endangered species is preempted only to the extent that such State does not prevent taking of endangered species—that is, species which are in imminent danger of extinction. Even in these cases, States whose plans have not been disapproved by the Secretary would have management powers not inconsistent with the prohibitions against taking.

The plan for Federal-State cooperation provides for much more extensive discretionary action on the part of the Secretary and the State agencies. Under existing laws, a species must be declared "endangered" even if in a certain portion of its range, the species has experienced a population boom, or is otherwise threatening to destroy the life support capacity of its habitat. Such a broad listing prevents local authorities from taking steps to insure healthy population levels.

Under S. 1983, however, the Secretary may list an animal as "endangered" through all or a portion of its range. An animal might be "endangered" in most States but overpopulated in some. In a State in which a species is overpopulated, the Secretary would have the discretion to list that animal as merely threatened or to remove it from the endangered species listing entirely while still providing protection in areas where it was threatened with extinction. In that portion of its range where it was not threatened with extinction, the States would have full authority to use their management skills to insure the proper conservation of the species. Also, upon passage of S. 1983, Federal prohibitions against taking would apply only in those States which did not prevent the taking of endangered species. Fifteen months after the passage of the act, the act's provisions would apply only in those States which had not adopted a management plan approved by the Secretary.

A well-known example may serve to illustrate how S. 1983 provides for maximum management and conservation discretion, while insuring absolute protection for species imminently in danger of extinction. The American alligator, which has been plagued by habitat destruction and commercial exploitation, is currently listed as an endangered species. However, due to increased population resulting in habitat destruction, the Louisiana Wildlife and Fisheries Commission ended total protection last year and conducted a closely regulated har-

vest in one parish of the State. According to the Department of the Interior, it is likely that in certain portions of Louisiana, the American alligator may be relisted under this bill as a threatened species. S. 1983 would permit continued State action to enhance the existence of this species. In other areas the alligator would remain listed as an endangered species and would be entitled to absolute Federal or State protection until a State plan was approved by the Secretary under the provisions of this act.

Should a State decide not to adopt an endangered species protection program, under this bill, as I propose it be amended, that State could always secure a permit from the Secretary to exempt animals from the prohibitions of this act in order to permit management of a species, then listed as endangered, to enhance the propagation or survival of the affected species. However, I hope that, as soon as possible after the passage of this act, all of the States will formulate plans for the management of resident endangered species and that these plans can be approved by the Secretary so that enlightened management programs can continue under the control of the States.

I feel that this bill provides the necessary national protection to severely endangered species while encouraging the States to utilize all of their resources toward the furtherance of the purposes of this act. State participation is necessary for the protection of endangered and threatened species. This bill provides them the authority and additional funds with which to provide that protection. Only those States who are unwilling to adopt endangered species protection programs to provide protection for species threatened with extinction need fear Federal preemption.

Finally, while we are concerned with our endangered domestic species, we must not forget the many animals that are in need of worldwide attention. S. 1983 includes the mechanisms of international cooperation that fulfill our commitments under international conventions for the protection of endangered species. This Nation has dedicated itself to international cooperation through several international treaties. S. 1983 extends this cooperation by permitting the President to use certain blocked Federal funds to provide assistance for the development of management programs in foreign countries, and to offer educational training for foreign personnel in wildlife management. The bill also permits loans for the development of protection agencies in foreign countries. And, the bill provides mechanisms for implementation of the Convention on International Trade and Endangered Species of Wild Flora and Fauna which was signed by representatives from the United States last March and is now pending ratification by the Senate.

As we consider this bill, we must remember the magnitude of the problem and the importance of our concern. We are dealing with the future of many species of fish and wildlife—species which in many cases we have placed near extinction from carelessness and a lack of understanding of their importance. These animals are part of our natural resources, part of our history, and part of our evolutionary heritage. We have a duty to restore what we have endangered—for ourselves and for posterity.

This bill is a step toward that necessary restoration. I urge Senators' favorable consideration.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. STEVENS. Mr. President, I am pleased to support the Endangered Species Act of 1973.

While the bill is not perfect, I believe it takes a major step in the protection of American endangered and threatened species. It will provide for the conservation of endangered fish and wildlife by prohibiting the taking of these species and also by encouraging the establishment of State programs. It retains the present bifurcation of responsibility between the Departments of Interior and Commerce over different species. It extends protection to species which are either endangered or likely to become endangered within the foreseeable future. It expands the protection of the Endangered Species Conservation Act of 1969 (85 Stat. 275). That act mainly prohibited the importation of foreign species. This legislation extends protection to domestic species. That act also implemented State statutes. This act will permit national listings of species as either endangered or threatened and also impose Federal prohibitions on their taking.

This legislation was the subject of extensive hearings last Congress in the Senate Environment Subcommittee. The former Senator from Virginia (Mr. SPONG) and I heard a number of knowledgeable witnesses from governmental agencies and also from various private groups. They were, almost uniformly, of the opinion that such legislation was necessary for the protection of endangered species.

As former Senator Spong said:

Extinction is quite literally a fate worse than death.

I agree.

This bill is designed to provide the Secretary of the Interior and the Secretary of Commerce with the authority to list a species as either endangered or threatened if its habitat or range is threatened with destruction, it is overutilized and taken in great numbers, it is the victim of disease or predation, it is out of balance with its environment, or natural or manmade factors adversely affect its continued existence.

The Secretaries must use the best scientific data to make this determination. They are to consult with all necessary persons and are to publish such a list in the Federal Register. They may periodically review this list upon the petition of any interested party.

For this purpose they are to establish an advisory committee on endangered and threatened species. This advisory committee was recommended by the State departments of fish and game to give them additional input. It will insure that the Secretaries have the very best possible advice before they list any species or delist it.

Section 5 is particularly important. Under it they are to establish particular programs to protect and conserve fish and wildlife listed as endangered and threatened. They are to acquire land for this purpose and may also utilize other Federal lands for this purpose.

Section 6 and 16 provide for cooperation with the States. They provide the major backbone of the act. Presently the States have an extensive network of endangered species legislation. Unfortunately, not all States have as yet implemented such programs. This bill will assist those States not yet involved to implement such programs and will, if the States do not, provide for Federal preemption.

Typical are the laws of Alaska, Illinois, and Texas. Alaska, for example, requires the State government to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. The language is very similar to S. 1983. The Alaska State commissioner of fish and game is required to seek the advice and recommendations of biological experts. Before anyone may take an endangered animal, he must obtain a special permit from the commissioner of fish and game which may only be given "for scientific or educational purposes, or for propagation in captivity for the purpose of preservation." The State statute also provides criminal penalties for anyone violating it.

I ask unanimous consent to have printed in the RECORD at this point the text of the Alaska State endangered species law.

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

ARTICLE 4. ENDANGERED SPECIES

Section
180. Declaration of purpose
185. Protection of habitat
190. Determining endangered species
195. Permit for taking endangered species
200. Penalty
210. Definitions

Sec. 16.20.180. Declaration of purpose. The legislature recognizes that, due to growth and development, certain species or subspecies of fish and wildlife are now and may in the future be threatened with extinction. The purpose of §§ 180–210 of this chapter is to establish a program for their continued conservation, protection, restoration and propagation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.185. Protection of habitat. On land under their respective jurisdictions, the commissioner of fish and game and the commissioner of natural resources shall take measures to preserve the natural habitat of species or subspecies of fish and wildlife that are recognized as threatened with extinction. (§ 1 ch 115 SLA 1971)

Sec. 16.20.190. Determining endangered species. (a) A species or subspecies of fish or wildlife is considered endangered when the commissioner of fish and game determines that its numbers have decreased to such an extent as to indicate that its continued existence is threatened. In making this determination the commissioner of fish and game shall consider

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) its overutilization for commercial or sporting purposes;

(3) the effect on it of disease or predation;

(4) other natural or man-made factors affecting its continued existence.

(b) After making a determination under

(a) of this section, the commissioner of fish and game shall, in accordance with the Administrative Procedure Act (AS 44.62), publish a list of the species or subspecies of fish and wildlife that are endangered. The commissioner shall, at least once every two years thereafter, conduct a thorough review of the list to determine what changes have occurred concerning the species or subspecies listed. Consideration of existing species or subspecies of fish and wildlife for listing under this section shall be made on a continuing basis. The review of listed species or subspecies conducted under this section shall be submitted in writing to the governor and the legislature and shall be made available to the public.

(c) In making his determination and review under (a) and (b) of this section, the commissioner of fish and game shall seek the advice and recommendation of interested persons and organizations, including but not limited to ornithologists, ichthyologists, ecologists and zoologists. (§ 1 ch 115 SLA 1971)

Sec. 16.20.195. Permit for taking endangered species. No species or subspecies of fish or wildlife listed as endangered under § 190 (b) of this chapter may be harvested, captured or propagated except under the terms of a special permit issued by the commissioner of fish and game for scientific or educational purposes, or for propagation in captivity for the purpose of preservation. (§ 1 ch 115 SLA 1971)

Sec. 16.20.200. Penalty. A person who, without a permit issued under § 195 of this chapter, harvests, injures, imports, exports, or captures a species or subspecies of fish or wildlife listed under § 190 of this chapter, is guilty of a misdemeanor. (§ 1 ch 115 SLA 1971)

Sec. 16.20.210. Definitions. In §§ 180–210 of this chapter "fish or wildlife" includes birds. (§ 1 ch 115 SLA 1971)

Mr. STEVENS. The Illinois State statute lists a number of domestic and foreign species and makes it unlawful to "possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this act" without obtaining a permit. Such permits may be given only for "zoological, educational or scientific purposes." It provides for fines and imprisonment for persons violating this act.

Mr. President, I ask unanimous consent that the text of the Illinois Endangered Species Act be printed in the RECORD at this point.

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

ILLINOIS ENDANGERED SPECIES ACT

An Act to prohibit the transfer, sale and possession of products or skins of animals in danger of extinction, to create a Board to determine which species are endangered and to provide penalties for the violation thereof, and to make an appropriation therefor.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the "Illinois Endangered Species Protection Act."

Section 2. As used in this Act the following words have the following meanings:

"Board" means the Endangered Species Protection Board created by this Act.

"Department" means the Department of Conservation and "Director" means the director of that Department.

"Endangered Species" means the species of animals listed in this Section plus such other species as the Board deems to be in danger of extinction. This includes but is not limited to the following species: leopard, Panthera pardus; snow leopard, Panthera unica; clouded leopard, Neofelis nebulosa; tiger, Panthera tigris, cheetah, Acinonyx jubatus; alligators, caiman, crocodiles and all other members of the order crocodylia; vicuna, Vicugna vicugna; red wolf, Canis niger; gray wolf, Canis lupus; polar bear, Thalarcotos martimus; mountain lion, sometimes called cougar, Felis wiedii; desert kit fox, Vulpes macrotis; kit or swift fox, Vulpes velox; Pacific Ridley turtle or warana, Lepidochelys olivacea; or green turtle, Chelonia mydas.

"Wild animal product" means the fur, hide, skin, teeth, feathers, tusks, claws or the body or any portion thereof whether in a green or raw state or as a product manufactured or refined from an animal protected under this Act or under regulations issued pursuant to this Act.

Section 3. After January 1, 1973, it is unlawful to possess, sell, order for sale, give or dispose of any animal or the wild animal product of any animal which is an endangered species under this Act, without a permit therefor issued by the Department.

Section 4. Upon proper application, the Department shall issue to any person, firm, association or corporation a permit which allows the possession, purchase and disposal of live animals or wild animal products of an endangered species for zoological, educational or scientific purposes only. Such permit shall be issued without fee. The holder of such permit and all applicants therefor shall submit a list of all animals and wild animal products of endangered species owned or in their possession when ordered by the Director, but no more often than annually. The Director may, upon notice and hearing, revoke the permit of any holder thereof upon his failure to file the reports required by this Section or the filing of a knowingly false report or the use of any wild animal product or animal of an endangered species for any purpose other than an educational, zoological or scientific purpose.

Section 5. Upon proper application, the Department shall issue a limited permit to any person, firm, association or corporation which had in its possession prior to the effective date of this Act, wild animal product of an endangered species. Such permit shall specifically name and describe each wild animal product possessed by the permit holder and shall be valid only for possession of the products so named. The Department may require proof that acquisition of such wild animal product was made before the effective date of this Act. Such permit shall be valid as long as the product is in existence. The limited permit may be revoked by the Director for any violation of this Act.

Section 8. Any officer or agent authorized by the Department of Conservation, or any police officer of any municipality within the State of Illinois, may execute any warrant to search for and seize any goods, merchandise or wildlife sold or offered for sale in violation of this Section, or any property or item used in connection with a violation of this Section. Such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

Section 9. Any person who violates any provision of this Act shall be fined not less than $100 nor more than $1,000 or imprisoned for not more than one year in a penal institution other than the penitentiary, or both.

Section 10. All fines collected under this Act shall be paid to the State Treasurer and deposited in the Game and Fish Fund.

Mr. STEVENS. A third example is the Texas Endangered Species Act. This was signed into law this May. It implements the present Federal statutes and also closely follows the wording of S. 1983. It requires permits before any species may be taken for zoological or scientific purposes if that species has been classified as endangered. It also provides criminal penalties.

Mr. President, I ask unanimous consent that the text of the Texas Endangered Species Act be printed in the RECORD at this point.

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

TEXAS ENDANGERED SPECIES BILL

An act relating to the conservation, management, protection, propagation, sale, and use of nongame fish and wildlife species; relating to the classification of certain fish and and wildlife as endangered species, and the protection, propagation, sale, and use of endangered species and products of endangered species; providing penalties for violations; and declaring an emergency

Be it enacted by the Legislature of the State of Texas:

Section 1. Definitions.—As used in this Act:

(1) "Director" means the executive director of the parks and wildlife department.

(2) "Department" means the parks and wildlife department.

(3) "Fish or wildlife" means any wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, offspring, dead or alive, of a wild mammal, fish, wild bird, amphibian, reptile, mollusk, or crustacean.

(4) "Person" means any individual, firm, corporation, association, or partnership.

(5) "Management" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and the maintaining of such levels. The term "management" likewise includes the entire range of activities constituting a full scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

Sec. 2. Nongame species. (a) The department shall conduct investigations on nongame fish and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of such determination, the department shall issue proposed regulations not later than one year from the effective date of this Act and develop management programs designed to insure the continued ability of nongame fish and wildlife to perpetuate themselves successfully. The proposed regulations shall set forth species or subspecies of nongame wildlife which the department deems in need of management pursuant to this section, giving their common and scientific names by species and subspecies. The department shall conduct ongoing investigations of nongame fish and wildlife and may from time to time amend such regulations by adding or deleting therefrom species or subspecies of nongame wildlife.

(b) The department shall by regulations establish proposed limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment as may be deemed necessary to manage nongame fish and wildlife. The regulations shall become effective 60 days after being proposed and during that period pub-

lic comment shall be solicited. The department shall hold a public hearing, notice of which shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. On the basis of public comments received or the testimony at a hearing the department may make such changes in the proposed regulations as are consistent with effective management of nongame fish and wildlife.

Sec. 3. Endangered species. Fish or wildlife are classified as endangered species if they appear on:

(1) the present United States List of Endangered Foreign Fish and Wildlife (50 C.F.R. Part 17, Appendix A);

(2) the present United States List of Endangered Native Fish and Wildlife (50 C.F.R. Part 17, Appendix D); or

(3) the list filed by the director under this Act of fish or wildlife threatened with statewide extinction.

Sec. 4. Statewide extinction. Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered in this state due to any of the following factors:

(1) the destruction, drastic modification, or severe curtailment of its habitat;

(2) the over-utilization of it for commercial or sporting purposes;

(3) the effect on it of disease or predation; or

(4) other natural or man-made factors affecting its continued existence.

Sec. 5. Initial classification by director. Within 45 days after the effective date of this Act, the department shall file with the secretary of state a proposed list of fish or wildlife threatened with statewide extinction. This list shall become effective on the 45th day after the date it is filed. Before the effective date of the proposed list, the department shall hold a public hearing on the proposed list. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. The proposed list may be amended prior to its effective date.

Sec. 6. Classification amendment by director. (a) If the federal lists set out in Section 3 of this Act are subsequently altered, the director shall file an order with the secretary of state accepting the alteration. The order is effective immediately.

(b) The department may amend the list filed under Section 5 of this Act by filing an order with the secretary of state. Notice of the intent to file the order and the contents of the proposed order must be given 60 days prior to the date of filing. If petition procedures set out in Section 7 of this Act are initiated relating to the contents of the proposed order during the 60-day notice period, the order may not be filed until the conclusion of the proceedings. The order is effective on the date of filing.

Sec. 7. Petition for reclassification. (a) On the petition of three interested persons presenting substantial scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction, the department may conduct a review of the classification and file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(b) If the department refuses to conduct a review of the classification of fish or wildlife threatened with statewide extinction under Subsection (a) of this section, a petition of 50 interested persons presenting scientific evidence for the addition or deletion of fish or wildlife classified as threatened with statewide extinction may be presented to the department. On receipt of this petition, the department must hold a public hearing to review the classification. Notice of the hearing shall be published in at least three major newspapers of general circulation in this state at least one week prior to the hearing date. Based on findings from the public hearing, the department may file an order with the secretary of state adding or deleting fish or wildlife from the list of fish or wildlife threatened with statewide extinction.

(c) Orders filed under this section are effective immediately.

Sec. 8. Use of name for sale. No person may advertise, offer for sale, or sell any other species of fish or wildlife under the name of any fish or wildlife classified as an endangered species.

Sec. 9. Permit to take certain fish or wildlife. (a) No person may take, possess, or transport fish or wildlife classified as endangered species for zoological gardens or scientific purposes or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat for propagation for commercial purposes, unless he has obtained a permit under Article 913, Penal Code of Texas, 1925, as amended, or under a federal permit.

(b) A permit may not be granted under Article 913, Penal Code of Texas, 1925, as amended, if the taking, possessing, or transporting of the fish or animal classified as an endangered species is specifically prohibited by federal law.

(c) The department may refuse to grant a permit to take or transport fish or wildlife classified as an endangered species from the wild or from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than the wild or its natural habitat.

(d) Fish or wildlife classified as an endangered species shall be considered and included within the meaning of "protected fish or wildlife" as that term is used in Article 913, Penal Code of Texas, 1925, as amended.

(e) Failure to comply with this section is a violation of this Act. Failure to comply with the terms of a permit issued under Article 913, Penal Code of Texas, 1925, as amended, is a violation of that article.

(f) The provisions of this Act do not apply to the possession of mounted or preserved endangered species by public or private nonprofit educational, zoological, or research institutions held prior to the effective date of this Act. The department may require such institutions to furnish a list of mounted or preserved endangered species which they hold, together with adequate proof of the time of acquisition.

Sec. 10. Propagation. No person may possess fish or wildlife classified as endangered species for the purpose of propagating them for sale unless he has obtained a commercial propagation permit issued under this Act.

Sec. 11. Original commercial propagation permit. (a) An applicant for an original commercial propagation permit must submit to the department the permit fee of $300 and an application containing information or statements required by the department.

(b) The department shall issue an original commercial propagation permit to an applicant on compliance with Subsection (a) of this section if the department is satisfied that the fish or wildlife to be used for initial breeding stock was acquired by the applicant for commercial propagation purposes under Section 9 of this Act, federal rules, regulations, or permits, or from a person or source authorized to possess, sell, or dispose of the fish or wildlife under the laws of this state, another state, or federal law.

(c) Each original commercial propagation permit which is issued shall contain a description of the fish or wildlife classified as an endangered species which may be possessed by the permit holder.

(d) An original commercial propagation permit expires one year from the date of issuance.

Sec. 12. Renewal commercial propagation permit. (a) The department shall renew a commercial propagation permit on receipt of an application and the $550 renewal fee prior to or within 10 days of the expiration date of the permit.

(b) A renewal commercial propagation permit expires three years from the date of issuance and may be renewed under the same conditions as renewal of the original permit.

(c) The department may refuse to renew any permit when it is deemed to be in the best interest of the species.

Sec. 13. Duty of permittee. A person holding a commercial propagation permit must submit annually to the department:

(1) a written report by a veterinarian licensed to practice in this state containing an evaluation of the physical conditions of the propagation facilities and the condition of the fish or wildlife held by the permit holder; and

(2) a written report by the permit holder on forms prepared by the department relating to the general propagation activity during the previous year.

Sec. 14. Refusal of cancellation of permit. (a) If, on the basis of the reports required by Section 13 of this Act or from an investigation or inspection of an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and the fish or wildlife need immediate protection, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

Sec. 15. Appeal. (a) A person whose application for a commercial propagation permit or for renewal of a commercial propagation permit has been refused by the department or whose permit has been cancelled may take an appeal within 20 days from the date of refusal to any district court of Travis County or to any district court of the county of his residence.

(b) A case reviewed under the provisions of this section proceeds in the district court by trial de novo as that term is used and understood in appeals from justice of the peace courts to the county courts of this state. Appeal from the judgment of the district court lies as in other civil cases.

Sec. 16. Disposition of fish or wildlife. A person who holds a commercial propagation permit and fails to renew the permit or his renewal application is denied, or whose permit is cancelled under Section 14 of this Act, must dispose of the fish or wildlife held under Section 14 of this Act, must dispose of the fish or wildlife held under the permit and any increase in the fish or wildlife in the manner specified by the department.

Sec. 17. Rules and regulations. The department shall make rules and regulations to administer the provisions of this Act including:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying fish or wildlife classified as endangered species which may be possessed, propagated, or sold under the provisions of this Act;

(4) publication and distribution of lists of the species or subspecies of fish or wildlife or products of fish or wildlife classified as endangered species; and

(5) other rules and regulations necessary to attain the objectives of this Act.

Sec. 18. Disposition of Funds. Money received from the issuance of permits under this Act or from violations of this Act shall be deposited by the department in the

state treasury to the credit of the general revenue fund.

Sec. 19. Sale of fish or wildlife classified as endangered species. (a) No person may sell, process, offer for sale, advertise for sale, or distribute fish or wildlife classified as endangered species unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(b) No person may sell, process, offer for sale, advertise for sale, or distribute goods made from fish or wildlife classified as endangered species unless the goods were made from fish or wildlife which were lawfully born and raised in captivity for commercial purposes under the provisions of this Act or federal law.

(c) Fish or wildlife classified as endangered species or goods made from fish or wildlife classified as endangered species sold under this section must be tagged or labeled in a manner to indicate compliance with this section.

Sec. 20. Exemptions. The provisions of this Act do not apply to coyotes (prairie wolves), cougars, bobcats, prairie dogs or red foxes.

No provision of this Act shall apply to any animals, fish or fowl which are privately owned animals, fish or fowl by the private owners of such animals, fish or fowl.

Sec. 21. Enforcement. (a) The provisions of this Act shall be enforced by the department.

(b) Any commissioned peace officer in this state, including game management officers commissioned as peace officers in this state may execute a warrant to search for and seize fish or wildlife or goods made from fish or wildlife taken, sold, or possessed in violation of this Act or the rules and regulations issued under this Act.

(c) An officer who has made an arrest of a person for a violation of this Act or the rules and regulations issued under this Act may search the person at the time of arrest and seize fish or wildlife, or goods made from fish or wildlife, taken, possessed, or made in connection with a violation of this Act or the rules and regulations issued under this Act.

(d) Fish or wildlife, or goods seized under this section shall be delivered to the department and held by the department pending disposition of court proceedings. Subsequent to the disposition of court proceedings, the department shall dispose of fish or wildlife, and goods in accordance with rules and regulations established by the department. Any costs of maintenance for fish or wildlife seized under this section incurred by the department during the pendency of court proceedings may be assessed to the defendant.

Sec. 22. Penalty. A person who violates a provision of this Act or a rule or regulation issued under this Act is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than $100 nor more than $200. A person who is convicted for a second violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than $200 nor more than $500, or confinement in the county jail for not less than 30 days nor more than 90 days, or both. A person who is convicted for a third or subsequent violation of a provision of this Act or a rule or regulation issued under this Act is punishable by a fine of not less than $500 nor more than $2,000, and confinement in the county jail for not less than six months nor more than one year.

Sec. 23. Conflict of laws. Any species or subspecies of fish or wildlife classified as an endangered species shall be governed exclusively by the provisions of this Act and no other regulatory or licensing laws of this state shall be applicable. This Act does not repeal Article 913, Penal Code of Texas, 1925, as amended.

Sec. 24. Funding. Funds for the administration of this Act may be appropriated from the general revenue fund by legislative appropriation.

Sec. 25. Issuance of permits on effective date. Any person who is engaged in the business of commercial propagation of a species of fish or wildlife classified as an endangered species on the effective date of this Act, may obtain a permit under Section 11 of this Act regardless of the method in which the fish or wildlife were initially obtained. Application for a permit under this section must be submitted within 120 days from the effective date of this Act.

Sec. 26. Effective date. Subsection (b) of Section 19 of this Act shall become effective September 1, 1974.

Sec. 27. Emergency. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act shall take effect and be in force according to its provisions, and it is so enacted.

Mr. STEVENS. These then are but three examples of the many State laws on the subject.

As Dr. Ralph MacMullan, president of the International Association of Game, Fish, and Conservation Commissioners, stated last year in hearings before our subcommittee, State wildlife agencies employ presently over 5,800 enforcement officers across the Nation. Formal endangered species programs are being implemented in over 30 States. The three I have just had printed in the RECORD are but examples.

The International Association of Game, Fish, and Conservation Commissioners have promulgated a model State bill relating to funding and authorization for improved nongame and endangered species programs. This is set forth on pages 164–168 of the hearing record, S. 92–81 of the Senate Commerce Committee. I will not ask that that be reprinted, but merely incorporated by reference.

But even Dr. MacMullen believed that the Federal Government has a definite role in this area to insure that minimum standards are set and to assist the States in their responsibility for managing resident species.

Dr. MacMullen indicated that there are only two Federal enforcement people in Michigan and there are 200 full-time conservation officers and another 200 part-time employees in the same State in 83 counties. In other words, in Michigan there are an average of over two full-time conservation officers plus a number of other peace officers in each county to enforce State laws. These State and local law enforcement officials enforce Federal as well as State laws. He said "we perform the legwork." This is true nationwide. He also indicated that if the Federal Government were to take away the right of the States to manage these species and to preempt the States, State legislatures would not be willing to appropriate the necessary funds to protect endangered species.

This is, as a practical matter, what has happened in the ocean mammal bill. The Federal Government has preempted the States and has not provided enough money to manage the program. Thus there is no enforcement agency to protect ocean mammals. This is the reason that the Endangered Species Act of 1973 provides for a larger role for States and why there has been less opposition to it. I strongly support this trend.

Sections 6 and 16 of this legislation require the Secretaries to consult with the States before the acquisition of any lands, waters or interests therein for the protection of an endangered species. Cooperative agreements may be entered into. Financial assistance may be given to the States for this purpose. Specific requirements for the States are listed. Periodic review is required also. Section 16 specifically provides that by the end of the first year after the date of enactment each State may establish a plan in accordance with this act to protect endangered and threatened species. The Secretary must make a determination as to whether the plan meets the requirements of the act. Periodic review is also required. States are given 15 months to conform their statutes to the provisions of this act. If not, they are subject to Federal preemption. I shall offer an amendment shortly to improve this section.

Financial assistance and encouragement of international efforts in the conservation of endangered species are also encouraged. This is particularly important for many of the migratory species involved.

Stringent prohibitions against unlawful taking or importation are also included.

There is set forth a specific exception for undue economic hardship. Because of certain technical problems with this section, I shall speak on it at some length when I offer an amendment on this later this morning.

There is also a specific exception for Alaska Natives. This was written utilizing the Marine Mammal Protection Act of 1972 (86 Stat. 1027) as a guide and was reviewed in detail with my staff and is entirely agreeable to me. I believe it provides the protection necessary for Alaskan Natives. Many of the technical changes were made as a result of certain problems we have found in the implementation of the marine mammal bill and certain questions that have subsequently been raised by those agencies in enforcing that act. Hopefully this will eliminate many of these ambiguities and will also, I intend, clarify our original interpretation of the Marine Mammal Protection Act.

It was my specific intent in this subsection to obviate the problems I mentioned in my several letters to the Departments of the Interior and Commerce on the Marine Mammal Protection Act. By passing this section, the Senate will be again indicating our congressional intent on each of these points.

Section 17 discusses the relationship of this act with the Marine Mammal Protection Act. A similar provision is found in section 11(d). It is important to note that certain of the provisions in that subsection will affect marine mammals and that, as specified in that sub-

section, they will take precedence over the Marine Mammal Protection Act of 1972.

One final point, last year at my request this legislation was not taken up on the Senate floor after being reported out of the Senate Commerce Committee.

That report, S. 92–1136, set forth my supplemental views also. I did not oppose this legislation at that time and I do not now. As I stated then:

I agree with the majority of the committee that legislation embodying the concepts in this bill is necessary.

I went on to state that time remaining in that congressional session was too short to permit the care and deliberation essential to the drafting and passage of legislation of this magnitude. The necessary time and care has since been spent. I believe we have a good bill in S. 1983 and am very pleased to have been designated the Republican floor manager for it.

Mr. President, in the United States there are 109 species and subspecies of wildlife—14 mammals, 51 birds, 7 reptiles, and 30 fish species—now threatened with extinction. These include such animals as the black-footed ferret, the whooping crane, the eastern timber wolf, the masked bobwhite, the ivory-billed woodpecker, and peregrine falcons. These are only domestic endangered species and do not include foreign endangered species.

Of this number, eight species, including the eastern cougar and the Mississippi sandhill crane, were listed on June 1 of this year.

I ask unanimous consent to have printed in the RECORD at this point, a list of the endangered species so specified by the Secretary of the Interior prior to June 1 and a second list of the additional species listed on June 1 of this year.

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

ENDANGERED SPECIES

MAMMALS

Hawaiian hoary bat, *Lasiurus cinereus semotus.*
Indiana bat, *Myotis sodalis.*
Delmarva Peninsula fox squirrel. *Sciurus niger cinereus.*
Morro Bay kangaroo rat, *Dipolomys heermanni morroensis.*
Salt marsh harvest mouse, *Reithrodontomys raviventris.*
Eastern timber wolf, *Canis lupus lycaon.*
Red wolf, *Canis rufus.*
San Joaquin kit fox, *Vulpes macrotis mutica.*
Black-footed ferret, *Mustela nigripes.*
Florida panther, *Felis concolor coryi.*
Florida manatee (sea cow), *Trichechus manatus latirostris.*
Key deer, *Odocoileus virginianus clavium.*
Columbian white-tailed deer, *Odocoileus virginianus leucurus.*
Sonoran pronghorn, *Antilocapra americana sonoriensis.*

BIRDS

Hawaiian dark-rumped petrel, *Pterodroma phaeopygia sandwichensis.*
California least tern, *Sterna albifrons browni.*
Hawaiian goose (nene), *Branta sandvicensis.*
Aleutian Canada goose, *Branta canadensis leucopareia.*
Laysan duck, *Anas laysanensis.*
Hawaiian duck (koloa), *Anas wyvilliana.*
Mexican duck, *Anas diazi.*
Brown pelican, *Pelecanus occidentalis.*
California condor, *Gymnogyps californianus.*
Florida everglade kite (snail kite), *Rostrhamus sociabilis plumbeus.*
Hawaiian hawk (io), *Buteo solitarius.*
Southern bald eagle, *Haliaeetus leucocephalus leucocephalus.*
American peregrine falcon, *Falco peregrinus anatum.*
Arctic peregrine falcon, *Falso peregrinus tundrius.*
Attwater's greater prairie chicken, *Tympanuchus cupido attwateri.*
Masked bobwhite, *Colinus virginianus ridgwayi.*
Whooping crane, *Grus americana.*
Yuma clapper rail, *Rallus longirostris yumanensis.*
California clapper rail, *Rallus longirostris obsoletus.*
Light-footed clapper rail, *Rallus longirostris levipes.*
Hawaiian gallinule, *Gallinula chloropus sandvicensis.*
Hawaiian coot, *Fulica americana alai.*
Eskimow curlew, *Numenius borealis.*
Hawaiian stilt, *Himantopus himantopus knudseni.*
Puerto Rican plain pigeon, *Columbia inornata wetmorei.*
Puerto Rican parrot, *Amazona vittata.*
Ivory-billed woodpecker, *Campephilus principalis.*
Red-cockaded woodpecker, *Dendrocopus borealis.*
Hawaiian crow (alala), *Corvus tropicus.*
Small Kauai thrush (puaiohi), *Phaeornis palmeri.*
Large Kauai thrush, *Phaeornis obscurus myadestina.*
Molokai thrush (Olomau), *Phaeornis obscurus rutha.*
Nihoa millerbird, *Acrocephalus kingi.*
Kauai oo (oo-aa), *Moho braccatus.*
Crested honeycreeper (akohekohe), *Palmeria dolei.*
Hawaii akepa (akepa), *Loxops coccinea coccinea.*
Maui akepa (akepuie), *Loxops coccinea ochraceu.*
Oahu creeper (alauwahio), *Loxops maculata maculata.*
Molokai creeper (kakawahie), *Loxops maculata flammea.*
Akiapolaau *Hemignathus wilsoni.*
Kauai akialoa, *Hemignathus procerus.*
Kauai and Maui nukupuus, *Hemignathus lucidus.*
Laysan and Nihoa finiches, *Psittirostra cantans.*
Ou, *Psittirostra psittacea.*
Palila, *Psittirostra bailleui.*
Maui parrotbill, *Pseudonestor xanthorphrys*
Bachman's warbler, *Vermivora bachmanii.*
Kirtland's warbler, *Dendroica kirtlandii.*
Dusky seaside sparrow, *Ammospiza nigrescens.*
Cape Sable sparrow, *Ammospiza mirabilis.*

REPTILES AND AMPHIBIANS

American alligator, *Alligator mississippiensis.*
Blunt-nosed leopard lizard, *Crotaphytus silus.*
San Francisco garter snake, *Thamnophis sirtalis tetrataenia.*
Puerto Rican boa, *Epicrates inornatus.*
Santa Cruz long-toed salamander, *Ambystoma macrodactylum croceum.*
Texas blind salamander, *Typhlomolge rathbuni.*
Houston toad, *Bufo houstonensis.*

FISHES

Shortnose sturgeon, *Acipenser brevirostrum.*
Longjaw cisco, *Coregonus alpenae.*
Lahontan cutthroat trout, *Salmo clarki henshawi.*
Piute cutthroat trout, *Salmo clarki selenris.*
Greenback cutthroat trout, *Salmo clarki stomias.*
Gila trout, *Salmo gilae.*
Arizona (Apache) trout, *Salmo sp.*
Humpback chub, *Gila cypha.*
Mohave chub, *Siphatles mohavensis.*
Pahranagat bonytail, *Gila robusta jordani.*
Moapa dace, *Moapa coriacea.*
Woundfin, *Plagopherus argentissimus.*
Colorado River squawfish, *Ptychocheilus lucius.*
Kendall Warm Springs, dace, *Rhinichthys osculus thermalis.*
Cui-ui, *Chasmistes cujus.*
Devil's Hole pupfish, *Cyprinodon diabolis.*
Comanche Springs pupfish, *Cyrinodon elegans.*
Tecopa pupfish, *Cyprinodon nevadensis calidae.*
Warm Springs pupfish, *Cyprinodon nevadensis pectoralis.*
Owens River pupfish, *Cyprinodon radiosus.*
Pahrump killifish, *Empetrichythys latos.*
Big Bend gambusia, *Gambusia gaigei.*
Clear Creek gambusia, *Gambusia heterochir.*
Pecos gambusia, *Gambusia nobolis.*
Unarmored threespine stickleback, *Gasterosterus aculeatus williamsoni.*
Gila topminnow, *Poeciliopsis occidentalis.*
Fountain darter, *Etheostoma fonticola.*
Watercress darter, *Etheostoma nuchale.*
Maryland darter, *Etheostoma sellare.*
Blue pike, *Stizostedion vitreum glaucum.*

Created in 1849, the Department of the Interior is concerned with the management, conservation, and development of the Nation's water, fish, wildlife, mineral, forest, and park and recreational resources. It also has major responsibiltities for Indian and Territorial affairs.

As the Nation's principal conservation agency, the Department works to assure that nonrenewable resources are developed and used wisely, that park recreational resources are conserved for the future, and that renewable resources make their full contribution to the progress, prosperity, and security of the United States—now and in the future.

ADDITIONAL SPACE LISTED JUNE 1, 1973

1. Utah prairie dog.
2. Northern Rocky Mountain wolf.
3. Eastern cougar.
4. Mississippi sandhill crane.
5. Puerto Rican whip-poor-will.
6. Santa Barbara song sparrow.
7. Desert slender salamander.
8. Okaloosa darter—a tiny minnow found only in Okaloosa County, Florida.

Mr. STEVENS. Some question has arisen with respect to the status of dall sheep and brown bear, two species found in Alaska. Neither of these species is on the Department of the Interior's list of endangered native fish and wildlife. Nor are there plans to add them at this time. I ask unanimous consent to have printed in the RECORD a letter from the Associate Director of the Bureau of Sport Fisheries and Wildlife to this effect.

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

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, D.C., June 7, 1973.

Hon. TED STEVENS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR STEVENS: This responds to your letter on behalf of Mr. John W. Hendrickson, Esq., regarding dall sheep and brown bear.

Please assure Mr. Hendrickson that neither of these animals are on this Department's

List of Endangered Native Fish and Wildlife and there are no plans to add them to this time.

We hope this information will clarify the matter. If we can assist you further, please call on us.

Sincerely yours,

——— ———,

Associate Director.

Mr. STEVENS. Mr. President, I would like to inquire of the Senator from California if he is prepared at this time to take up an amendment I have concerning unduc economic hardship.

Mr. TUNNEY. Mr. President, the Senator from New Jersey has a few comments that he wants to make in debate, if that is agreeable with the Senator from Alaska.

Mr. STEVENS. Mr. President, that is perfectly agreeable with me.

Mr. WILLIAMS. Mr. President, first I want to extend my sincere thanks and appreciation to the Senator from Washington (Mr. MAGNUSON) and to other members of the Senate Commerce Committee for their hard and alert work on this bill and for their dedication to the protection of endangered wildlife.

Mr. President, this is important legislation. It is remarkable when one considers the time in which the committee has been able to deal with this bill after its introduction on the floor, the hearings, and then bringing it to the Senate for consideration by the full Senate.

It was only June 12 of this year that I introduced this bill. It followed the introduction of another bill by the Senator from Washington (Mr. MAGNUSON) in April. The bill that I had introduced had a broader sweep of protection than the Magnuson bill. In my judgment, the best of both bills has been combined in S. 1983, the bill before us today, and I am more than grateful to the committee for their expeditious consideration of this measure.

Mr. President, one of our most precious natural resources is our wildlife. It is difficult to imagine a world without the many and varied creatures which inhabit our forests, rivers, and oceans.

And yet, if our wildlife continues to decline at the alarming rate we have witnessed during the past 100 years or so, it is indeed possible that the time will come when it will be necessary to visit a zoo or wildlife preserve in order to observe what was once an integral part of our everyday environment.

Many species of fish, birds and mammals have disappeared through the evolution process. Many of them were never abundant to begin with and were therefore particularly vulnerable to the encroachment of civilization. However, many species would still be abundant today were it not for overexploitation by man.

It was once necessary for man to hunt wild animals in order to obtain food and clothing. However, in today's industrial society, where there is a synthetic substitute for almost anything nature can provide, we are no longer dependent upon animals, as we once were.

Most animals are worth very little in terms of dollars and cents. However, their esthetic value is great indeed. The pleasure of simply observing them, as demonstrated by the hundreds of thousands of people who visit zoos and wildlife preserves each year, is unmeasurable. Furthermore, the integral part they play in preserving the delicate balance of nature cannot be ignored.

In the United States alone, over the past 100 years, 47 species of native fish and wildlife have become extinct. We have hunted them and destroyed their habitat. We have been indifferent to their fate and ignored the fact that once an animal has vanished from the Earth, it can never be replaced. Today, we can only hope to prevent more wildlife from becoming extinct.

For quite some time, it has been evident that present laws are inadequate for protecting endangered wildlife.

Neither the Endangered Species Protection Act of 1966, nor the Endangered Species Conservation Act of 1969, prohibits the taking or possession of native, endangered fish and wildlife.

Migratory birds are protected under the Migratory Bird Treaty Act; eagles are protected under the Bald Eagle Act; and marine mammals under the Marine Mammal Protection Act. The Lacey Act provides for Federal involvement if an animal is taken contrary to State law and transported across State lines. And the importation of foreign endangered wildlife is prohibited under the Endangered Species Conservation Act of 1969.

The present endangered species law requires the Secretary of the Interior to maintain two lists of endangered wildlife. One list is composed of the names of native—or domestic—endangered wildlife and the other list is made up of the names of foreign endangered wildlife. This law further requires that a species of wildlife be threatened with extinction before it may be placed on the endangered list. An animal's continued existence must actually be in peril before it may be considered endangered.

It is absolutely essential that a species of wildlife be afforded protection before it reaches the endangered list and thereby the brink of extinction. In addition, a Federal prohibition against the taking, import, export and interstate transportation of any species listed as endangered is mandatory if endangered wildlife is to be saved.

The continued survival of many species now listed as endangered is questionable. Various factors, including small population levels, restricted breeding areas, continued destruction of habitat and inadequate prohibitions against taking are responsible for their precarious existence.

The bill before us today, S. 1983, which I introduced, is designed to provide the protection needed to save species of wildlife threatened with extinction, as well as those species which are likely to become threatened with extinction if protective measures are not taken.

I would like to take a few moments to briefly review the provisions of this legislation.

S. 1983 requires that the Secretary maintain two lists. One list shall contain the names of "endangered" native and foreign wildlife and the other shall contain the names of "threatened" native and foreign wildlife. The endangered list will be composed of those species which are in danger of extinction. The threatened list will be composed of those species which are not presently in danger of extinction, but which are likely to become endangered if protective measures are not taken. The bill sets up requirements for determining and listing species of fish and wildlife which are endangered or threatened. Further, whenever the Secretary lists a species as threatened, he is required to issue regulations to protect such species.

S. 1983 would prohibit the taking, import, export, and interstate transportation, of any species of wildlife or part thereof which is listed as endangered or threatened. In addition, the Secretray is authorized to extend the protection of the act to any species which so closely resembles in appearance one which has been listed as endangered or threatened that enforcement personnel have difficulty in distinguishing between the listed and nonlisted species.

Jurisdiction over endangered and threatened species of wildlife is divided between the Secretaries of the Department of the Interior and the Department of Commerce.

Most States are intimately involved with endangered wildlife because of the habitat they control, the legal responsibilities they have for resident wildlife, and the skilled professional personnel which they employ. Many States are already conducting programs to identify and collect information about threatened resident wildlife and to design programs for their protection.

In recognition of the fact that the protection and conservation of endangered wildlife requires close cooperation between the Federal and State Governments, S. 1983 establishes mechanisms through which they can work together to protect endangered and threatened wildlife.

S. 1983 directs the Secretary to cooperate to the maximum extent practicable with the States. Financial aid grants to the States are authorized for the purpose of carrying out programs for the protection and management of endangered and threatened species. In order to qualify for this financial assistance, a State program must meet the strict criteria which is set forth in the bill. The Federal share of such a program may not exceed 50 percent of the total estimated costs for a single State.

The act in no way limits the power of any State to enact legislation or regulations more restrictive than the provisions of the act.

Under the provisions of S. 1983, the Secretary may delegate to a State the authority to manage resident endangered and threatened wildlife, if such State submits an acceptable plan for this purpose. Such plan must be submitted to the Secretary within 1 year from the date of enactment and must meet or exceed the requirements set forth in the act for obtaining financial assistance. If the plan is not disapproved by the Secretary, it shall go into effect within the State.

The prohibitions against the taking of endangered and threatened wildlife contained in S. 1983 will not apply within

the 15-month period following the date of enactment, except in those States which have not established an acceptable plan and those which do not prohibit the taking of endangered and threatened wildlife.

Resident endangered and threatened wildlife will be subject to the provisions of S. 1983 in their entirety upon the date of enactment in any State which has not established an acceptable plan.

One of the major causes of the decline in wildlife populations is the destruction of their habitat. The future of many species, including some already listed as endangered, is in jeopardy because of continued threats to their environment.

It is therefore essential that the habitat of endangered or threatened wildlife be protected from further encroachment. S. 1983 gives the Secretary authority to acquire any real property which he determines to be necessary in order to protect and restore an endangered or threatened species. He is authorized to use the land acquisition authorities of the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act. He is further authorized to use funds authorized and appropriated under the Land and Water Conservation Fund Act, in addition to direct appropriations under S. 1983, for the purpose of acquiring such lands.

In order to facilitate international cooperation in the protection of endangered and threatened wildlife, foreign currencies accruing to the United States in other nations under the Agricultural Trade Development and Assistance Act or any other law, may be used to provide assistance to any foreign country in the development and management of programs which are necessary or useful in the conservation and protection of endangered or threatened wildlife. Further, the Secretary, in cooperation with the Secretary of State, is authorized to encourage foreign countries to establish protective programs and to enter into bilateral or multilateral agreements for the protection of endangered or threatened species, and to encourage citizens of such countries to practice conservation in taking fish or wildlife for importation into the United States.

In February of this year, the United States convened a plenipotentiary conference to bring international protection to wild fauna and flora in danger of extinction due to commerce. Representatives from 80 countries attended this conference. The result was the Convention on International Trade in Endangered Species of Wild Flora and Fauna, which provides for a system of regulation for the purpose of preventing the commercial overexploitation of any species of flora or fauna judged to be endangered or threatened by trade. S. 1983 provides the means with which to carry out the provisions of the convention.

Permits may be issued for the taking of a threatened or endangered species for scientific purposes or the propagation of such species in captivity or in a controlled habitat. But only if such taking will not adversely affect the survival of the wild population.

The provisions of the act do not apply to Alaska natives, who take endangered or threatened species for the purposes of consumption or use in a native community or for the purpose of creating authentic native articles of handicrafts and clothing, provided the taking is not done in a wasteful manner.

In addition, a limited hardship exemption is authorized for persons who have entered into contracts prior to the date a species is listed or proposed to be listed as an endangered or threatened species.

A civil penalty of up to $10,000 and a criminal penalty of up to $20,000 and up to 1 year in prison, is provided for under the act.

The act also authorizes the Secretary to pay a reward of up to $2,500 to persons who furnish information leading to a civil penalty or criminal conviction.

Importers of fish and wildlife will be required to register with the Secretary of the Treasury, to keep records and to provide the Secretary or his representative with access to these records and to their place of business.

Citizen suits are also permitted, subject to certain conditions.

Furthermore, the Secretary of the Smithsonian Institution is directed to review species of plants which are endangered or threatened and methods of providing adequate protection, including legislation. He is directed to report his findings to Congress within 1 year from the date of enactment.

Mr. President, I believe that in S. 1983, we have before us the necessary tools with which to restore our endangered and threatened wildlife. I sincerely hope that my colleagues in the Senate share this view, and that S. 1983 will be approved without delay.

I appreciate the full and comprehensive explanation and review of the provisions of this bill that has been made earlier by the knowledgeable Senator from California (Mr. TUNNEY) and the comanager of the bill, the Senator from Alaska (Mr. STEVENS).

Mr. President, I yield the floor.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

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

The second assistant legislative clerk proceeded to read the amendment.

Mr. STEVENS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

Mr. STEVENS' amendment is as follows:

On page 53, line 13, through page 54, line 11, strike sub-section 11(b) and insert:

"(b)(1) HARDSHIP—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish or wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of Section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used for primarily commercial purposes.

"(2) As used in this subsection, the term 'undue economic hardship' shall include, but not be limited to:

(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

"(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

Mr. STEVENS. Mr. President, this is really a noncontroversial amendment, and I am pleased to note that I understand the distinguished Senator from California, the manager of the bill (Mr. TUNNEY) has indicated that he would accept the amendment.

It makes certain changes in the section granting exceptions for undue economic hardship. Because it makes a series of changes throughout that section, I have set forth the entire section as amended in my proposed amendment.

My amendment would require that an exception for undue economic hardship must be granted to all non-Native residents of Alaskan Native villages unless such residents are found by the Secre-

tary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. In other words, the presumption is that such persons are to be entitled to such an exception. This exception will apply probably to no more than a dozen Alaskans. These are persons who are not one quarter or more Native by blood but are integral members of the Native communities that take endangered species. Presently the only such species of which I am aware is the bowhead whale. This is taken in approximately seven villages along the northwest coast of Alaska. Thus, very few people will be covered. However, to be fair, I believe that all such persons, because they really are part of the Native communities, must be excepted to the same extent as Alaskan Natives in the same communities. Such non-Natives who depend primarily upon the taking of fish and wildlife for subsistence need not apply in writing for the exception. Others must.

This amendment defines the term "undue economic hardship" to also include three groups of persons.

The first group is those persons who incur substantial economic loss resulting from the inability caused by this act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a proposed listing of a species.

The second is those who, for the year prior to the listing of a species, have derived a substantial portion of their income from the lawful taking of any listed species and will incur substantial economic loss as the result of such listing.

The third is those who must take endangered species for subsistence and who first, are not reasonably able to secure other sources of subsistence, and second, depend to a substantial extent upon hunting and fishing for subsistence, and third, must engage in such curtailed taking for subsistence purposes.

The Secretary is also, under my amendment, given additional discretion to grant exceptions under such limits as he may determine necessary, if he does not believe blanket exceptions are warranted. Such limits may be as to time, area, or any other factor of applicability.

I ask unanimous consent to have printed in the RECORD a telegram I received from the Alaska Legal Services Attorney for Nome.

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

NOME, ALASKA, *July 19, 1973.*

Senator TED STEVENS,
Washington, D.C.

This is to convey my strong support for your amendments to the endangered species legislation currently before the commerce committee. As an Alaska legal services attorney assigned to the Nome office I travel quite extensively through the villages in northwest Alaska. The impact on the residents of these villages of prohibiting the taking of animals supplying traditional foods would be disastrous. As for nonnatives, I would estimate there are not more than 10 persons who rely on the taking of animals used in traditional Eskimo food for subsistence. They are hardly a danger to any species.

ROBERT BUNDY,
Attorney at Law.

Mr. STEVENS. Mr. President, this amendment and the other amendments dealing with Alaska Natives were worked out by my staff and the staff of the Senate Commerce Committee's Environment Subcommittee in coordination with Alaska Legal Services.

I am most pleased to express my appreciation to the staff of the Commerce Committee's Environmental Subcommittee and to the Alaska legal services in regard to this amendment. I believe that it does protect fully the rights of those residents of Alaska Native villages. That is the intent of the amendment, to clarify the congressional intent with regard to that protection.

I am hopeful that the Senator from California may be able to accept the amendment.

Mr. TUNNEY. Mr. President, I understand that this amendment is not intended to create a loophole for those who would exploit their Native village resident status in order to increase their taking of the endangered species or to increase commerce in such endangered species but only in order to meet the bona fide community needs; is that not correct?

Mr. STEVENS. The Senator from California is absolutely correct. They are bona fide residents of Native villages who may not be considered to be Natives, who may be married, for instance, to Native people and who are part of the subsistence economy. This amendment is not intended to give anyone the opportunity to start taking endangered species or any other kind of species by virtue of merely establishing residence in a Native village.

Mr. TUNNEY. We have seen examples of thoughtless commercial taking of endangered species, which only helps to drive endangered species nearer and nearer to extinction. I would expect that no permit would be granted under the provisions of this amendment to further that kind of process. I am sure that the Senator from Alaska would agree that no area of the drafting of this amendment would be utilized in order to permit unwarranted exploitation of endangered species.

Mr. STEVENS. I absolutely concur. The Endangered Species Act of the State of Alaska is specific in that regard already. I am trying to make certain that the Federal law is as specific. We are not trying to open the door to commercial exploitation. We are trying, however, to protect those people who live in a subsistence economy and depend on the animals for food and for their livelihood. It is not intended in any way to encourage or to authorize commercial exploitation by those not so dependent.

Mr. TUNNEY. The Senator from California is aware that certain non-Native Alaska village residents are dependent upon the taking of endangered species. Some of these people have entered into contracts which may have to be broken due to this act. They would suffer unwarranted economic hardship. As I understand the amendment, its purpose is to provide individuals, particularly those who depend on such taking for subsistence purposes, and may be unaware of the application requirements of the act, with a 1-year period to find other means of support. Is that correct?

Mr. STEVENS. That is correct.

Mr. TUNNEY. With that understanding, I think that the Senator from Alaska has offered an amendment which will strengthen the legislation and will protect certain constituents of the Senator in Alaska, and the committee will accept the amendment.

The PRESIDING OFFICER (Mr. CHILES). Is all time yielded back on the amendment?

Mr. STEVENS. I yield back the remainder of my time.

Mr. TUNNEY. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Alaska (Mr. STEVENS).

The amendment was agreed to.

Mr. STEVENS. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. TUNNEY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. STEVENS. I call up another amendment.

The PRESIDING OFFICER. The clerk will report the amendment.

The second assistant legislative clerk read as follows:

On page 71, lines 20 through 24, strike the proviso and substitute:

"*Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a state which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State."

Mr. STEVENS. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on the pending amendment occur today at the hour of 2 p.m.

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

Mr. EASTLAND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Senator would have to ask unanimous consent for that because there is an amendment already pending.

Mr. EASTLAND. Mr. President, I ask unanimous consent that I may send an amendment to the desk for immediate consideration. The manager of the bill has agreed to accept it.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will state the amendment.

The second assistant legislative clerk read as follows:

On page 29, line 15, before the period, insert a comma and the following: "other than a species of the order insectica determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man."

The PRESIDING OFFICER. Who yields time?

Mr. EASTLAND. Mr. President, I yield myself such time as I may desire.

Mr. President, this amendment would except insect pests which the Secretary found presented an overwhelming risk to man from the protection provided by the bill. The Senate recently passed S. 1888 to provide for a program to eradicate the boll weevil and other insect pests of cotton. Millions of dollars are spent every year in trying to protect man from such pests. If these eradication programs should approach success, the bill as reported would require their cessation until the insect had been given an opportunity to regenerate.

Another example is the gypsy moth, which was brought into this country by an individual for scientific purposes and has multiplied and spread across the Northeast and is expanding its range State by State defoliating our forests. I do not believe that it makes any sense to attempt to eradicate and preserve these pests at the same time; and I hope that the committee will see fit to agree to this amendment as a technical correction to the bill.

Mr. TUNNEY. Mr. President, I accept the amendment offered by the Senator from Mississippi, which would permit the Secretary to not list species of the order of insectica determined by the Secretary to constitute a pest whose protection under provisions of this act would present an overwhelming and overriding risk to man.

It is my understanding that this amendment would permit the Secretary to not list an insect upon a finding that the insect presented such an overwhelming risk to man that there was no possible justification for providing protection, but that it would not be used to promote the elimination of species which in only a few numbers might be of value to society. The term "overriding" threat implies an extreme danger which only total destruction would prevent.

Even if the risk is overwhelming that, in and of itself, would not keep the species off the list. The Secretary must also find that the avoidance of that overwhelming risk overrides the need to protect the species. In other words, he has discretion as to whether he chooses to protect the species or humans in the case of an overwhelming risk to man. Without the Eastland amendment, he would not have that discretion and would have to protect the species whenever it became endangered regardless of the very worst consequences for man's health or well-being.

I think that the Senator from Mississippi has a similar understanding of the amendment?

Mr. EASTLAND. That is correct.

Mr. TUNNEY. I am prepared to accept the amendment and yield back the remainder of my time.

Mr. EASTLAND. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Mississippi (Mr. EASTLAND).

The amendment was agreed to.

Mr. STEVENS. Mr. President, the pending amendment is my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. Mr. President, it is my understanding that the Senator from Utah has an amendment and if it is one that is to be accepted by the manager of the bill, I would have no objection to taking it up at this time.

I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged against my amendment.

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

The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. STEVENS. 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. STEVENS. Mr. President, the amendment I have at the desk is to section 16(d). The present proviso states that the prohibitions against taking under S. 1983 automatically apply in any State which does not prevent the taking of any species listed by the Secretary as an endangered species. These prohibitions against taking apply to all species which have been listed by the Secretaries. The present proviso gives the Secretaries no discretion in the matter. The prohibitions automatically apply.

This amendment, as submitted by me and by the Senators from Montana (Mr. MANSFIELD and Mr. METCALF) and the Senator from Georgia (Mr. TALMADGE) would give the Secretary the discretion he needs to act in this area. This amendment also preserves traditional areas of State sovereignty over resident species.

The amendment provides that if the Secretary with authority over the particular species finds that a particular State does not prevent the taking of a species listed by him as endangered and also does not provide adequate protection for that species, he may in his discretion by regulation implement the provisions of subsection 10(a), the prohibitions against taking.

Certain species, like the American alligator, are listed as endangered presently by the Federal Government. However, they are not endangered in certain States like Louisiana. As a matter of fact, there are enough American alligators in Louisiana to permit the export of a number of animals to other States, for zoos and other purposes.

Certain States do not "prevent the taking" of particular species, but have enacted other measures to protect them. These include habitat acquisition to protect the areas in which these animals live and forge. Such programs are not taken into account under the present language of this section. Land acquisition and other similar conservation measures actually will do more to protect many species of endangered animals than preventing their taking.

Third, certain States, like Illinois, list the species protected under their State statutes. The Secretary may, by regulation, list or delist additional species and it will take some time to amend the State law to take care of those circumstances.

If each State law which so lists the species covered does not exactly conform to the Secretary's lists, present prohibitions of the bill, under section 10(a), will automatically become effective.

Unfortunately, in none of these cases is the Secretary given any discretion. He must prohibit the taking of all species covered under the act merely because some of the species are not protected by State statute, although there is every reason to believe that the State would act to protect those species that are found to be endangered. They have in the past, and I feel certain they will in the future.

This amendment will give the Secretary the discretion he needs to act in such situations.

I want to emphasize the necessity of keeping the States interested in endangered species. They have almost 6,000 officers who are capable of protecting these species. The Federal Government has only some 200 in the whole United States, and to shift this burden from the States to the Federal Government without giving the Secretary discretion to recognize those States which are in fact taking action to protect endangered species would be unfortunate.

I am pleased that Senators MANSFIELD, METCALF, and TALMADGE have seen fit to join as cosponsors of the amendment.

I hope Senators will read the letter we have placed on their desks before voting on this amendment, because the amendment, I think, is very important to preserve the role of the State fish and game departments who have done an admirable job so far in trying to protect endangered species.

Mr. President, I reserve the remainder of my time.

Mr. TUNNEY. Mr. President, as floor manager for the Endangered Species Protection Act, I am not able to accept the amendment offered by the Senator from Alaska. I recognize full well that the purposes of the Senator are well intended. However, I feel it goes too far.

The Committee on Commerce, which has carefully studied Federal-State relationships in the endangered species protection area, has designed in S. 1983, a legislative scheme which is sufficiently sophisticated, first, to permit the continued management of endangered species by those States with well-developed programs; second, to provide Federal protection to States which do not yet offer such protection; and third, to encour-

age the development of programs in those States which do not now actively protect endangered species in a manner that will eventualy permit a much reduced Federal commitment to endangered species conservation and management.

If the bill is reported, Federal prohibitions against the taking of endangered species apply upon the date of enactment of this act only in those States which have not adopted similar protective measures. During the 15 months subsequent to the passage of the act any State would otherwise be able to exercise its full powers to manage, protect, conserve, restore, or propagate endangered and threatened species. These powers would include the power to permit the taking of threatened species. Furthermore, during this 15-month period any State might apply to the Secretary for approval of its States endangered species management plan. Any State whose plan was not disapproved by the Secretary within 3 months of submission to the Secretary would have full power to regulate both endangered and threatened species, including the power to regulate the taking of endangered species otherwise regulated under this act. At the end of the 15 months following passage of the act, all of the provisions of this act regarding the management and taking of endangered and threatened species would go into effect in any State which had not applied to the Secretary or whose plan had been disapproved by the Secretary.

Thus, the bill as reported takes care of all the options: first, it provides immediate protection against the taking of endangered species in any State which has not provided for such protection at this time. Second, it allows any State to secure full management powers over endangered species by submitting an adequate management plan to the Secretary for approval. Third, 15 months after the passage of the act, Federal law would go into effect to carry out the purposes of this act in any State that should not have an approved management program.

Not only does the bill, as reported, permit any State which adequately protects endangered species to continue such a protection program; it provides funds to assist the State in its management and conservation activities. Ten millon dollars is provided to fund this effort for the first 2 years the act is in effect.

The Senator from Alaska argues that the issue is whether or not we are going to preempt the State judicial power to manage present fish and wildlife. This, however, is not the issue. The issue is whether we are going to provide full protection to those species of fish and wildlife which are imminently in danger of extinction in those States which have not yet deemed fit, in the 200 years of our Nation's existence, to provide full protection to these species.

Presently, 35 States provide protection for endangered species. In most of these States, their laws are as strong as or stronger than the provisions of this bill. In the others there are strong management programs. Only 15 States do not now provide some protection for endangered species.

Under this bill there would be absolutely no Federal intervention in those States which provided full protection for presently endangered species. Those States which do not provide absolute prohibitions against taking endangered species but do provide strong programs approved by the Secretary would be totally free to manage a residential species within ? months of this act. The rationale behind the proposed amendment is that in an emergency the Secretary can rush in and take care of any endangered species. This bill as reported is predicated on the evidence provided in hearings before the Committee on Commerce in the last 2 years that an emergency already exists. This bill only prevents the capacity of those who would exploit endangered species in those States which have not yet had the time to prepare adequate endangered species programs.

This is a bill to protect endangered species, to provide for their conservation, restoration, and propagation. Some argue that the States should have their chance. I argue that the States have had their chance. Nothing in this bill prevents them from continuing to do the excellent work that most of the States have done in the past.

Some States, such as Alaska, have done an excellent job. I think California has done a good job. But there are States which have not done a good job, and it seems to me we ought to have the ability, immediately upon passage of this bill, to protect endangered species inasmuch as those States themselves have not seen fit to do as good a job as the authors of the bill envision as being necessary to protect endangered species.

Mr. STEVENS. Mr. President, I think the Senator from California states his case very well, but, unfortunately, the bill is drawn on the basis of making the Federal law preemptive. In the event there is a species that is not totally protected, then the Federal law applies to all species.

The effect of the amendment I have offered is that if the Secretary finds within this 15-month period that a State does not prevent the taking of a species listed by him as endangered, does not provide adequate protection for that species, he may by regulation implement subsection 10(a) with respect to the taking of that species. In other words, my amendment is directed to a particular situation.

The present language of section 16(d) makes the provisions of the bill effective on the date of enactment of the bill. It does not prevent the taking of any species listed by the Secretary as an endangered species. I think it is most important to keep in mind again what we are doing. We are saying, in effect, that if Louisiana has a management program which has in fact produced a situation in which alligators can be harvested for cultural, scientific, or other purposes without harming the species in that area, even though the alligator may be listed as an endangered species by the Secretary of the Interior, since they do not prevent the taking of alligators, and in fact are taking them under a very scientific and wise management program, that all of the Louisiana laws would be suspended with regard to any species listed among the 109 in the Federal endangered species list. That to me is foolhardy, to suspend the activities of a very viable and good management program, and one that is farsighted.

All that my amendment would do would be to give the Secretary discretion over that on the basis of the individual species, and not make the law effective on the date of the act as to all species if there is any species that is not protected and on the list of the Secretaries on the date of enactment of the bill.

I think that it would be important to list some of the types of species we are talking about. There has been prepared a list of some 14 particular species.

I ask unanimous consent to have this material printed in the RECORD at this point if the Senator from California does not object.

Mr. TUNNEY. Mr. President, I do not object.

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

1. Longjaw cisco—distribution of this species is throughout Lakes Michigan and Huron, and a very small population in the small deep hole in Lake Erie that was present as late as 1948. The decline of this species is attributed to sea lamprey predation and intensive commercial fisheries for large ciscos and increased competition from the small bloater and alewife in Lakes Michigan and Huron. The low number in Lake Erie is due to a very limited favorable environment which has become increasingly unfavorable in recent years.

2. Lahontan cutthroat trout—This species is found primarily in California, but there are a few in Nevada. California provides complete protection but Nevada does not. The decline of the species is attributed to damage to spawning beds resulting from forest removal, fires, and over grazing. Also, dams which block spawning runs, pollution, diversion of water for irrigation, hybridization, and competition with rainbow trout and other cutthroats are considered to be other reasons for their demise. This species is found primarily on public lands and has been placed in a special protected category by the Bureau of Land Management. The Bureau of Sport Fisheries and Wildlife is constructing a fish hatchery primarily for rearing this subspecies.

3. Greenback cutthroat trout—this species is found only in Boulder and Larimer Counties, Colorado. The decline of this species was caused by deterioration of habitat due to man's activities, competition from stocked trout, and hybridization. Although my information does not show that this species is fully protected by the State of Colorado, the wildlife agency is cooperating in reclamation and restocking of certain waters in the Rocky Mountain National Park and stocking is proposed in other limited reclaimed suitable waters. Barrier dams to isolate populations and angling restrictions are also proposed for certain streams.

4. Arizona trout—the Arizona Game and Fish Department has stocked several streams in Arizona with this species. They have closed Ford Creek and the Upper East Fork of the White River to fishing. Barrier dams to protect the species were constructed on both streams in cooperation with the department, and, the White Mountain Apache tribe constructed two lakes for this trout. Plans are underway to increase hatchery production of this species and restock suitable reclaimed waters. The Arizona Game and Fish Department has several thousand of these fish producing at one of its state hatcheries.

5. Pahranagat bonytail—this species is

found only at the outflow of two springs in Lincoln County, Nevada. Its decline is attributed to irrigation development and establishment of competitive and predatory exotic species in its range. Measures have been proposed to transplant the species into other suitable habitat, if it can be found.

6. Woundfin—this species is found essentially in the Virgin River below Hurricane, Utah. Its decline is attributed to modification of its habitat by man. The species is adapted to life in sandy, swift, turbid rivers. A dam is proposed above St. George, Utah, which purportedly would render this species extinct. Research has been proposed to determine its habitat requirement so as to establish a population elsewhere.

7. Colorado squawfish—this species occurs only in the middle and lower Green River, the main Colorado River above Lake Powell, and the Salt River. The reason for its decline is attributed to the modification of its habitat by man through construction of large reservoirs. The species will not reproduce in cold tailwaters below high dams nor in reservoirs behind these dams.

8. Warm spring pupfish—this species is found in School Spring and Scruggs Springs in the northern part of Ash Meadows, Nye, Nevada. Although not fully protected by state law, School Springs, which is administrated by the Bureau of Land Management, was improved and fenced in 1969. In 1970 a well was drilled to serve as an additional water supply during periods of low spring waterflow to protect the species. This pupfish, of course, is found primarily on public land.

9. American alligator—The American alligator is completely protected in all states. However, due to increased populations and impending habitat destruction, the Louisiana Wildlife and Fisheries Commission lifted the total protection last year and conducted a closely regulated harvest in one parish of the state. This species, with its tremendous reproductive potential, and with strict law enforcement given by southern state wildlife agencies, has rebounded tremendously in recent years. It is very doubtful if it will remain on the endangered species list very long.

10. Puerto Rican boa—this species, found only in Puerto Rico, is in trouble mainly from mongoose predation, according to authorities. This theory has been disputed, however, by some observers. People usually kill every one they see and automobiles kill a few every year.

11. Aleutian Canada Goose—this species does not receive total state or federal protection. It is managed by the federal government, not the state, under the Migratory Bird Treaty Act. Hunting is still permitted by the Bureau of Sport Fisheries and Wildlife.

12. Mexican duck—likewise, this species comes under the purview of the federal government. It is not totally protected, hunting is still allowed by the Bureau of Sport Fisheries and Wildlife.

13. Eastern timber wolf—this species is totally protected in every state except Minnesota. The State of Minnesota came up with a state plan to protect and manage this species last year but violent objection from the Bureau of Sport Fisheries and Wildlife resulted in the state legislature rejecting the proposal. Hopefully this program will be accepted by the next state legislature. At present nearly 2 million acres of the Superior National Forest provides complete protection for the species.

14. Red wolf—the red wolf is found in Texas and Louisiana. Texas recently passed an endangered species law which affords complete protection to the red wolf in that state. In Louisiana the red wolf is given complete protection except in cases of livestock predation which is controlled by federal agents. The livestock-killing animals are removed alive and transferred to the Wild Animal Propagation Trust of the American Association of Zoological Parks and Aquariums.

Those animals listed above are the only ones on the U.S. native endangered species list not receiving complete protection by state law, to the best of my knowledge. As you can see two of the species are under federal control, not state. Also, many of the species do receive protection in some form or another either from the state or some federal agency when they are found on public lands. Therefore, I cannot foresee where any animal on the endangered species list would suffer as a result of an interim period provided in the new endangered species act to give state agencies an opportunity to beef-up their programs in compliance with that act.

Mr. STEVENS. I am not trying to undermine the bill. My State supports the bill, and I think that we have been the leaders in this endeavor. My Governor has indicated that he thinks it is a good idea. However, we want to maintain our ability to act with regard to all species, even though it might be that one species is listed.

I hope that the Senator from California will see my point, that if one species or more is listed and is endangered in Pennsylvania, but is not endangered in Alaska, having it on that list, as the bill stands now, would not only lift it with regard to one State, but would lift it entirely.

Mr. TUNNEY. Mr. President, all that the State of Alaska would have to do would be to apply to the Secretary for approval of this plan.

Mr. STEVENS. But what that would require would be calling a special session of the State legislature. We protect them by State statute. And we must be given the time to call the legislature into session to pass a law on the subject. That is the reason for the 15 months delay.

My friend, the Senator from California, will recall that we put in the 15 months as a sort of breathing period to permit the States which do not protect the taking of any species to have time to act.

We can turn that around and say that the burden is on the Secretary, and if he finds that they are not protected, he may suspend the State law as to that species.

I thing that is fair. I think the burden is where it should be. After all, we are dealing with 109 species on the list now. And a lot of people are thinking that we want to take a species that is in danger. They do not understand the fact that Louisiana can have alligators literally, as the old saying goes, coming out of the swamps, whereas they are endangered in some other States.

Mr. TUNNEY. The State of Louisiana could apply for approval of the plan. And if they had an excess number of alligators and they felt that a reasonable harvest of alligators made sense in the State of Louisiana, the Secretary of the Interior might agree.

Mr. STEVENS. In the meantime, all of the plans would be suspended. The State law would become inoperative. They are listed and, therefore, no management could be undertaken as far as the harvesting of any species during that period of time. And the State has to wait and ask the Secretary of the Interior for approval of a plan which is already effective.

Mr. TUNNEY. In the case of Louisiana, it is the understanding of the Senator from California that if the State of Louisiana made application, they would have immediate approval of the plan as it relates particularly to alligators. They would then be under State management, and there would be no problem.

What specific species in Alaska is the Senator from Alaska talking about in terms of their being affected?

Mr. STEVENS. I would inform the Senator from California that to my knowledge there is no species in Alaska that are endangered that are not already protected by the State plan.

I am not talking about Alaska. I am talking about the general proposition of protecting them where they are endangered. Again, in the Lake Superior wilderness area, we have an area which protects wolves, even though they may not be fully protected by the State law. They are provided a habitat, which is absolute protection. It would be immaterial as to whether the State law protected them, because the only place in which they are found is in a sanctuary.

Any Secretary of the Interior under my amendment, if he lists wolves, would look to that area and say that those wolves do not have to be listed under State endangered species law, because the State already has, as a practical matter, imposed absolute protection for that species. Under present language of the bill, because they are in fact listed on the Federal endangered species list for the whole Nation, they would be taken out of State jurisdiction in this regard.

Mr. TUNNEY. Unless the State came in and asked for approval of that management plan. In the case of Alaska, the management plan would be approved immediately. It is an excellent plan. We are not talking about States such as Alaska which have excellent management plans. However, we are talking about States which do not have plans or which have inadequate management plans. We did not want to wait 15 months to have the kind of controls that were deemed necessary.

It was the view of the committee that if there is a clear and present danger to the endangered or threatened species, then we wanted to have action to protect those species as of the date of the enactment of the law.

I think it is very important that we take such action immediately. It does not make sense, at least to me, to say that we are going to wait for another period of time when we already recognize that the danger is present and with us and that some species are threatened with extinction.

Mr. STEVENS. Mr. President, I think the Senator from California states his position well. I have no great disagreement with him the way it is stated.

The only problem is that the burden is placed on the wrong foot. The burden is

placed on those people who have a good program—a program that is effective—to come forward and ask the Secretary to approve their program. However, my amendment puts the burden on the Secretary to go to those who do not have an effective program and suspend their authority as to particular species.

As the Senator points out, some 30 States do already have programs.

A relatively small number of States do not have the program. However, it would be very simple for the Secretary to go to these States and say, "You are not protecting the species that are listed." They would then be suspended and they would have the burden of coming back and asking for approval.

However, under the Senator's amendment, the 30 States that do have programs are all suspended if any of them contain any species listed on the Federal endangered species list on the date of the enactment of this act.

In the outline which I had printed in the RECORD, one of the species, as I recall, is a small fish that is found only in Hot Springs. If that fish is not listed on the endangered species program in that State, the entire management program is suspended until the State comes in and asks for restoration.

That is wrong. If the State does not list that species, and the Secretary wants to have it listed, he can do so immediately under my amendment. There is no time frame involved. He can issue the regulations to protect them immediately.

I am sure that if my amendment is in the bill at the time the bill goes to the House and the bill is signed by the President, the Secretary will have the regulations ready to protect those species that are not protected now.

But I believe we have an honest difference of opinion. I want to be subjective, to put the burden on the Secretary to look after those States which do not have effective regulation. I believe the Senator from California is defending the commitee's bill, which puts the burden on those States which do have effective regulation to come in and prove it. That to me is the wrong way to approach the bill, and I disagree very honestly and openly with the Senator from California, as I have throughout the consideration of this measure.

Therefore, I would like to change that proviso.

Mr. TUNNEY. Mr. President, I would just like to say there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska.

The PRESIDING OFFICER. All time of the Senator from California has expired. The Senator from Alaska has 8 minutes remaining.

Mr. STEVENS. I yield such time as the Senator from California may desire.

Mr. TUNNEY. I thank the Senator. As I say, there is no Senator who has made a greater contribution to the development of this legislation than the Senator from Alaska. So I certainly do not want my remarks to be in any way construed that I think the Senator from Alaska is trying to open up an evasive loophole in this legislation, because I do not think that is the case. His persistent interest in seeing this legislation passed shows that he is devoted to the concept of protecting endangered species. I know this full well, and I would say that he has made a tremendous contribution, not only in the committee but on the floor, in explaining what the purposes of this act are.

I must say that I do disagree on this particular point. I think that we do have a clear and present danger to endangered species now, and I think that the Federal Government ought to, at the time that this bill passes, provide protection to endangered species, and the States ought to come in and have their plans approved if they are not now providing adequate protection. In the case of Alaska, it would be approved forthwith, and with many other States the case would be the same. As things now stand, many States already provide the protection required under the act.

The Senator mentioned the State of Louisiana and the alligators, and the fact that at one point alligators were threatened in Louisiana, but through a good management program the State of Louisiana has been able to see propagation of alligators to the point that a reasonable harvest is deemed desirable.

There is nothing in the legislation as presently drafted and as reported by the committee to prevent the Secretary from granting a permit to take a reasonable number of alligators, even if the State plan for the management of endangered species in Louisiana was disapproved by the Secretary. I do not know whether the State plan would be disapproved or approved, but even if it were disapproved, and that meant that the Federal regulations would be operative, it would not prevent the Secretary from granting a specific permit to the State to allow a reasonable number of alligators to be taken.

So I recognize that there is a disagreement. I recognize that there is a difference of philosophy. I just happen to think that we have such a need for the management at the Federal level of endangered species that we ought to have the act become operative across the board at the time of passage, and if States are now handling the problem better than the Federal Government, the Federal Government would not be involved in their affairs.

Mr. STEVENS. Mr. President, I thank the Senator from California for his kind remarks. I believe we have, as I stated, an honest difference of opinion on the approach to be taken with regard to alligators. They are listed among the 109 that are already endangered species, notwithstanding the fact that, as I say, in Louisiana they have a good management program and they are not endangered there. The effect of the committee bill would be to suspend the Louisiana program until the State of Louisiana came forward and demonstrated that it was in fact a good program. The fact that there is a surplus of alligators there demonstrates that they have a good program, in my opinion.

I would say to the Senator from California that when I conducted the hearings on this matter, I asked the representatives of the National Association of State Game & Fish Commissioners, the Wilderness Society, the Friends of Earth, and the others with regard to this preemption, did they not feel that the States should have a time period to act before the Federal Government should move. My understanding of their response was that they all believed that the State should be given a reasonable time. That is the reason for the 15-month time period that is in the bill, which is reasonable as far as the committee is concerned. The Secretary should act on an emergency basis to protect individual species that are in need of protection during that period.

That is my understanding of the general tenor of the witnesses' comments, and I believe this amendment would carry out that objective, which I outlined to the witnesses as they appeared before the committee.

Mr. President, I assume that the time is expired.

The PRESIDING OFFICER (Mr. CHILES). All time on the amendment has expired. Time can be yielded on the bill itself.

Mr. TUNNEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TUNNEY. Is there anything in the rules to prevent another amendment from being offered between now and 2 o'clock, the time that was designated for the yea-and-nay vote on the Stevens amendment?

The PRESIDING OFFICER. The time on the Stevens amendment having expired, another amendment is in order.

Mr. MOSS. Mr. President, I send to the desk a series of amendments, which I call up, and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. MOSS. Mr. President, since they are rather lengthy and complicated, I ask unanimous consent that further reading of the amendments be dispensed with, and I shall try to explain what the purpose of the amendments is. I have discussed them fully with the manager of the bill.

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

Mr. Moss' amendments, en bloc, are as follows:

Page 29, line 9, insert "(1) 'Conservation' and 'management' mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends.

Page 30, line 16, insert "(7) 'Optimum carrying capacity' means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function."

Page 30, line 16, and immediately following (7) above, insert "(8) 'Optimum sustainable population' means, with respect to any population segment to endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part."

Pages 29, 30, 31 and 32, renumber the present paragraphs (1), (2), (3), (4) and (5) as (2), (3), (4), (5) and (6) and renumber the present paragraphs (6), (7), (8), (9), (10), (11), (12), (13) and (14) as (9), (10), (11), (12), (13), (14), (15), (16) and (17).

Page 36, lines 14 and 15, strike the words "protection, restoration or propagation" and insert the words "and management."

Page 38, lines 2 and 3, strike the words "protection, restoration, or propagation" and insert the words "and management."

Page 38, lines 11 and 12, strike the words "management, conservation, protection, and restoration" and insert the words "conservation and management."

Page 39, lines 12 and 13, strike the words "conservation, protection restoration, and propagation" and insert the words "conservation and management."

Page 39, lines 21 and 22, strike the words "conservation, protection, restoration and propagation" and insert the words "conservation and management."

Page 40, lines 7, 8 and 9, strike the words "research, censusing, law enforcement, propagation and habitat acquisition or improvement." and insert the words "conservation and management."

Page 72, line 4, strike the words "management and taking" and insert the words "conservation and management."

Mr. MOSS. Mr. President, these amendments that I have proposed are simply to establish in this bill a definition or definitions that are consistent generally with the language that was worked out in the sea mammal bill that the Senator from South Carolina (Mr. HOLLINGS) worked on so vigorously, and that also came out of our Commerce Committee.

What we are trying to do here, and what this amendment will accomplish, is to define conservation and management in a way that is agreeable to and supported by the wildlife community. It reinforces Congress' determination, as expressed in the Marine Mammal Protection Act, that our invaluable and irreplaceable wildlife resources be handled on a professional and not simply an emotional basis.

The amendments would, first of all, insert a new paragraph 1 at page 29, line 9, to provide that conservation and management mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations in endangered and threatened species at the optimum carrying capacity of their habitat.

Such terms include the entire scope of activities that constitute a modern scientific resources program, including but not limited to research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation, and restoration of such species, including regulation and taking necessary to these ends.

The thrust of these amendments is that the States, in managing resident wildlife, are authorized to maximize the population. It is not simply to keep endangered species at a good level, but really to improve and expand the species, and that whatever scientific methods are needed in order to bring the population up to the maximum carrying capacity of the habitat shall be done, and this includes all of the specific functions. Also, in the amendments, we define "optimum carrying capacity" and "optimum sustainable population" and what those terms mean. Then, with those definitions engrafted in there, there is a renumbering of the paragraphs in order to make them fit in their regular order in there. That is what constitutes the second page of the amendment.

We consistently use the words "conservation and management" rather than repeating all the other terms, because they all refer back to the first paragraph on conservation and management.

In our consideration of the bill, we thought it would be entirely proper to write this language in a concise and logical manner, and to emphasize the fact that the purpose of this is not simply to protect the resident species which are threatened or endangered, but simply to provide that there be a maximum effort made to restore the numbers of those species to the point that they would not any longer be considered threatened or in any way endangered.

We believe that this language will accomplish that.

I have discussed this, as I say, at some length with the manager of the bill. I compliment him very highly for his dedication to the work he has done on this matter and for his great concern for the problems we face.

As our country has become more populated and metropolitan in nature, of course, we put pressure on the various species of wildlife. The time is here when we must make a determined effort to see that we do not drive to extinction any of the wildlife that can be preserved.

I think that is the objective of all of us who have been concerned with this bill.

I especially compliment the Senator from California for the valuable work he has done on this matter.

Mr. TUNNEY. Mr. President, I want to thank the distinguished Senator from Utah for his very kind remarks. It is clear that the language which is suggested by the Senator from Utah would strengthen the purposes of this act, which is, namely, to protect, conserve, propagate and restore endangered species. I have had the opportunity to consult with the Senator from Utah, as he has indicated, regarding the language, and I think that my understanding of it is similar to his; that is, that the amendment is designed in a more careful fashion to articulate the type of protections the committee intended when it reported the bill from the committee to the floor of the Senate.

Mr. MOSS. I thank the Senator from California for his remarks. I believe that we see eye to eye on the matter. It will strengthen the bill considerably as these definition amendments are adopted.

Mr. TUNNEY. One further point. It is the understanding of the Senator from Utah, is it not, that in no way by this amendment are we going to be moving in the direction of treating endangered species as game animals?

Mr. MOSS. No. It does not affect that at all. It does not change the characterization of any animal into a game or a nongame kind of animal. But many of those on the endangered or the threatened species list do fall into the game classification.

Mr. TUNNEY. If they do fall into the game classification the protection afforded them under this bill, will in no way be diminished by the language which is the clarifying language suggested by the Senator from Utah?

Mr. MOSS. Yes, That is true. It applies to all animals of resident species. In fact, beyond even the animal class.

Mr. TUNNEY. It would not change the protection given to endangered species.

Mr. MOSS. No, it would not change that.

I want to compliment the Senator from Utah for the great interest he has shown in the bill. As a member of the committee, he has taken a very deep interest in the matter and has helped to fashion the bill which has come to the floor of the Senate today.

With the understandings that I now have, and as expressed by the Senator from Utah, I am prepared to accept the amendment and yield back the remainder of my time.

Mr. MOSS. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HASKELL). All time on the amendment has now expired.

The question is on agreeing to the amendment of the Senator from Utah (Mr. Moss).

The amendment was agreed to.

Mr. MOSS. Mr. President, I move that the vote by which the amendment was agreed to be reconsidered.

Mr. TUNNEY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, I send to the desk a series of technical and clarifying amendments to S. 1973 and ask unanimous consent that they be considered en bloc.

The PRESIDING OFFICER. The amendments will be stated.

The legislative clerk proceeded to read the amendments.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered, and the amendments will be printed in the RECORD.

The text of the amendments is as follows:

On page 27, line 12, before the word "educational," insert the words "aesthetic, ecological,".

On page 28, line 8, after the word "States" insert the words "and other interested parties,".

On page 31, line 6, delete the word "terrestrial".

On page 31, line 20, after the word "harass," and before the word "pursue", insert the word "harm,".

On page 33, delete lines 17–23.

On page 33, line 34, delete the number "3" and insert the number "2".

On page 35, line 9, delete the word "Secretary" and insert the word "Secretaries".

On page 36, lines 15–16, strike the words "endangered or".

On page 38, line 12, before the word "and" insert the word "propagation".

On page 38, line 18, after the word "has", insert the words "statutory and regulatory".

On page 39, line 13, strike the words "facing extinction" and, before the word "fish" strike the words "endangered and threatened".

On page 40, strike lines 13–17 and insert, in lieu thereof, the following:

"(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

"(C) the number of endangered and threatened species within a State;

"(D) the potential for restoring endangered and threatened species within a State; and

"(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species."

On page 40, line 19, after the word "year" insert the word "shall".

On page 40, line 20, after the period insert the words "Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section."

On page 41, line 18, after the period, insert the words "For the purposes of this section, the non-federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money."

On page 41, line 23, after the word "appropriated" insert the words "through the fiscal year ending June 30, 1977."

On page 42, line 12, strike the word "of" and insert in lieu thereof the word "regarding".

On page 49, lines 19 and 20, delete the words "subsection (a)" and insert the words "paragraph (1) of this subsection".

On page 50, lines 20–22, strike the words "specimens or products processed or manufactured in whole or in part from specimens of any such species" and insert, in lieu thereof the words "any endangered species of fish or wildlife".

On page 51, lines 12–14, after the word "consumption" strike the words, "or taken for recreational purpose in waters under United States jurisdiction or on the high seas," and insert in lieu thereof the words ", or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas".

On page 55, line 16, after the word "consumption" insert the words "within native villages or towns".

On page 59, line 14, after the word "revocation," insert the words "made pursuant to this section".

On page 68, line 11, strike the word "protection", and insert in lieu thereof the word "conservation".

On page 69, line 20, add a new subsection as follows:

"(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (P. L. 92–516) is amended by striking out the words 'by the Secretary of the Interior under Public Law 91–135' and inserting in lieu thereof the words 'or threatened by the Secretary pursuant to the Endangered Species Act of 1973' ".

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

Mr. TUNNEY. Mr. President, I have submitted these technical and clarifying amendments to the Senator from Alaska (Mr. STEVENS) and he has indicated that he will support them. The amendments will help to achieve the purposes of the bill and will clarify some confusion caused by language remaining in the bill from earlier drafts or omitted from earlier drafts which went unnoticed during the final committee markup.

They are, as I indicate, technical in nature. They are important, however.

If there is a member of the minority on the floor now, I should like to move their adoption.

Mr. President, I ask unanimous consent that I may suggest the absence of a quorum, with the time to be charged against both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON. 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. NELSON. Mr. President, I ask unanimous consent that William Spring and Richard Johnson, staff members of the Subcommittee on Manpower and Poverty, be permitted access to the floor during the course of the consideration of the manpower bill this afternoon, beginning at this time.

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

Who yields time?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON. 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. NELSON. Mr. President, I ask unanimous consent that Mr. John Scales minority counsel of the Manpower and Poverty Subcommittee, be permitted the privilege of the floor during the debate on this measure.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum. I ask unanimous consent that the time not be charged against either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TUNNEY. 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. TUNNEY. Mr. President, as I understand it, the parliamentary situation is that I have an amendment pending. I have not yet yielded back the remainder of my time.

The PRESIDING OFFICER. The Senator is correct.

Mr. TUNNEY. I am prepared to yield back the remainder of my time. Is the designee of the minority leader prepared to yield back the remainder of his time?

Mr. COOK. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TUNNEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 53, line 8, strike the word "for.".

On page 53, line 8, before the word "scientific" insert the word "for".

On page 53, at line 11–12, strike the words "the propagation of such species in captivity or in a controlled habitat", and insert the following "(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat."

Mr. TUNNEY. Mr. President, the purpose of the amendment I am offering is to allow the Secretary to permit the taking of an endangered species for the enhancement of the species. This is a needed management tool recommended by all wildlife biologists. It is needed, for example, where a species is destroying its habitat or where the species is diseased.

This amendment has been discussed with the Senator from Alaska, who has indicated that he approves of it.

I am prepared to yield back the remainder of my time, if the distinguished Senator from Kentucky, the designee of the minority leader, is prepared to yield back the remainder of his time.

Mr. COOK. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TUNNEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. TUNNEY. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. TUNNEY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 52, between lines 22 and 23, insert a new subsection as follows:

"(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions or this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this Act.".

Mr. TUNNEY. Mr. President, I submit an amendment to S. 1983 to exempt from the prohibitions of this bill present owners of certain endangered species.

This amendment would exempt from Government interference endangered species now lawfully held in captivity or in a controlled environment which might come under provisions of this bill. These animals include pets, species held for obligation purposes for which permits might otherwise have to be secured under this bill, and species held in similar circumstances. The Government has made several attempts in the recent past to prosecute certain individuals attempting to enhance the condition of endangered species for seemingly technical violations of the law.

Without further judging this particular case, I wish to submit for the RECORD a newspaper article from the Denver Post illustrating the type of individual effort which can be made to help restore endangered species and the possible governmental interference which might be exacerbated if we did not provide the grandfather clause which is contained in my proposed amendment. I ask unanimous consent that this article be printed at this point in the RECORD.

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

[From the Denver Post, Apr. 22, 1973]

HOW REDTAPE IS STRANGLING AN ENDANGERED SPECIES

(By Zeke Scher)

Colorado's Division of Wildlife has authorized 126 men and women to keep those majestic falcons and hawks generally called raptors. They spend many hours in training and hunting with the raptors, the world's fastest birds.

But not all licensed falconers have birds and some who do choose not to fly them and risk losing them, for raptor populations have plummeted and most of these birds of prey are on the endangered list.

The law limits a falconer to two birds. This possession limitation doesn't apply to "approved" scientific or education institutions (the Air Force Academy has nine), or to those engaged in an "approved" raptor breeding program. Seventy-six of the 189 birds in captivity in the state are held for breeding by 10 parties.

Lt. Col. Richard Allen Graham, 39, is one of them. He is in charge of the T-33 jet training program at Peterson Field in Colorado Springs. In August 1969, he returned to the United States after 250 fighter missions in Vietnam. He lives on the eastern edge of Colorado Springs in a modest ranch-style house with a spacious backyard, where he keeps the birds, and an unobstructed view of Pikes Peak.

Graham has worked with birds since he was 7 years old in his native Brownsville, Tex. In 1965 when the Air Force Academy wanted a rare white Arctic gyrfalcon, Graham took leave from his base in Germany and trapped one in Canada's Northwest Territories. The bird, named Baffin, became the Academy's official mascot.

When the Danish government last year approved a survey of Greenland's falcon population, Graham was named co-leader of the expedition. He is also director of the budding United Peregrine Society Inc., which seeks to save the endangered falcons by breeding them in captivity.

Graham has 17 falcons in the mews (the raptor pens) in his back yard. Fourteen are peregrine falcons, among the rarest of all raptors. There are only 50 in Colorado. Graham may hold more peregrines than anyone in the nation.

But:

The Colorado Wildlife Division won't renew his license as a falconer and won't "approve" his breeding program.

The U.S. Bureau of Sport Fisheries and Wildlife (BSF&W) is prosecuting him on three charges and is attempting to confiscate 10 of his birds.

The U.S. Customs Service has levied a $7,500 assessment on him for the same 10 birds the other government agency is trying to seize.

And a federal lawyer has threatened him with criminal prosecution if he crosses a state line with one of his falcons.

That's the "bad" news.

Now the "good" news:

Even those who are trying to block his breeding program concede that Graham is an experienced falconer totally dedicated to saving the birds.

He has served 21 years in the Air Force with distinction, winning the Distinguished Flying Cross and 13 Air Medals.

Educators, congressmen, lawyers and many falconers and friends are supporting his fight to continue his program of captive breeding.

What's the fuss all about?

Gross harassment, according to Graham, instigated by bureaucrats more concerned with prosecuting him than with saving an endangered species.

But government agencies say the issue is violation of regulations.

Their confrontation surfaced in four quick-breaking developments in February, and a climax is approaching. But let's start back at the beginning.

As a child in southern Texas Graham required no special lessons on law and order. His father was district attorney, his uncle was county judge and lots of other relatives were lawyers. A brother who is an attorney helped incorporate the United Peregrine Society.

Graham probably would have become a lawyer, too, but for his enlistment at 18 as an airman in August 1952 at Corpus Christi, Tex. The toughest thing about his first two years in the Air Force training was he had to do without his pet birds. When other kids were shooting hawks, Graham had been patching them up. He was seldom without a raptor.

You can take Lorinda Graham's word for that. A native of Sheridan, Wyo., she met Richard—and his redtail hawk—at McChord Air Force Base near Tacoma, Wash., in 1956.

They were married two years later. Luggage in the travels of the service family always included a hawk or falcon—to Alaska, Maine, Texas, Arizona, Germany and finally Colorado.

In the mid-'60s, Graham underwent a change in raptor philosophy. The sport of falconry—using raptors to hunt game—seemed an indulgence at a time when the world's falcons faced extinction.

Agricultural pesticides had gone up the food chain—insects to small birds to raptors—to the point where falcons were dangerously threatened. They couldn't utilize the calcium needed to form egg shells strong enough to withstand incubation.

Graham's love for the birds dictated he do something to save the species. He felt that in the not-too-distant future the problem of agricultural poisons would be whipped. But in the critical period of perhaps 10 to 20 years, the raptors might not survive in the wild. His solution: Breeding North American peregrine falcons in captivity for eventual reintroduction into the wild.

This plan would entail capture of comparatively few birds and a large-scale research program to maintain the genetic continuity of the species, which would be fed poison-free food.

The food, large housing facilities and the unusual amount of time required in handling falcons—to keep them tame and healthy—meant considerable expense. Graham helped create the United Peregrine Society as the non-profit vehicle to support the plan.

A week after his arrival in Colorado Springs in late summer of 1969, Graham informed state officials in Denver that he had more than the two birds allowed—three Spanish peregrines and a gyrfalcon—and that he expected to obtain more for his breeding program.

Colorado Game Director Harry Woodward suggested Graham apply for a scientific collectors permit and mailed him forms. Graham filled them out and returned them. Nothing happened for the rest of 1969.

In early 1970 Graham received a letter from Jack E. Hogue, Woodward's chief conservation officer. It was a notice to reduce his stock to two falcons within 30 days.

Graham telephoned Woodward who said he didn't know about the Hogue notice. He suggested a conference in his Denver office. It took place July 24, 1970. Laurence Riordan, assistant director of field operations, summarized the meeting in his minutes:

"Graham explained his interest and concern that something be done to try to prevent the complete extinction of the peregrine falcon, particularly the birds that traditionally or historically occupied the mid-latitude ranges throughout the northern hemisphere . . . According to several experts he quoted, the next 8 to 10 years could be crucial . . .

"His proposed solution to the problem is to collect and hold in captivity representative specimens of the several races of birds until such time as they can be reintroduced to their native ranges. . . ."

Riordan suggested that the Colorado Game Department had "both the legal and moral responsibility to prevent the extinction of any native wildlife species" and it should "seriously consider entering into some type of cooperative working relationship with Graham to overcome the legal aspects of his having more than the two birds permitted by law."

Woodward now pointed out that a scientific collecting permit was not issued to individuals unless they are vouched for by a recognized scientific or educational institution. He suggested that Graham get some affiliation and promised to take "no precipitous action" while a solution was being worked out.

Meanwhile, Graham was granted a regular raptor license for 1970 and it was renewed in 1971. He built mews in his backyard, obtained a source of untainted food (small chickens) and continued his breeding plans, all out of his own pocket. At the same time

he submitted detailed proposals for support to the National Audubon Society, Cornell University, Colorado State University and the Interior Department's Patuxent Wildlife Research Center at Laurel, Md.

All were laudatory of Graham's goals. But all turned him down, pleading shortage of funds.

But Graham was cheered when interest was shown by the Zoological Society of San Diego, Calif. This reached the stage of preparing a contract for a $615,000 10-year captive breeding program. At the last moment Graham was pushed aside by another project.

Woodward then suggested that Graham seek an amendment to the raptor laws which would permit an individual to keep more than two birds for breeding. Graham conferred with State Sen. George Jackson of Colorado Springs who agreed to sponsor such a bill in the 1971 Legislature. A proposed draft was endorsed by the local game officer, Jack Walch.

But somewhere along the line there was a signal change. Senator Jackson was informed that the state game department opposed his bill for an individual's breeding permit—the bill that Woodward had urged Graham to get.

At a Senate subcommittee hearing in February 1971 on the bill, Hogue testified there was no need for an individual breeding program because the state was supporting two organized breeding projects at CSU and Colorado College.

Graham countered with a charge that Hogue was misinforming the legislators. There were *no* breeding programs at CSU and CC for the state to support, he said. Graham had chaired a falcon-breeding seminar at CSU and was working closely with a CC falconer, and consequently "knew what I was talking about."

The colonel won a partial victory. The raptor law was amended to allow individuals to exceed the two-bird limitation if they are engaged in raptor breeding efforts "approved by the Division of Wildlife."

It was a hollow victory. Another amendment put clamps directly on Graham. Prior to 1971 the law defining raptors included the words, "all birds found in the wild on the North American continent that are members of the order of falconiformers, strigiformes, etc."

The legislators—on recommendation of the game department—removed from that definition these five words: "On the North American continent." This changed the Colorado law to bring under game department control any raptor a resident might have, no matter where it came from. Graham held three peregrine falcons from Spain. Up to this point, the possession limitation of two birds hadn't applied to the Spanish species.

Nonetheless, Graham submitted his application for an "approved" individual breeding program.

Meanwhile, a chance of a lifetime came up. An old friend in Spain, the Marques de Torrehermosa, Mauricio Lopez Roberts, offered Graham several pairs of the abundant Spanish peregrine falcons for the breeding project.

Says Graham: "They would be ideal for our research since they come from an identical latitude as our endangered peregrines and you can hardly tell them apart.

"I phoned Hogue in Denver and asked if the new state law (removing the 'North American continent' phrase) had been signed by the governor and was effective. If it had been, I would have needed permission from Hogue to import the birds.

"He said the new law hadn't been signed, but I should write him my plans, which I did. Col. Jim McIntyre who is in charge of the Air Force Academy falcon program agreed to sponsor my transportation on military aircraft to get the falcons from Spain."

Graham next contacted the Interior Department in Washington, D.C. He was told wildlife must be brought into one of several designated ports of entry, otherwise a waiver must be granted by the government.

"I didn't know how many birds I would get or when or where my military plane would land," Graham says. "But wherever it was, it would be a place with U.S. Customs and I assured them I would fill out the applications and wildlife declarations."

What was said in these conversations with Washington is disputed now. In a letter dated May 16, 1971, just before the hurried trip to Madrid, Graham stated his travel plans to pick up about eight birds. Marshall L. Stinnett, the Bureau of Sports Fisheries and Wildlife enforcement branch chief with whom Graham spoke, says he never got the letter. (He also denies getting a second letter Graham sent a week later—after the trip.)

Nearly a year later—April 14, 1972—Stinnett wrote Graham saying he should have filed applications before leaving for Spain. He denied authorizing any exception to normal procedures.

What happened was this:

Graham flew from McGuire Air Force Base, N.J., to Spain in May 17, 1971, where he met his friend the Marques. The acquaintanceship began in the mid-'60s when Graham, stationed in Germany, was detached to help the Torrejon Air Base near Madrid solve a bird-hazard problem.

The solution: Fly a few falcons and they would quickly chase off the birds fouling up the airways. Presto: No more hazard.

The Marques surprised Graham by offering him 10 peregrine falcons. Graham fixed cages for the birds and within two days was winging back to the United States with them. Before leaving, he checked the military base administration section and was told Spanish regulations had been studied the previous summer when an Air Force Academy cadet took a peregrine. Only a health certificate was necessary and Graham obtained that for all the birds.

The plane Graham was on was to land at Dover Air Force Base, Del., about 8 p.m., May 21, 1971. The pilot, while over the Atlantic, asked Dover to notify U.S. Customs about the incoming falcons (Dover is a "nondesignated" port of entry). Stinnett's name and phone number in Washington were provided in case of any questioning.

On arrival at Dover, Graham found the Customs agents knew nothing about the incoming falcons. So Graham declared them—gifts for breeding purposes, no commercial value—and Customs passed him through. Stinnett had told Graham he should file a Form 3–177 Declaration for the Importation of Fish or Wildlife, but Dover didn't have the form.

Graham went on to McGuire Air Force Base in New Jersey where he again checked with Customs. They didn't have a Form 3–177 either. "No problem," he was told. That was an error.

A friend drove Graham and the birds to Philadelphia where he took a commercial flight back to Colorado, the birds riding in the baggage compartment. In Colorado Springs Graham sent the second letter to Stinnett—which Stinnett says he didn't get—in which Graham mentioned the unavailability of the Form 3–177.

There was no reply and Graham says: "I assumed that since I'd cleared Customs, and since Interior didn't seem interested after my letter to them, it was no big thing."

Next Graham sent Chief Hogue a letter informing him of the big addition to his mews.

(Hogan got the letter but didn't respond.)

Five months later Graham had an unnerving visit. Two federal agents—from Customs and Interior—came by his house and asked what "duties" he had paid on the imported birds.

"They mentioned the confiscation powers of Customs, the possibility of criminal charges and the veiled threat of how an investigation would look on my military record," Graham recalls. "They talked about nondesignated ports of entry and the Lacey Act. I asked if they were advising me of my rights or seeking information to use against me.

"No, I was told, it was just that if any duties were owed, they wanted to be sure they were collected. I told them of the approval I got from Stinnett in Washington and they left."

In December 1971 Graham learned he was in fact being investigated by the Air Force's Office of Special Investigation (OSI).

"I met with OSI Agent Howard Rossiter to try and clear up the whole thing," Graham says. "Stinnett had written the Air Force saying that Interior had 'confidential' information that I may have stolen some falcons in Spain with an unnamed German national."

A month later the mail brought him Customs Form 5955–A, dated Jan. 10, 1972. It stated: "Demand is hereby made for payment of $7,500 representing penalties assessed against you for violation of law or regulation as set forth below—

"From Nov. 5, 1969, to May 21, 1971, you imported 13 raptors (falcons), declaring them at 'no commercial value' or 'free entry' as personal baggage of a returning Vietnam serviceman."

Graham immediately wrote the Bureau of Customs demanding to see any possible documents on which they based their claims. Customs acknowledged his response and—in two letters—said there would be a delay because they were seeking more documentation themselves.

On March 14, 1972, came an amended "notice of penalty" dropping the Vietnam reference (Graham says he had no birds in Vietnam to bring back) but maintaining the $7,500 assessment based on "the domestic value" of 13 falcons imported between 1969 and 1971 as "baggage of a returning serviceman and as property of the United States Air Force Academy."

Since there is no marketplace for falcons—Colorado law prohibits their purchase or sale—Graham asked how the government set a commercial value on them.

The Customs acting district director, J. G. Brenner, replied on March 31, 1972:

"The foreign values are determined in the market of the country of exportation where such or similar merchandise is freely sold or offered for sale. Domestic values represent value at the time and place of a seizure in the condition and quantities seized. Sincerely yours, J. G. Bremer."

On April 22 Graham sent a four-page, single-spaced typewritten letter detailing to Customs the source of his birds and the plans for them. He mentioned the common incorrect assumption that any Air Force officer with a falcon going to Colorado Springs must be with the Academy.

"There has been near-hysterical reaction toward one man attempting to make a contribution to wildlife," Graham wrote. "Many vested interests in the Fish and Game Departments as well as others feel that only a university or a governmental agency should make an attempt.

"It is ironic that as an individual with 30 years practical experience, and actually breeding the falcons in captivity at this time, I find myself under pressure which would prevent my contribution. Certainly no state or federal agency has a wide-ranging plan as that of the United Peregrine Society. Somehow this is neither correct nor just."

He attached copies of eight letters—from doctors, professors and zoologists—commending his preservation program and dedication.

Graham was deeply discouraged by what he considered unreasonable harassment, but he stuck doggedly by his guns. While he awaited an answer, he found another oppor-

tunity to increase breeding stock in the United States.

The Mexican government consented to the export of five pairs of endangered peregrines—on condition the United States approved. Graham asked for that permission on March 17, 1972, in a letter to Director Earl Baysinger of the U.S. Wildlife Bureau.

Graham explained that the birds would be cared for at Brigham Young University, Provo, Utah, by Dr. Clayton White, and at Centerville, S.D., by Don Hunter, past president of the North American Falconers Association. Both men are trustees of the United Peregrine Society. When the society establishes permanent breeding facilities, the birds would be placed there.

When he got no response, Graham went to Washington and obtained an appointment with Baysinger, who asked his enforcement chief, Stinnett, to sit in.

For an hour Graham enthusiastically described his hopes and beliefs on what could be done for the raptors, and Baysinger seemed to be impressed.

Stinnett then mentioned that there was "some question" with Customs over Graham's importing 10 Spanish birds. Stinnett felt that the Interior Department shouldn't authorize the Mexican import while that issue was pending, and that's the way Baysinger ruled.

The "question" with Customs remains unanswered and no hearing was ever set. It continued to be a factor, however, in later, more perilous developments.

Last spring Denmark authorized a population survey of the peregrine falcons of Greenland, where little information was available on these birds. Heading the expedition were Dr. William G. Mattox of Dartmouth College—and Graham. The Air Force granted Graham temporary duty—at no expense to the government—to perform the 90-day survey. Last June 20 the expedition left for Greenland from McGuire Air Force Base, N.J.

On that same day in Denver's U.S. District Court, another adventure began involving Graham. A small group of state and federal agents, armed with a very unusual search warrant, prepared to swoop down on Colorado Springs and raid Graham's falcons.

[From the Denver Post, Apr. 29, 1973]

THE RAID ON 5111 ROCKING R DRIVE

(By Zeke Scher)

The day last summer that Lt. Col. Richard Graham left the United States for Greenland to survey the endangered peregrine falcon, a small group of officials met in Denver's U.S. District Court to plan a raid on Graham's Colorado Springs home.

The Americans in the expedition left from McGuire Air Force Base, N.J., on Tuesday, June 20. In Denver, Asst. U.S. Attorney Charles Johnson accompanied by David Kirkland, a game management agent for the U.S. Bureau of Sport Fisheries & Wildlife (BSF&W), approached Magistrate Royce D. Sickler. Johnson docketed a case entitled *United States of America vs. 5111 Rocking R Drive, Colorado Springs, Colo. 80915,* and requested a search warrant.

The address is the home on the eastern edge of Colorado Springs for Graham, his wife Lorinda, their three children and 17 falcons, the world's most beautiful birds of prey.

Graham was assigned to Peterson Field in August 1969 after completing 250 fighter missions in Vietnam. His life-long love for birds and his expanding avocation of trying to save the endangered birds by a captive breeding program were detailed in the first installment of this story last week.

Graham came to Colorado with a gorgeous white Arctic gyrfalcon he'd trapped in Canada, and three Spanish peregrine falcons. Later he was given two prairie falcons, trapped two tundra peregrines in South Carolina and then received 10 Spanish peregrines (one of which escaped) from a friend in Madrid.

But Colorado law restricts a falconer to no more than two birds unless he has a breeding program approved by the State Wildlife Division. Graham's request for approval went unanswered.

As detailed in the first part of this series, eight months after Graham's return from Spain with the 10 donated birds, the U.S. Customs Bureau imposed a $7,500 penalty on him, charging him with importing them illegally.

The fact that Graham was "under investigation" by federal agents was the reason Colorado officials ignored Graham's requests for permits and licenses.

Jack E. Hogue, chief conservation officer for the Colorado Wildlife Division, told *Empire:* "We wouldn't issue Graham any permits so long as he was being investigated. In fact, they (federal wildlife bureau) asked us not to issue him any."

Then, last June 20 in the Denver court, Johnson, the government lawyer, handed Magistrate Sickler the sworn statement by Game Agent Kirkland:

"On or about May 21, 1971, Graham . . . did import into the United States at Dover Air Force Base, Del., 10 Spanish peregrine falcons. At said time, Graham had not obtained a permit from the U.S. Department of Interior to bring wildlife through a non-designated port of entry. Graham did not file a Form 3–177, Declaration for Importation of Fish and Wildlife, Graham had not received authority from a foreign country, to wit, Spain, to export the 10 Spanish peregrine falcons as required by Title 18, U.S. Code. . . .

"On June 19, 1972, U.S. Game Management Agent Charles Hayes, Denver, Colo., informed me that Graham still had some of the illegally imported Spanish peregrine falcons in his possession and that there was a good possibility he would be leaving the state in the near future."

The magistrate signed the search warrant. It directed "any U.S. game management agent" to search 5111 Rocking R Drive and seize "10, more or less, Spanish peregrine falcons."

Under the court order, Hayes became director of the raiding party. He told *Empire:* "I decided we would make the seizure on Saturday morning because I was told that was the best time to catch Graham at home. The night before I got a phone call telling me Graham wasn't there. I didn't like that, but I decided to go ahead anyway because of all the preparations."

The preparations had begun long before the court issued the warrant. A pen for the to-be-seized birds was set up at the Denver Federal Center in a building formerly used for duck breeding research.

Hayes also built perches to handle a dozen birds in the back of an air conditioned station wagon. He, asked Colorado Game Department to assign its young raptor biologist, Gerald R. Craig, to help with the actual confiscation of the birds.

Craig is a 26-year-old Colorado State University graduate and the first raptor specialist hired by any state game department. He'd visited Graham's mews and could identify the Spanish birds better than any of the federal agents.

He emphasizes that he didn't volunteer for the task. "I was asked," he says. Craig was concerned about possible injury to the birds when they were approached by strangers, especially ones who don't know how to handle falcons.

Craig spent three evenings before the raid making soft leather hoods to put over the falcons' heads. The hood blinds the birds and generally keeps them quiet.

At 7 a.m. Saturday, June 24, Hayes picked up Kirkland and Craig and the three drove in the station wagon to Colorado Springs. There they stopped at the game department office where they were joined for the raid by Agent Howard Rossiter of the Air Force's Office of Special Investigations (OSI).

While these four proceeded to 5111 Rocking R Drive, another federal game agent, Jack Randall, drove to Canon City to seize two peregrines known to be held for Graham at the home of Bill Burnham, who also was away on the Greenland survey. (Since the search warrant didn't cover Burnham's home, Randall's authority was at best questionable.)

At 5111 Rocking R Drive, Lorinda Graham was on a second cup of coffee when the doorbell rang. She found four men at the front door. Kirkland identified himself and explained the search warrant. "I heard the words but I really didn't understand that they intended to take the birds away," she recalls. "I told them Richard wasn't home."

"Yes, we know," Kirkland replied. "We just found out last night."

Mrs. Graham led the men to the back yard "to look at" the falcons. She unlocked one of the three mews.

Craig alone went inside. A few minutes later he walked out with a hooded bird—a majestic 5-year-old female Spanish peregrine that Graham owned before he came to Colorado. Mrs. Graham was shocked. She suddenly realized the men were really going to take her husband's beloved falcons.

She slammed the lock back on the door and ran into the house to call a lawyer. Kirkland stood at the door demanding she re-open the mews or they'd break the door down. She couldn't reach the lawyer. She called another Colorado Springs falconer, Rodger (Buddy) Graver, and he sped over to help the distressed woman.

Graver pleaded with the officers not to endanger the birds' lives by taking them when Graham was away. Meanwhile, Mrs. Graham reached the legal officer at Peterson Field where her husband is stationed and explained the situation. He said she had no recourse if there was a legal search warrant.

One by one, Craig carefully hooded the falcons—10 of them—and removed them to the station wagon. Agents Hayes and Kirkland assured Mrs. Graham the birds would be properly cared for but they refused to reveal where they would be held. The officers drove away and the woman collapsed. A physician was called and Mrs. Graham was taken to the Peterson Field medical facility.

She was given an electrocardiogram because of heart attack symptoms. This proved negative but she was given medication (which she continues to require). The Air Force was asked to notify her husband.

Graham on that day was on a backpack trip into the wilderness some 30 miles from Sondrestrom Air Force Base in Greenland. He wouldn't return until Monday.

Hayes, Kirkland and Craig drove with the birds from Colorado Springs to Canon City where they met Randall. He was awaiting their arrival before approaching Burnham's wife, Pat, for the two peregrines at her home. The woman turned them over.

This gave them all of Graham's Spanish peregrines—three he'd owned (without dispute) since 1969, and nine of those he brought in from Spain. The officers arrived at the Denver Federal Center shortly after 6 p.m. They'd had no trouble with the birds.

Mrs. Graham finally got word to her attorney, J. Gregory Walta, and he immediately began action to get the birds released.

On Monday afternoon, June 26, two days after the raid, an unusual stipulation was submitted to Judge Alfred A. Arraj in Denver's U.S. District Court. Government Attorney Johnson agreed to the return of all birds if the Grahams posted $1,000 bond and agreed not to take the falcons out of Colorado.

The stipulation informed the court: "There is danger that such falcons may expire unless they are returned to Mr. and Mrs. Graham."

Judge Arraj approved the action. (There still was no suit—civil or criminal—filed against Graham. There never was.)

When Colonel Graham finally received word of the seizure he left the expedition and hurried home. By Wednesday noon he was back in Colorado Springs. The previous afternoon Mrs. Graham and two falconer friends, Buddy Graver and Roger Smith, armed with the court order, went to the Federal Center and asked Kirkland for the birds.

Kirkland demanded that she sign a release stating the birds were in the same condition as when they were taken. She refused until she could examine the falcons. They were returned to 5111 Rocking R Drive, apparently none the worse for the roundtrip to Denver.

Attorney Walta sought some legal answers. In what type of litigation was the search warrant obtained? Why was it necessary to seize and imperil the rare birds? (U.S. Attorney Johnson tells *Empire* the warrant was obtained "in anticipation" of filing a federal court action.) Walta and Graham could learn only that a complete report on the case had been forwarded to the attorney general in Washington, D.C.

Eight months passed. Then Walta learned the attorney general's office had vetoed any prosecution of Graham and had returned the case to the federal wildlife agency (BSF&W).

The U.S. attorney in Denver, however, refused to drop the $1,000 bond and the restraining order despite the lack of a case. So Walta forced the issue by going to Judge Arraj.

Last Feb. 21, Graham, in uniform with a chestful of decorations, sat beside Walta in Judge Arraj's Denver courtroom. Agent Kirkland sat with Johnson at the opposite table. Walta opened the proceeding by calling Graham to the witness stand. Graham began an outline of his 32 years' experience with hawks and falcons. But Johnson interrupted to object.

"I'll concede that Colonel Graham is a falconer but I object to trying this case on the merits," he said.

Walta said the purpose of the testimony was to show why Graham is keeping the birds.

Judge Arraj asked a question that seemed to startle Johnson: "Why not try the case on the merits?"

Johnson replied that "other" proceedings were pending and that "Graham could leave the country."

"If he crosses the state lines with a falcon, he will violate the Lacey Act," Johnson said. "The government is trying to protect him."

"Protect him?" asked Walta.

"We're trying to help Colonel Graham not take the law in his own hands," explained Johnson. "I'll concede there is no necessity for the bond."

Walta asked the judge how the government could keep Graham under bond for eight months without filing a charge. Johnson offered an apology, adding that the preparation of charges "takes time."

"I'm granting the motion to dispose of the bond," said Arraj. The hearing was adjourned.

A heated exchange between Walta, Graham and Johnson continued to the hallway. "It takes the government seven months to find out what the law is?" asked Walta. "How is the individual supposed to know?"

"Our position is that when the birds came in there was a question whether they were legally imported birds," said Johnson. "And after this hearing today, I'm going to do everything I can to stick you. I shouldn't get emotionally involved but I am."

The dismissal of the bond was another hollow victory for Graham.

His letters to the Colorado Wildlife Division's Director Harry Woodward, biologist Craig and enforcement chief Hogue, asking approval for his breeding program, remained unanswered.

Reports that he was "under investigation" continued to circulate. U.S. Customs did not drop its $7,500 penalty assessment on Graham for the Spanish peregrines—but failed to set a hearing to dispose of the matter. His service-connected flights in and out of the country resulted in closer scrutiny of his luggage.

The only conclusion Graham could reach was that others were more concerned with harassing him than with saving the endangered species. So he decided to bring the situation into the open.

First he got permission to address the monthly meeting of the Colorado Wildlife Commission's Game Committee. And then he asked the Colorado Department of Natural Resources director, Tom Ten Eyck, who supervises the Wildlife Division, to hold a meeting with all concerned to clear the air.

On Feb. 8, Graham appeared before the wildlife game committee.

"I want to report what I consider gross harassment by the Game Department," Graham began, then reciting in chronological order his licensing and permit problems since returning from Vietnam in 1969.

On his clash with Hogue in the Legislature on a raptor law amendment, Graham said: "I feel Mr. Hogue told me to play frog and I didn't jump."

On the Wildlife Division ignoring him: "I have a year's correspondence here with no response."

On official indifference: "Cornell University had a female prairie falcon ready to breed and requested I ship my home-raised male prairie falcon. I asked Colorado permission to send it. I got no answer."

On his preservation program: "I'm an individual trying to do something. As long as they ignore me, they're effectively using their investigative powers for punitive action."

The chairman, Dr. Wilton Cogswell, Jr., assured Graham: "It's not the intention of the Wildlife Division to harass you. We'll order a report to the commission and to you. I thank you for bringing it to our attention."

The next day, over Woodward's signature, Graham got a reply:

"The Division's position has been that information on the legality of birds in possession . . . should be verified . . . Investigations into the legality of holding some raptors by Colonel Graham were initiated prior to July 1970 by the Bureau of Sport Fisheries & Wildlife, assisted by other agencies. These have continued until the present time and are still pending. U.S. Customs violations on the importation of some of the raptors now in his possession are a matter of record * * *

"Lastly, our correspondence and record files will show that lack of answers to Colonel Graham's inquiries do not exist and that harassment, from the Division's standpoint, has not occurred."

(Editor's note: Graham has not been found guilty of any customs violations.)

Woodward added that if bird legality is proved, the Division would still scrutinize cautiously Graham's research objectives.

The reply was another frustration for Graham. He'd already submitted all the information he had on his Spanish peregrines including the health certificate obtained in Spain and a letter from the donor. He had no other "documentation."

On the following Wednesday, Feb. 14, Graham, Walta, Woodward and Craig met with Resources Director Ten Eyck.

The meeting started on a sour note. There was no federal representative as promised, and as a result nothing would be learned about the federal position.

In the three-hour discussion that followed, Ten Eyck acted as interrogator and moderator, seeking immediate responses to Graham's charges of improprieties.

"We got letters saying Graham was going too fast for the good of the birds," said Craig. "The letters are in the file."

"That's the first time I've heard of that," said Graham.

"I've got a stack of letters here about Mr. Woodward," said Ten Eyck. "Does that convict him of anything? If you have complaints against Graham, you should give him a chance to hear them and answer. I believe that involves fundamental due process of law."

"If anyone is really interested in these birds, some communication should have been had," said Walta. "It seems to me that all efforts at communication came from this side."

Ten Eyck said: "I have the impression that Colonel Graham is a dedicated researcher in the falcon field."

"I don't dispute that," replied Craig.

"Does he have any improper motive?" asked Ten Eyck.

"I can't say that," replied Craig. "Legality of the birds is the issue."

"Then Graham is guilty until proven innocent?" asked Ten Eyck.

Woodward said the Division just wants documentation.

"He got silence from you," Ten Eyck said. "How does he interpret that? We've got to do better. In what way is his documentation inadequate? I get the impression he's tried like hell to do the right thing."

Walta asked: "Is the whole concept of breeding for future release a good idea? If so, let's cooperate with those truly interested scientists."

"We are for captive breeding," said Craig, "but I can't put much faith in individual projects. Graham has the drive and as much dedication as anyone but he may have overstepped the bounds by not going through channels."

Woodward said all the Division wanted was legal documentation or "a legal explanation" on the Graham birds.

"A legal explanation?" replied Ten Eyck. "Now that's different from legal documentation. I haven't heard you say that before, Harry. I worked in Spain for two years and for $10 you could get any official document you wanted. I don't think you want just a phony document."

When Graham again told about his letters to Craig and Hogue which went unanswered, Ten Eyck interrupted him: "I think you've rubbed their nose in it pretty good. You've made your case. Harry, I can't assess it any other way."

"I assess it that way too," Woodward admitted.

"I hate to see bureaucracy lose sight of our real goal—preservation of the species rather than Form X," said Ten Eyck.

What Ten Eyck didn't know, but what Woodward, Craig and Hogue did know at that time, was that the federal BSF&W was filing "administrative" charges against Graham concerning the importation of the 10 Spanish birds.

Denver wildlife agent Hayes was informed Feb. 6 from Washington that a three-count "notice of violation" was being sent by certified mail. He informed the state agents but "law enforcement ethics" forbade their disclosure until Graham was served.

The charges, dated Feb. 7, were not received by Graham until he picked up the certified letter at a Colorado Springs branch post office on Feb. 20, long after both the meetings with the commissioners and with Ten Eyck.

The four-page "notice of violation" accused Graham of illegally bringing in the falcons at Dover, Del., "not a designated port of entry for importation of fish and wild-

life." A civil penalty of $2,000 was "assessed" for that offense.

A second count accused Graham of violating the laws of Spain. "You have not been issued any permit or authorization from the Spanish Ministry of Agriculture or his delegate showing that you had permission to leave the country with these birds," it was charged. A $1,000 penalty was imposed for that.

The third count made Graham liable for a $1,000 penalty and forfeiture of the peregrines for failure to file Form 3-177 with the Customs Bureau.

Graham was given 20 days to notify the Secretary of the Interior if he would pay penalties or contest the charges. He didn't need 20 seconds to decide.

A "notice of contest and request for hearing" was sent to Washington, D.C. The reply was prepared by Walta and a new face on the Colorado Springs scene, Shephard Kole, a New York attorney who successfully championed the cause of the Amish in an early '60s battle with the government over Social Security taxes.

Kole, 55, moved to Colorado in January, just four blocks from Graham. When he heard about his neighbor's plight, he volunteered his services.

Among the points raised by Walta and Kole:

The Lacey Act (which would convict Graham of a Spanish law violation) is unconstitutional because it delegates legislative powers to every foreign country on Earth.

Spanish hunting laws didn't apply because the donated birds were domestically owned by a Spanish citizen with a valid permit. No violations were charged by Spanish authorities.

Graham informed authorities at each step of the importation, was granted Customs clearance and no objection was made, reaffirming a government waiver of procedural formalities nearly two years ago.

If the lack of a Form 3-177 is a continuing problem for the government, the attorneys continued, "Graham stands willing and able to complete Form 3-177."

Late last month another surprise was injected into the debate. Dr. Emilio Gomez-Manzanares, agricultural attache for Spain in Washington, D.C., sent a letter to the director of the federal wildlife bureau.

". . . I feel required to bring to your attention that the charges of violation . . . of the Spanish Hunting Regulations are based on a mistranslation," the Spanish official stated. "The Spanish term 'piezas de caza' which appears in the original text of the Spanish law has been translated as 'hunting animals' in your notice, when it really means 'game.' Therefore, it does not apply to falcons, hawks and other birds of prey.

"Consequently, I consider that there are no grounds for the charges made against Colonel Graham based on the referenced Spanish Hunting Law."

The proposed contest will be before a hearing officer to be named, probably in Denver. At this writing no date has been set.

When the lawyers finally get around to debating the issues, I wonder if anyone will offer a word for the birds in Colonel Graham's back yard. If the litigation goes on long enough, the subject matter could well vanish.

Mr. TUNNEY. Mr. President, this amendment has been discussed with the Senator from Alaska, and he has indicated that he approves of this amendment.

I am prepared to yield back the remainder of my time, if the Senator from Kentucky is prepared to do the same.

Mr. COOK. Mr. President, we have no objection to this amendment and I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. TUNNEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. COOK. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, it is my understanding that the Senator from Kentucky has an amendment.

Mr. COOK. Mr. President, I am in the process of having that amendment prepared, and I have one other amendment I am trying to check now with the Senator from Alaska.

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

The PRESIDING OFFICER. On whose time?

Mr. TUNNEY. To be equally divided.

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.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Hackney, one of its reading clerks, announced that the House has passed the bill (S. 426) to regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes, with amendments, in which it requested the concurrence of the Senate.

TIME LIMITATION AGREEMENT ON S. 1559

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on S. 1559 there be a time limitation of 1 hour, the time to be equally divided between the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. JAVITS); that the time on any amendment, debatable motion, or repeal be limited to 30 minutes; and that the agreement be in the usual form.

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

Mr. ROBERT C. BYRD. Mr. President, I understand this request has been cleared on both sides.

Mr. STAFFORD. That is true, Mr. President.

ORDER FOR RECOGNITION OF SENATOR WEICKER TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, after the two leaders or their designees have been recognized under the standing order, the distinguished Senator from Connecticut (Mr. WEICKER) be recognized for not to exceed 15 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum, under the same arrangements as heretofore agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8947) making appropriations for public works for water and power development, including the Corps of Engineers—Civil, the Bureau of Reclamation, the Bonneville Power Administration and other power agencies of the Department of the Interior, the Appalachian regional development programs, the Federal Power Commission, the Tennessee Valley Authority, the Atomic Energy Commission, and related independent agencies and commissions for the fiscal year ending June 30, 1974, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. EVINS of Tennessee, Mr. BOLAND, Mr. WHITTEN, Mr. SLACK, Mr. PASSMAN, Mr. MAHON, Mr. RHODES, Mr. DAVIS of Wisconsin, Mr. ROBISON of New York, and Mr. CEDERBERG were appointed managers on the part of the House at the conference.

MESSAGES FROM THE PRESIDENT

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

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer (Mr. HASKELL) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

VISIT TO THE SENATE BY MEMBERS OF THE CANADIAN PARLIAMENT

Mr. McGEE. Mr. President, we are delightfully graced today by our colleagues from the Parliament of Canada. All of these gentlemen are old friends of many Members of this body.

We have a great tradition of meeting every year in order to exchange views, to share problems, and to try to find mutual solutions to these very difficult questions. I know of no finer way to address our-

selves to good relations than in this fashion.

Some few of us have just returned from China, where we had conversations with their deputies, and there was a great contrast. They could not even understand the kind of problems we have in parliamentary systems at all. There was no vernacular for mutual dialog. That simply underscores the importance that where we do have similar systems we understand the use of the common denominators present in our systems to bring us closer together rather than to move us farther apart. That is precisely why we are here today.

In the Senate and House of Representatives, we have been so carried away with our good relations with our colleagues from Canada that we were reluctant to wait until next April, when we were scheduled to meet again, so we had to figure out how best to get them down here. We found that oil was the quickest and easiest way to float them into the U.S.A. That is what brings us together. We have mutual efforts. None of us looks upon this as a simple thing; it is complex.

So I take this opportunity to present the distinguished Governors and Members of Parliament from the Government of Canada:

CANADIAN DELEGATION TO THE SPECIAL MEETING OF THE CANADA-UNITED STATES INTERPARLIAMENTARY GROUP

Senate:

Hon. Alan Macnaughton, P.C.—Lib.-Quebec—cochairman.

Hon. Allister Grosart—P.C.—Ontario.

Hon. Daniel A. Long—Lib.-Ontario.

Hon. M. Grattan O'Leary—P.C.-Ontario.

Hon. George van Roggen—Lib.-British Columbia.

House of Commons:

Mr. Robert McCleave, Deputy Speaker—P.C., Nova Scotia—cochairman.

Mr. J.-J. Blais—Lib.-Ontario.

Mr. Jack Cullen—Lib.-Ontario.

Mr. Len Marchand—Lib.-British Columbia.

Mr. Paul E. McRae—Lib.-Ontario.

Mr. T. C. Douglas—N.D.P., British Columbia.

Mr. Randolph Harding—N.D.P., British Columbia.

Mr. Eudore Allard—S.C.-Quebec.

Mr. Peter C. Bawden—P.C.-Alberta.

Mr. Walter Baker—P.C.-Alberta.

Mr. John A. Fraser—P.C.-British Columbia.

Mr. Donald W. Munro—P.C., British Columbia.

Staff: Mr. Peter Dobell, Ms. Jean Macpherson.

Political Parties: Lib., Liberal; N.D.P., New Democratic Party; S.C., Social Credit; and P.C., Progressive Conservative.

[Applause, Senators rising.]

Mr. COOK. Mr. President, I move that the Senate be in recess for 5 minutes so that we may greet our colleagues from the Canadian Parliament.

The motion was agreed to; and at 1:35 p.m. the Senate took a recess until 1:40 p.m. whereupon the Senate reassembled when called to order by the Presiding Officer (Mr. HASKELL).

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

UNANIMOUS-CONSENT AGREEMENT ON S. 1559

Mr. MANSFIELD. Mr. President, I ask unanimous consent that after the pending business is finally disposed of, the Senate proceed to the consideration of Calendar No. 286, a bill (S. 1559) to provide financial assistance to enable State and local governments to assume responsibilities for job training in community services, and for other purposes, so that it may become the pending business.

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

Mr. MANSFIELD. I ask unanimous consent that, after the disposal of S. 1559, the Senate go into executive session to consider the nomination of Mr. Vincent R. Barabba, of California, to be Director of the Census.

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

ENDANGERED SPECIES ACT OF 1973

The Senate continued with the consideration of the bill (S. 1983) to provide for the conservation, protection, and propagation of species or subspecies of fish and wildlife that are threatened with extinction or likely within the foreseeable future to become threatened with extinction, and for other purposes.

Mr. COOK. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

On page 43, line 11, insert the following: strike the word "such," and insert the word "any."

Mr. COOK. Mr. President, an earlier version of this bill provided that the appropriate Secretary review other programs administered by him and utilize such programs in furtherance of the purpose of the act. The bill provided further that all other Federal departments and agencies, shall, in consultation with and with the assistance of the Secretary, utilize their authority in furtherance of the purpose of the act by carrying out programs for the protection of endangered species or subspecies of fish and wildlife by taking such action necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of endangered species.

I am in complete agreement with this provision as stated, but it did not go far enough as it did not protect the habitat of the endangered species. I therefore recommended to the committee, and I am pleased that the bill we are now considering includes a provision which would prohibit the destruction or modification of the critical habitat of such species.

Mr. President, the only purpose of my amendment to change the word "such" to "any" is to make the provision all inclusive. I think we should be concerned with the habitat of all wildlife instead of considering that of endangered species.

We have a situation in my State that falls in this category.

Mr. TUNNEY. Mr. President, I ask the Senator whether the effect of his amendment would be, first, if the Bureau of Public Roads wanted to build a highway through an area of the country, as it deemed necessary for the citizens of the Nation, if it would be prevented from doing so by changing the word "such" to "any."

Mr. COOK. Mr. President, I would be less than fair with the Senator if I would say otherwise to him. It is conceivable that this could happen. It is conceivable also that never would happen.

The only point I am making is that they would have to have consultation with the respective agency. The point I have in mind is that we have the Pioneer Weapons Hunting Area in the State of Kentucky. It is the only one of its kind in the United States. There is no other. It is a tremendous nesting area for wild turkeys.

I might suggest that the Corps of Engineers decided that it would build a road right through the middle of this area. We have tried our best to have them change the route of the road. They had alternate routes, but they decided, despite their alternative routes, that this is where they would build the road.

This language means that they have to consult with the respective agencies under this bill, and they have to consult with the respective State agencies in order to work out this problem. That is exactly what it means. And I would be less than candid if I did not explain that to the Senator.

Mr. TUNNEY. Mr. President, as I understand it, after the consultation process took place, the Bureau of Public Roads, or the Corps of Engineers, would not be prohibited from building such a road if they deemed it necessary to do so.

Mr. COOK. The point is that they would then be doing it after consultation with the respective agencies, rather than making that decision on their own.

Mr. TUNNEY. But they would have the final decision after consultation.

Mr. COOK. The Senator has put me in a rather bad light. Under the terms of this, it would have to be under an agreement worked out with the respective agencies.

Mr. TUNNEY. Mr. President, as I understand the legislation, just reading the language:

All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation and with the assistance of the Secretary—

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the

continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

So, as I read the language, there has to be consultation. However, the Bureau of Public Roads or any other agency would have the final decision as to whether such a road should be built. That is my interpretation of the legislation at any rate.

Mr. COOK. Mr. President, we find ourselves in a position where we are debating or really talking about endangered or threatened species, and that is where the consequence of this amendment lies.

I might suggest to the Senator from California that if the Senator feels this might be the burden of this language, I do have another amendment which would designate this area.

Mr. TUNNEY. Mr. President, I would prefer it if the Senator would withdraw his pending amendment. I know what the Senator's next amendment is. And I support that amendment. I recognize that the Senator has to secure unanimous consent to make the amendment germane to the bill. However, I am prepared to accept the amendment. I have looked it over.

I do not think there is any desire on the part of any Senator on the floor to object to a unanimous-consent request that the amendment be considered.

Mr. President, I am hesitant, as the floor manager of the bill, to accept the amendment. This does broaden considerably the impact of the language which requires consultations with the respective agencies and the Department and the Secretary of Interior. It moves it from endangered species to any species of animal. And with that extension of the language on the floor and without any hearings, I believe it is something that I would not be able to accept.

Mr. COOK. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. COOK. Mr. President, I send to the desk an amendment which is the same as S. 1532 which I introduced earlier this year and ask that it be immediately considered.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk proceeded to state the amendment.

Mr. COOK. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

The amendment reads as follows:

At the end of the bill, add the following:

That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

SEC. 2. As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however,* That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

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

SEC. 4. Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zilpo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

Mr. COOK. Mr. President, I ask unanimous consent that as to this amendment the rule of germaneness be waived.

Mr. ROBERT C. BYRD. Mr. President, the Senator does not have to ask unanimous consent as long as no Senator makes a point of order.

The PRESIDING OFFICER. The Senator from West Virginia is correct.

Mr. COOK. Mr. President, I thank the Senator from West Virginia.

Mr. President, I thank the Senator from California, because this now gives me an opportunity to clarify the situation.

Mr. President, I believe that S. 1983 as written will contribute to the guarantee we all want that succeeding generations will enjoy some measure of nature and wildlife as we have known it. However, I would like further assurance for the people of Kentucky.

Mr. President, in my State of Kentucky, we have located at Cave Run, in Daniel Boone National Forest, a Pioneer Weapons Hunting Area. Within this area are various species of wild turkeys, white-tailed deer, red and grey foxes, ruffed grouse, dove, and quail. During the past year there have been attempts made to bisect this Pioneer Weapons Hunting Area by construction of a road through the normal nesting and grazing area of these species. To do so would most assuredly destroy or severely endanger the species. The tragedy is in the fact that a feasible alternate route is available that would generally skirt the Pioneer Weapons Hunting Area. We cannot permit such inconsiderate and ill-conceived projects to continue.

The amendment would now add a new section to the bill which would designate under section 3(b) of the Wilderness Act of the United States Code, that this area be designated as a wilderness area. Therefore, having such a designation, it is in the unique position of not being subject to this kind of tampering.

If we can get this accomplished, we will solve a problem and this has been going on for more than 2 years on my part.

We no longer have to fear that an agency can decide to arbitrarily build a major highway which bisects this area. I assure my colleagues that this would be of significance to the Pioneer Weapons Hunting Area located in the Daniel Boone National Forest in Kentucky.

Mr. TUNNEY. Mr. President, I have had an opportunity to consult with the Senator from Kentucky on his amendment. It is a good amendment. It is specific. It clearly focuses on the problem. I am prepared to accept the amendment.

I yield back the remainder of my time.

Mr. COOK. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. HASKELL). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Kentucky.

The amendment was agreed to.

Mr. COOK. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TUNNEY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. Under the precedents of the Senate, the Senator does not have enough time remaining on the bill to suggest the absence of a quorum.

Mr. TUNNEY. I ask unanimous consent that I may suggest the absence of a quorum without the time being charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The hour of 2 p.m. having arrived, the Senate will now proceed to vote on the amendment of the Senator from Alaska (Mr. STEVENS) to S. 1983.

On this question the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), is necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent to attend the funeral of a friend.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Maryland (Mr. BEALL) and the Senator from Arizona

(Mr. GOLDWATER) are detained on official business.

The result was announced—yeas 60, nays 33, as follows:

[No. 321 Leg.]

YEAS—60

Aiken	Fannin	Metcalf
Allen	Fulbright	Montoya
Baker	Gravel	Moss
Bartlett	Gurney	Nunn
Bennett	Hansen	Pearson
Bible	Helms	Percy
Biden	Hollings	Randolph
Brock	Hruska	Saxbe
Burdick	Huddleston	Scott, Pa.
Byrd, Harry F., Jr.	Inouye	Scott, Va.
	Jackson	Sparkman
Chiles	Johnston	Stafford
Church	Long	Stevens
Clark	Magnuson	Symington
Cook	Mansfield	Talmadge
Curtis	Mathias	Thurmond
Dole	McClellan	Tower
Domenici	McClure	Weicker
Dominick	McGee	Young
Eagleton	McGovern	
Eastland	McIntyre	

NAYS—33

Bayh	Hartke	Packwood
Bentsen	Haskell	Pastore
Brooke	Hatfield	Pell
Buckley	Hathaway	Proxmire
Byrd, Robert C.	Hughes	Ribicoff
Case	Humphrey	Roth
Cranston	Javits	Schweiker
Ervin	Kennedy	Stevenson
Fong	Mondale	Taft
Griffin	Muskie	Tunney
Hart	Nelson	Williams

NOT VOTING—7

Abourezk	Cannon	Stennis
Beall	Cotton	
Bellmon	Goldwater	

So Mr. STEVENS' amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. FULBRIGHT. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 66, line 12, strike "the Secretary of the Smithsonian Institution" and insert in lieu thereof "The Secretary of Agriculture."

Mr. FULBRIGHT. Mr. President, this provision, authorizing the money to the Smithsonian Institution, was not in the original bill. It was inserted in the House, in the Subcommittee on Commerce, by Representative DINGELL.

I have consulted the Smithsonian, and Mr. Michael Huxley, the Assistant Secretary, has informed me that they do not wish to pursue this; and they have suggested the substitution of the Secretary of Agriculture for the Smithsonian Institution.

The Smithsonian is interested in this subject, but they do not feel that they are in a position today to carry out the program which is here authorized, and they have suggested that the Department of Agriculture be substituted. It is my understanding that this amendment is acceptable to the chairman of the committee.

Of course, if the Department of Agriculture wishes the cooperation of the Smithsonian, I am quite sure they can obtain it, insofar as the Smithsonian's facilities will permit them to do so.

Mr. TUNNEY. Mr. President, it is my understanding that the amendment would enable the Department of Agriculture to contract with the Smithsonian Institution to conduct a part of the study if the Department of Agriculture felt that it was necessary—or, for that matter, to contract with any other Federal agency, State agency, or private individual for the purpose of conducting that study.

Mr. FULBRIGHT. I see nothing to prevent that, either.

I must say that I had no notice of this matter until a couple of hours ago, and on inquiry from the Smithsonian, this is the best information I have.

Mr. TUNNEY. I certainly have no objection to the amendment; but I want to make clear that it is the manager's understanding that it would not prevent the Secretary of Agriculture from contracting with the Smithsonian Institution or any other group or agency for the purpose of conducting the study.

Mr. FULBRIGHT. So far as I can see, there is nothing to prevent that. It is up to the Department of Agriculture.

Mr. TUNNEY. I accept the amendment, and I yield back the remainder of my time.

Mr. FULBRIGHT. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arkansas.

The amendment was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. NELSON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. NELSON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 32 insert the following new subsection after Section 3(14);

"(15) 'chemical toxicant' means any chemical substance designed, intended, or employed to control or eradicate insects, rodents, predators and any other wildlife, or plants, by causing significant bodily malfunction, injury, illnes, or death immediately or in the future."

On page 39, line 23, immediately before the semicolon, insert a comma and the following: "and plans to issue regulations prohibiting the use of chemical toxicants within the areas comprising such lands, waters, and interests so acquired, in a manner comparable to that provided under section 10(a)(10)."

On page 52, insert the following new subsection after section 10(a)(9):

"(10) uses any chemical toxicants within any area, comprising lands and waters, including interests therein, of the United States, which were acquired and are being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register, that:

"(A) an emergency exists to the endangered or threatened species that cannot be dealt with by means which do not involve the use of chemical toxicants, and that such use is necessary for the survival of the endangered or threatened species; or

"(B) a particular method of applying a chemical toxicant will not impair the survival of an endangered or threatened species."

Mr. NELSON. Mr. President, this act is designed to stave off the extinction of our wildlife by protecting the endangered species from men who might knowingly or inadvertently harm them. Because of this act, an animal or fish species will not be overtly "taken."

Yet, it is common knowledge that there is another danger to our wildlife, a threat which is unavoidable: the expansion of our cities and industries. But we should also watch that we not destroy the animal world, made helpless by human technology. This act acknowledges that habitat modification is liable to be increasingly prevalent as the cause of future wildlife losses. The Secretaries of Interior and Commerce are authorized to acquire the lands upon which the endangered and threatened species reside and funds are provided for this purpose. Habitat acquisition will provide a framework, a base for the construction of true sanctuaries, preserves free from harmful human instrusions. This amendment would aid in safeguarding the sanctuaries of the endangered species.

Around 10 years ago we first learned the insidiousness of chemical poisons: how the residues of herbicides, insecticides, of pesticides in general, remain and find their way into the tissue of the low members of the food chain which are consumed by the next higher and so on, until the birds and mammals of prey, representing the top of the food chain, accumulate massive concentrations of chemical poisons.

They become the victims of chemical toxicant poisoning in the form of reproductive failures, incapacitation, or death.

There are presently eight species upon the Department of the Interior's red book list of rare and endangered species, including the southern bald eagle and the California condor which have been decimated by the use of chemical toxicants. Other species like the prairie falcon will have to be added to the future endangered and threatened species lists because of our widespread use of pesticides. This amendment does not cover much area, only those small preserves which are wholly dedicated to endangered species protection.

Poisons are so lethal and the existence of endangered species so precarious that we must be overly cautious to avoid chemical disasters. This amendment applies to those lands "acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species." However, the Secretary is authorized to allow the use of chemical toxicants if he finds that that use is needed to insure the survival or that such use will not at all affect the survival of an endangered or threatened species.

The amendment prohibits the use of chemical poisons upon the lands that the Federal Government and the States has and will acquire as selected habitat for the endangered or threatened species. The lands this amendment refers to are primarily those in the National Wild-

life Refuge System and those lands which State Fish and Game Departments will oversee. The ratio will be even more lopsided for the lands the States will acquire under the provisions of this act. For example the California Department of Fish and Game has indentified seven of its indigenous rare and endangered species of wildlife as being presently threatened by county rodent control programs and is negotiating a joint policy agreement with the California Department of Food and Agriculture so that the two Departments will cooperate more closely. In other words, the Fish and Game Department is very concerned, and with good reason, that control people in the field will not realize until it is too late that they are using chemical toxicants within the areas upon which the endangered and rare species are making their last stand.

Mr. President, this is a very simple amendment which provides that chemical toxicants, poisons, may not be used on those lands which are—

Acquired by and are being used for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species, except that the Secretary may authorize the use of a chemical toxicant, but only if he makes a written finding which he shall publish in the Federal Register.

That the use of chemical toxicants is necessary for the purpose of protecting endangered species.

I think there is no controversy about the amendment. I ask the Senator if he is willing to accept it.

Mr. TUNNEY. Mr. President, I want to make sure I understand the amendment. Does the amendment provide that the Secretary of Interior must make a positive finding that before chemical toxicants can be used such a toxicant will protect the species or not hurt the species?

Mr. NELSON. He must file a statement saying that the use of the chemical toxicant is necessary for the purpose of protecting the endangered species. Otherwise it may not be used on sanctuary lands.

Mr. TUNNEY. Let me make sure that I understand the lands this applies to. The Senator said sanctuary lands.

Mr. NELSON. Yes. In the amendment it is described as—

Lands acquired and being utilized for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

The Government is going to be acquiring lands under this provision and there are sanctuary lands already set aside; the amendment applies to these lands unless the Secretary says that the use of toxicants is necessary for the protection of endangered species.

Mr. TUNNEY. Are toxicants presently allowed to be used on sanctuary lands?

Mr. NELSON. For example, I think there is a case in the Senator's State where there are two different agencies. One agency used chemical poisons to kill rodents and one of the endangered birds was being poisoned by the poisons being used to kill rodents. Those two departments of the state government which were operating with conflicting purposes have now reached an agreement. But this is the kind of case that could occur. Poison could be used on some lands where you are trying to protect a species, and at the same time they are threatening the survival of the endangered species.

This provides that poison cannot be used on those lands unless the Secretary certifies that it is necessary to protect the species for which the sanctuary is in existence.

Mr. TUNNEY. What if it is a State sanctuary as contrasted with the Federal sanctuary? If it were a State sanctuary would they have to get authorization from the Secretary of the Interior?

Mr. NELSON. That is the way I interpret it.

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

Mr. NELSON. I yield.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

The Senate will be in order. The Senator may proceed.

Mr. HANSEN. I am wondering about this situation. In times past, in western Wyoming, the State game and fish commission has found it advisable to employ the use of so-called coyote getters in and around elk winter feeding areas. I am not certain that has been used in national elk sanctuaries.

My question is, If in the judgment of the Fish and Wildlife Service, or the Bureau of Sports, Fisheries, and Wildlife, as it is now called, it became necessary to try to bring some effective control upon the coyote—we have trumpeter swan and waterfowl and other birds in addition to elk, which is the major big game animal in the area, although there are moose, deer, and mountain sheep—would this amendment prohibit any control of the coyote within the national elk refuge, if it is permitted, assuming it may be, if in the judgment of the Bureau of Sports, Fisheries, and Wildlife it became necessary or desirable to effect control of the coyote? Would this preclude that action unless the Secretary certified that the use of the coyote getter was to protect the endangered species?

Mr. TUNNEY. I do not know the classification of the Elk Refuge Commission. It is clear that if it involved any lands that were being acquired under this legislation——

Mr. HANSEN. These lands have been acquired first, partly by gift. The Izaak Walton League many years ago made a grant and, from 1914 forward, the Federal Government through different measures has added to the refuge, and by purchase.

Does that answer the Senator's question?

Mr. NELSON. I am not sure it does. If the sanctuary has been created or the lands acquired for the purpose of creating a sanctuary or a wildlife habitat for an endangered species, very clearly you could not use chemical poisons on that land except upon authorization of the Secretary who would make the finding in the amendment.

I assume it would apply to the elk land referred to, but I do not know what classification they are under.

Mr. HANSEN. My purpose in asking the question is to try to have a better understanding of the amendment. I have posed a hypothetical question. I do not think for a moment this might happen, but sometimes in our enthusiasm it is easy to attain a certain objective that might tie our hands. The trumpeter swan found in that refuge were an endangered species. As far as I know, they are the only endangered species in the elk refuge. I do not think the elk refuge was established because the elk was endangered, but was an important wildlife species which deserved better year-around care than they were getting.

Mr. TUNNEY. Mr. President, I believe the Senator's amendment is designed to achieve a very desirable purpose but during the course of the hearings we never did have an opportunity to get testimony from any party with respect to chemical toxicants and the use of chemical toxicants on sanctuaries. Inasmuch as the Senator's amendment relates also to State sanctuaries and we would be imposing the will of the Secretary of the Interior on State officials as it relates to State sanctuaries. I think the matter should be subject to hearings.

Therefore, for the committee, I cannot accept the amendment.

Mr. NELSON. I would like to ask a question. Is there a similar bill under consideration in the other body?

Mr. TUNNEY. Yes. The House will be considering legislation.

Mr. NELSON. On this bill, or do they have a bill of their own?

Mr. TUNNEY. They have one of their own.

Mr. NELSON. Have they finished the hearings on that?

Mr. TUNNEY. Yes.

Mr. NELSON. In view of the Senator's objection, Mr. President, I will withdraw the amendment and if they have not acted on the House side, I will have further comment.

Mr. TUNNEY. I sympathize with the purpose of the Senator's amendment, but I do not see how we can include it without hearings.

Mr. NELSON. Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The bill is open to further amendment.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended, in the nature of a substitute.

The committee amendment, as amended, in the nature of a substitute was agreed to.

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

Mr. ROTH. Mr. President, I am proud to lend my support to the Endangered Species Act of 1973, a long overdue piece of legislation. The time has come for us to recognize that more than one hundred species and subspecies of wildlife—fish, animals, and birds—as well as forms of plantlife, are being seriously threatened through hunting and trapping, and by man's encroachment on their natural habitats. I encourage support of S. 1983 because it refines previous legislation that this body developed and passed in 1966 and expanded upon in 1969.

The President stated in his environmental message of February 8, 1972, that the existing law "simply does not provide the kind of management tools needed to act early enough to save a vanishing species." In effect, the present law prevents the Government from taking action until a species is virtually extinct. Often, by the time something is done, it is too late to reverse the trend. I support the provisions of this bill and urge your careful consideration. Especially notable in this legislation are its provisions to create a more flexible classification and declassification system, strict civil and criminal penalties, and its acknowledgement of migratory patterns and the need for international cooperation.

The people of Delaware who admire the graceful and inspiring flight of the few American bald eagles remaining in the State, who view with awe the migratory flight of geese, ducks, and swans, hope that the Senate will look favorably upon this measure.

Mr. DOMENICI. Mr. President, today we will vote on S. 1983—the Endangered Species Act of 1973—a bill which provides for the conservation, protection and propagation of now endangered species of fish and wildlife. If implemented, this legislation will save from extinction one of our more valuable natural resources.

In recent years, many citizens of the United States have come to view the various species of wildlife as environmental indicators for their State, and, in a larger context, for the world. These citizens consider wildlife a precious natural resource which, if husbanded and protected, will be one of the factors in our natural surroundings which will endure for generations to follow. These individuals—whether they live in New York City or Chama, N. Mex.—want to be assured that there exists abundance of wildlife "somewhere" in our Nation, as well as to be assured of its continued existence.

The beautiful State of New Mexico has fought hard, although in some cases not hard enough, to protect its environment and its endangered species. The people of my State share a feeling of pride in the fact that they continually strive to preserve the natural—they strive to prevent technology from overriding the natural resources of our State.

In terms of wildlife, there has always been an endangered spicies for both natural and manmade reasons. Natural population fluctuations of some species have diminished their number to such a low point that they were unable to generate a continued existence. Other species have become so highly specialized that any slight alteration of the habitat spelled doom for their continued existence—experts point out that this natural phenomenon continues today. However, in the "modern age" of man, many experts claim that the possible extinction of numerous species of wildlife has increased by a tremendous factor. In many cases, "progress" for man means threatening disaster or devastating decline for a major portion of our wildlife. I feel the main thrust of our discussion on this legislation should be man's obvious detrimental effect on wildlife to the point of practically guaranteeing its extinction.

We are not here today to discuss individual blame but to plan as immediate solution to insure the life of our endangered species. The advance of man's civilization has proved to be costly to the natural environment. It is a fact that man has been the culprit in bringing certain species to the point of extinction; it would be a double indictment against humanity to ignore the present situation and allow the destruction of our resource of wildlife to continue.

How has man effected wildlife adversely? Some reasons are quite obvious and others more subtle. Many of our land-use practices have destroyed the delicate habitat necessary to maintain a healthy wildlife. Certain intensive agricultural practices, unconcerned with their harmful influence on wildlife, have brought various species to the brink of extinction. All of us in these Chambers have heard of the now infamous golden eagle killings in Colorado and Wyoming. While the golden eagle has been saved from extinction, it was through indiscriminate shooting and treatment that this species was almost lost. In New Mexico, the prairie dog towns have been so decimated that the rare and endangered black-footed ferret is nowhere to be seen. While most naturally harmful organochlorine pesticides have been banned, their effects have been detrimental to various wildlife species. Again, in New Mexico, the peregrine falcon is still trying to recover from DDT poisoning.

Also, man through commercial exploitation of a particular wildlife species has placed some animals in the endangered category. Most of you here today are aware of the disputes within the whaling industry which exist among other nations. While the legislation under consideration takes care of such problems within the United States territorial boundaries, we must additionally have a procedure to intervene in such international disputes where the existence of endangered species is at stake.

Under the provisions of this act, there exists various means of recovery that can be instituted on behalf of rare and endangered species. We must demand the continued protection of prime habitat and, where feasible, renew and refurbish deteriorated species. Through the Office of Endangered Species and other Federal agencies, and with the aid and coordination of the various States' fish and game agencies, innovative and intensive programs should be initiated for all endangered species; such management will result in beneficial effects for our wildlife. Finally, various programs of captive propagation would be beneficial for rare and endangered species in order that progeny raised in captivity could be used to replenish the wildlife population.

At the same time, our governmental agencies, in cooperation with biologists and interested citizens, should continue research on the rare and endangered wildlife of our Nation. Continued investigations should be made to determine the population fluctuations of the various species. On the basis of a complete census, efforts should be made to determine which are the limiting factors at the present time and which factors in the future will affect the well-being of our wildlife resource.

Senate bill 1983 addresses itself to rare and endangered wildlife. This legislation is drafted to protect these species, and it suggests a number of ways by which this can be accomplished. Under the authority of the Secretaries of Interior and Commerce, any species which is considered rare or endangered shall be free from molestation by the threat of civil penalty. It also gives authority to the Secretaries to permit continued scientific research into the problems of endangered wildlife. With a broadening of our knowledge concerning the problems of endangered species, maybe we can turn the tide on the uncertain existence of many of these animals. I urge my colleagues in the Senate to support this legislation which will benefit the generations which follow us and our Nation as well.

Mr. PERCY. Mr. President, it is certainly encouraging to me that the Senate is about to move promptly and hopefully unanimously upon S. 1983, the Endangered Species Act of 1973. For too long there has been insufficient means to protect and preserve all the valuable species of wildife that contribute so much to the quality of life as we know it. S. 1983 will provide the tools we need both to protect animals that are presently endangered and to take the necessary precautions so that additional species are not reduced to the endangered level.

Action in this field reflects both an increased awareness of man's place in the ecosystem and the healthy respect that that awareness must engender. I am pleased that the Senate will take positive action with the adoption of S. 1983 and I am confident that this legislation will go a long way toward preserving our valuable and unfortunately perishable wildlife.

It is my pleasure to report that the State of Illinois has taken a lead in the area of endangered species with the passage of vigorous legislation earlier this year and will have no trouble in complying with the new Federal regulations.

The PRESIDING OFFICER. The bill has been read the third time. The question now is, Shall it pass? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON) is necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from South Dakota (Mr. ABOUREZK) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent to attend the funeral of a friend.

The Senator from Utah (Mr. BENNETT) is necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Maryland (Mr. BEALL) and the Senator from Arizona (Mr. GOLDWATER) are detained on official business.

The result was announced—yeas 92, nays 0, as follows:

[No. 322 Leg.]

YEAS—92

Aiken	Gravel	Montoya
Allen	Griffin	Moss
Baker	Gurney	Muskie
Bartlett	Hansen	Nelson
Bayh	Hart	Nunn
Bentsen	Hartke	Packwood
Bible	Haskell	Pastore
Biden	Hatfield	Pearson
Brock	Hathaway	Pell
Brooke	Helms	Percy
Buckley	Hollings	Proxmire
Burdick	Hruska	Randolph
Byrd, Harry F., Jr.	Huddleston	Ribicoff
	Hughes	Roth
Byrd, Robert C.	Humphrey	Saxbe
Case	Inouye	Schweiker
Chiles	Jackson	Scott, Pa.
Church	Javits	Scott, Va.
Clark	Johnston	Sparkman
Cook	Kennedy	Stafford
Cranston	Long	Stevens
Curtis	Magnuson	Stevenson
Dole	Mansfield	Symington
Domenici	Mathias	Taft
Dominick	McClellan	Talmadge
Eagleton	McClure	Thurmond
Eastland	McGee	Tower
Ervin	McGovern	Tunney
Fannin	McIntyre	Weicker
Fong	Metcalf	Williams
Fulbright	Mondale	Young

NAYS—0

NOT VOTING—8

Abourezk	Bennett	Goldwater
Beall	Cannon	Stennis
Bellmon	Cotton	

So the bill (S. 1983) was passed, as follows:

S. 1983

An act to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes

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 "Endangered Species Act of 1973".

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve and protect to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation, protection, restoration, and propagation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish and wildlife.

(b) PURPOSES.—The Congress hereby declares that the purposes and policy of this Act are to—

(1) provide an effective means to conserve, protect, and restore the ecosystems upon which endangered and threatened species of fish or wildlife depend;

(2) provide a viable program for the conservation, protection, restoration, and propagation of endangered and threatened species;

(3) take all appropriate steps to implement the Nation's international commitments with respect to endangered and threatened fish or wildlife; and

(4) insure that all departments, agencies, and instrumentalities of the United States seek, within the scope of their authority and administrative jurisdiction, to protect endangered and threatened species.

DEFINITIONS

SEC. 3. As used in this Act—

(1) "Conservation" and "management" mean the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of endangered and threatened species at the optimum carrying capacity of their habitat. Such terms include the entire scope of activities that constitute a modern scientific resources program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the protection, propagation, conservation and restoration of such species, including regulation and taking necessary to these ends.

(2) "Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.

(3) "Endangered species" means any species of fish or wildlife which is in danger of extinction throughout all or a significant portion of its range, other than a species of the order insectica determined by the Secretary to constitute a pest whose protection under the provisions of this Act would present an overwhelming and overriding risk to man.

(4) "Fish or wildlife" means any living member of the animal kingdom and the remains of any dead member of the animal kingdom, including, but not limited to, any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, or any part, egg, or offspring of any such member, or any product produced from any part or parts of the remains of any such member.

(5) "Foreign commerce" includes any transaction—

(A) between persons within one foreign country;

(B) between persons in two or more foreign countries;

(C) between a person within the United States and a person in a foreign country; or

(D) between persons within the United States, where the fish or wildlife involved are moving in any country or countries outside the United States.

(6) "Import" means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(7) "Optimum carrying capacity" means the ability of a given habitat to support the optimum sustainable population of an endangered or threatened species in a healthy state without diminishing the ability of the habitat to continue that function.

(8) "Optimum sustainable population" means, with respect to any of endangered or threatened species, the number of such species which will result in the maximum productivity of the species, keeping in mind the optimum carrying capacity of the habitat and the health of the ecosystem of which they form a constituent part.

(9) "Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(10) "Plant" means any member of the plant kingdom, including seeds, roots, or other parts of any such member.

(11) "Secretary" means, except as otherwise provided, the Secretary of the Interior or the Secretary of Commerce in the same manner in which program responsibilities are vested under Reorganization Plan Numbered 4 of 1970. With respect to enforcement of the provisions of this Act and of the Convention, which pertain to the importation of plants, the term means the Secretary of Agriculture.

(12) "Species" includes any subspecies or other group of fish or wildlife of the same species or lesser taxa in common spatial arrangement that interbreed when mature.

(13) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(14) "State agency" means the State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish and wildlife resources within a State.

(15) "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(16) "Threatened species" means any species of fish or wildlife which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(17) "United States", when used in a geographical sense, includes all States.

DETERMINATION OF ENDANGERED OR THREATENED SPECIES

SEC. 4. (a) GENERAL.—The Secretary shall by regulation determine whether any fish or wildlife is an endangered or threatened species as a result of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

(b) BASIS FOR DETERMINATIONS.—(1) The determinations required by this section shall be made on the basis of the best scientific and commercial data available to the Secretary, including any recommendations that have been made by the Advisory Committee established under subsection (d) of this section and after consultation, as appropriate, with all interested persons and organizations, including affected or knowledgeable Federal, State, and foreign government agencies. In any case in which such determinations involve an indigenous species, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which determinations involve a species which is normally found on the high seas, in lakes, or other waters off the coast of a State of which are customarily harvested by citizens of such a State, the Secretary shall consult with and consider the recommendations of each State involved. In any case in which such determinations involve a species which is normally found in a foreign country or countries or which is harvested from the ocean by citizens of such country or countries, the Secretary shall (where practicable) with the assistance of the Secretary of State, consult with and consider the recommendations of such country or countries.

(2) Fish or wildlife which have been designated as requiring protection from unrestricted commerce by any foreign country, or pursuant to any international agreement, shall receive special and full consideration by the Secretary to determine whether each is an endangered or a threatened species.

(c) LISTS.—(1) The Secretary shall publish in the Federal Register a list of all fish or wildlife determined by him by regulation to be endangered species and a list of all fish or wildlife determined by him by regulation to be threatened species. Such lists may be amended, modified, or revised periodically by regulation. Each list shall refer to each species of fish or wildlife named therein by scientific name and common name or names and shall specify the portion of its range over which it is endanagered or threatened.

(2) The Secretary shall, upon the petition of an interested person under subsection 553(e) of title 5, United States Code, conduct a review of any listed or unlisted species of fish or wildlife proposed to be removed from or added to either of the lists published pursuant to paragraph (1) of this subsection, but only if he makes and publishes a finding that such person has presented substantial evidence which in his judgment warrants such a review.

(3) Any list of species of fish or wildlife determined to be threatened with extinction, by the Secretary of the Interior pursuant to the Endangered Species Conservation Act of 1969, which is in effect the day before the date of enactment of this Act shall be republished to conform to the appropriate classifications under this Act. Pending reclassification as endangered species or threatened species and republication, any species listed pursuant to the Act of 1969 shall be deemed an endangered species within the meaning of this Act. Such reclassification and republication shall not require a public hearing or comment under section 553 of title 5, United States Code.

(d) ADVISORY COMMITTEE.—(1) The Secretaries shall establish an Advisory Committee on Endangered and Threatened Species to consult with, advise, and make recommendations to him and to the States. The Advisory Committee shall consist of not more than eleven members including a Chairman who shall be appointed by the Secretary from lists of qualified individuals submitted by State fish and wildlife agency administrators, universities, nongovernmental organizations concerned with conservation, and scientific societies. Five of the members shall be regularly employed by State governments or political subdivisions thereof. The terms of office shall be so arranged by the Secretary that each year at least three new members shall be appointed to fill vacancies caused by the expiration of terms of office.

(2) The Advisory Committee shall periodically, but not less than once each year, make recommendations to the Secretary with respect to removal from, addition to, or reclassification within the lists maintained pursuant to subsection (a) of this section, and may, with the approval of the Secretary, perform other functions in furtherance of the purposes of this Act. A member of the Advisory Committee who is not otherwise a Government employee may, in the discretion of the Secretary, receive not more than $150 per diem when engaged in the actual performance of his duties. Each member may receive reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of his duties.

(e) PROTECTIVE REGULATIONS.—Whenever the Secretary lists a species of fish or wildlife as a threatened species, pursuant to subsection (a) of this section, he shall issue such regulations as he deems necessary and advisable to provide for the conservation and management of such species. With respect to any threatened species, the Secretary may by regulation prohibit any act prohibited with respect to an endangered species under section 10(a) of this Act.

LAND ACQUISITION

SEC. 5. The Secretary shall establish and implement a program to conserve, protect, restore, and propagate fish or wildlife which are listed as endangered or threatened species pursuant to section 4 of this Act. To carry out such programs, the Secretary—

(a) shall utilize as appropriate the land acquisition and other authorities conferred upon him under the Migratory Bird Conservation Act, the Fish and Wildlife Act of 1956, and the Fish and Wildlife Coordination Act;

(b) may acquire by purchase, donation, or otherwise any lands, waters, or interests therein necessary for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species. Such authority shall be in addition to any other land acquisition authority vested in him;

(c) may use funds made available under the Land and Water Conservation Fund Act of 1965 or under this Act to acquire such lands, waters, or interests therein.

COOPERATION WITH THE STATES

SEC. 6. (a) GENERAL.—In carrying out the program authorized by this Act, the Secretary shall cooperate to the maximum extent practicable with the States. In addition to all other obligations, the Secretary shall consult with the affected State before the acquisition of any lands, waters, or interests therein for the purpose of conserving, protecting, restoring, or propagating any endangered or threatened species.

(b) MANAGEMENT AGREEMENTS.—The Secretary may enter into an agreement or agreements with any State for the administration and management of any area established for the conservation and management of an endangered or a threatened species. Any revenues derived from the administration of such areas under such agreements shall be subject to section 401 of the Act of June 15, 1935 (16 U.S.C. 715s).

(c) FINANCIAL ASSISTANCE.—The Secretary is authorized to enter into a cooperative agreement in accordance with this subsection to provide financial assistance to any State which establishes and maintains an adequate and active program for the conservation and management of endangered and threatened species. Before the Secretary may enter into or renew such a cooperative agreement to provide financial assistance to a State, he shall make, justify, and publish in the Federal Register a finding that such agreement would further the policy of this Act and that such State has a program under which—

(1) the State agency has statutory and regulatory authority and administrative jurisdiction to manage and protect any species of fish or wildlife which is determined by such agency or the Secretary to be endangered or threatened;

(2) the State has established a State plan, including a management program under the State agency, for all species of resident fish or wildlife which are deemed by the Secretary to be endangered or threatened, and has furnished a copy of such plan and program together with all pertinent details, information, and data requested to the Secretary;

(3) the State agency during the first year of the existence of such agreement—

(A) will issue protective regulations;

(B) will employ sufficient trained and qualified personnel; and

(C) will maintain investigation, enforcement, and public education programs,

which are adequate, in the Secretary's judgment, for the conservation and management of species of endangered and threatened fish or wildlife;

(4) the State agency is authorized and plans to conduct studies to determine the status and requirements for survival of species of resident fish or wildlife and agrees to transmit a copy of the findings of such studies to the Secretary;

(5) the State agency is authorized and plans to establish programs, including the acquisition of lands, waters, or interests therein, for the conservation and management of endangered and threatened species; and

(6) provision is made for public participation in designating species of resident fish or wildlife as endangered or threatened.

(d) ALLOCATION OF FUNDS.—(1) Funds appropriated for financial assistance pursuant to subsection (c) of this section shall be available to the Secretary for allocation to the States under cooperative agreements. The purposes for which such funds may be used include, but are not limited to, conservation and management. The Secretary shall allocate appropriated funds to such States upon the basis of—

(A) the international commitments of the United States to protect endangered or threatened species;

(B) the readiness of a State to proceed with a conservation and management program consistent with the objectives and purposes of this Act;

(C) the number of endangered and threatened species within a State;

(D) the potential for restoring endangered and threatened species within a State; and

(E) the relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of the survival of the species.

Funds allocated to a State but unexpended or unobligated at the close of the fiscal year shall remain available for expenditure by such State until the close of the succeeding fiscal year. Any funds remaining unobligated or unexpended at the close of the second fiscal year shall remain available to the Secretary for the purpose of this section.

(2) Each cooperative agreement between a State and the Secretary shall provide for—

(A) the actions to be taken by the Secretary and the State;

(B) the benefits that are expected to be derived in connection with preservation and restoration of endangered or threatened species;

(C) the estimated cost of these actions; and

(D) the share of such costs to be borne by the Federal Government and by the States, except that—

(i) the Federal share of such program costs shall not exceed 50 per centum of the esti-

mated program costs stated in the agreement; and

(ii) the Federal share may be increased to 66⅔ per centum whenever two or more States, having a common interest in a program that the Secretary deems to meet the criteria of paragraph (1) of this subsection, enter jointly into an agreement with the Secretary.

The Secretary may, in his discretion, and under such rules and regulations as he may prescribe, advance funds to the State for financing the United States pro rata share agreed upon in the cooperative agreement. For the purposes of this section, the non-Federal share may, in the discretion of the Secretary, be in the form of real or personal property, the value of which will be determined by the Secretary, as well as money.

(3) The Secretary is authorized to issue such regulations as may be appropriate to carry out the provisions of this section with respect to financial assistance to States.

(4) For the purposes of this section, there is authorized to be appropriated through the fiscal year ending June 30, 1977, not to exceed $10,000,000.

(e) PERIODIC REVIEW.—The finding made under subsection (c) of this section and any action taken by the Secretary under this section shall be subject to his periodic review, including the consideration of comment from interested persons, at no greater than annual intervals. Upon ninety days' notice in writing to the affected State, the Secretary may terminate in his discretion any cooperative agreement entered into under this section.

(f) STATE ACTION PERMITTED.—Nothing in this Act shall be construed as superseding or limiting the power of any State or political subdivision thereof to enact legislation or regulations more restrictive than or consistent with the provisions of this Act with respect to an endangered or a threatened species: *Provided*, That any State law or regulation regarding the import or export of or the interstate or foreign commerce in an endangered species listed pursuant to section 4 of this Act is void to the extent that it may effectively permit what is prohibited by this Act or its implementing regulations, or prohbit what is authorized pursuant to an exemption or permit provided for in this Act or its implementing regulations. This Act shall not otherwise be construed to void any State law or regulation which is intended to conserve and manage migratory, resident, or introduced fish or wildlife, or to permit or prohibit sale of such fish or wildlife.

INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review all programs administered by him and utilize such programs in furtherance of the policy of this Act. All other departments, agencies, and instrumentalities of the Federal Government shall, in consultation with and with the assistance of the Secretary—

(a) carry out such programs as are practicable for the protection of species listed, pursuant to section 4 of this Act, as endangered or threatened;

(b) take such action as is necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of any endangered or threatened species, or result in the destruction or modification of any habitat of such species which is determined by the Secretary, after consultation to the extent appropriate and necessary with affected States, to be a critical habitat of such species.

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation, protection, restoration, or propagation of any endangered or threatened species listed by the Secretary pursuant to section 4 of this Act: *Provided*, That no funds other than foreign currencies available for expenditure only within such foreign country shall be used pursuant to this section. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section upon such terms and conditions as he deems appropriate.

(b) ENCOURAGEMENT.—In order to carry out further the provisions of this Act, the Secretary, with the assistance of the Secretary of State, shall encourage—

(1) foreign countries to provide for the protection, conservation, restoration, or propagation of fish or wildlife, including endangered and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements for foreign countries to provide for such protection, conservation, restoration, or propagation; and

(3) foreign persons, who directly or indirectly take fish or wildlife in foreign countries or on the high sea for importation into the United States for commercial or other purposes, to develop and carry out, with such assistance as he may provide, conservation practices designed to enhance such fish, wildlife and plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the protection, conservation, restoration, or propagation of fish or wildlife; and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife or plant management, research, and law enforcement, and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(e) CONVENTION IMPLEMENTATION.—The President is authorized and directed to designate appropriate agencies to act as the Management Authority or Authorities and the Scientific Authority or Authorities pursuant to the Convention. The agencies so designated shall thereafter be authorized to do all things assigned to them under the Convention, including the issuance of permits and certificates. The agency designated by the President to communicate with other parties to the Convention and with the Secretariat shall also be empowered, in consultation with the State Department, to act on behalf of and represent the United States in all regards as required by the Convention.

REGULATIONS, PROCEDURE, AND JUDICIAL REVIEW

SEC. 9. (a) REGULATIONS.—The Secretary shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final, except that in case of an emergency the Secretary may publish such regulations not less than thirty days prior to the time when such regulations shall become final if at the same time he publishes in the Federal Register detailed reasons why emergency action is necessary. The Secretary shall also publish in the Federal Register a notice of all petitions received pursuant to this Act 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 Secretary shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Secretary 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 Secretary may make applicable thereto. Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(b) PROCEDURE.—Except as expressly modified by this section, the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) shall apply to proceedings conducted by the Secretary under this Act: Provided, That the provisions of this section shall not apply to the extent necessary to permit emergency action by the Secretary. Notice of and reasons for such action shall be published prior to such action in the Federal Register.

(c) JUDICIAL REVIEW.—(1) Any judicial review of final regulations promulgated under this Act and final actions under section 5(c) of this Act shall be in accordance with sections 701–706 of title 5, United States Code, except that—

(A) with respect to regulations promulgated under section 4 or 6 of this Act, the findings of the Secretary as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(B) with respect to relief pending review, no stay of an action may be granted unless the reviewing court determines that the party seeking such stay—

(i) is likely to prevail on the merits in the review proceeding, and

(ii) will suffer irreparable harm pending such proceeding.

(2) 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 that—

(A) the information is material and was not available at the time of the proceeding before the Secretary; or

(B) failure to include such evidence in the proceeding was an arbitrary or capricious act of the Secretary, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Secretary, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Secretary 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.

(d) AUDIT.—(1) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans, or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection

with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in paragraph (1) of this subsection of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

UNLAWFUL CONDUCT

SEC. 10. (a) PROHIBITED ACTS.—Except as provided in section 11 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(1) import into, or export from, the United States any endangered species which has been listed pursuant to section 4 of this Act;

(2) take any such species within the United States or in the territorial sea of the United States or upon the high seas;

(3) possess, sell, deliver, carry, transport, ship, or receive, by any means whatever, any such species which are taken in violation of paragraph (2) of this subsection;

(4) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and for commercial purposes, any such species;

(5) sell, distribute, or offer for sale in foreign commerce, interstate commerce, or activity affecting interstate commerce any endangered species of fish or wildlife;

(6) attempt to commit, solicit another to commit, or cause to be commited, any act prohibited by paragraphs (1) through (5) of this subsection;

(7) engage in any trade in any specimens of fish, wildlife, or plants, contrary to the provisions of the Convention, or possess any specimens traded contrary to the provisions of the Convention, including the definitions in article I therein;

(8) violate any regulation which is promulgated by the Secretary pursuant to section 4(e) of this Act; or

(9) import into or export from the United States except at a port or ports designated by the Secretary, any fish or wildlife, except nonendangered and nonthreatened shellfish and fishery products which are imported or exported for human or animal consumption, or fish or wildlife taken for recreational purposes pursuant to applicable Federal or State laws and regulations in waters under United States jurisdiction or on the high seas.

To facilitate enforcement of this paragraph and to reduce the costs of enforcement, the Secretary, with the approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. Upon such terms and conditions as he may prescribe, the Secretary may permit such importation at nondesignated ports in the interest of the health or safety of the fish or wildlife or for any other reasons he deems appropriate. Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc–4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under this paragraph until such time as the Secretary otherwise provides.

(b) SIMILARITY OF APPEARANCE CASES.—The Secretary may, by regulation, and to the extent he deems advisable, treat any species of fish or wildlife as an endangered or threatened species even though it is not listed pursuant to section 4 of this act if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this Act.

(c) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of this section shall not apply to any species held in captivity or in a controlled environment on the effective date of this Act if the purposes of such holding are not contrary to the purposes of this act.

EXCEPTIONS

SEC. 11. (a) GENERAL.—Upon a finding that the excepted conduct will not adversely affect the regenerative capacity of the involved species in a significant portion of its range or habitat or otherwise affect the survival of the wild population of such species, and upon such terms and conditions as he may prescribe, the Secretary may issue permits authorizing the importation, exportation, taking, or transportation, by persons found to be qualified, of any fish or wildlife which is listed as an endangered or threatened species pursuant to section 4 of this act for—

(1) for scientific purposes in furtherance of the purposes of this act; or

(2) to enhance the propagation or survival of the affected species including the propagation of such species in captivity or in a controlled habitat.

(b)(1) HARDSHIP.—The Secretary may except from the application of section 10(a) of this Act any person if the failure to grant such exception will cause undue economic hardship: *Provided*, That such exception shall be granted any non-Native resident of an Alaska Native village unless such resident is found by the Secretary not to be primarily dependent upon the taking of fish and wildlife for consumption or use in a Native community or for creating and selling authentic Native articles of handicrafts. The extent and duration of such exception shall be such as the Secretary deems appropriate: *Provided*, No such exception shall be for a duration of more than one year from the date of publication in the Federal Register of notice of proposed listing of the involved species. No exception shall apply to a quantity of fish or wildlife in excess of that specified by the Secretary. No such exception shall be granted unless such person, except non-Native residents of Alaska Native villages who are primarily dependent upon the taking of fish and wildlife for subsistence purposes, applies to the Secretary in writing and furnishes with such application such information as the Secretary may require to prove hardship. The one year period for those species of fish and wildlife which were listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275). No such exemption may be granted for the importation or exportation of a specimen listed in apendix I of the Convention which is to be used for primarily commercial purposes.

"(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) Substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of a proposed listing of such species as an endangered or threatened species.

(B) Substantial economic loss to persons who, for the year prior to the listing of a species under this Act derived a substantial portion of their income from the lawful taking of any listed species which taking would be made unlawful under this Act; or

(C) Curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) PROCEDURE.—(1) The Secretary shall publish a notice in the Federal Register of each application for an exception. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(2) The Secretary may grant exceptions under subsections (a) and (b) of this section only if he finds, and publishes such finding in the Federal Register, that such exceptions were applied for in good faith and if granted and exercised will not operate to the disadvantage of such endangered or threatened species and will be consistent with the policy of this Act.

(d) ALASKA NATIVES.—(1) The provisions of this Act shall not apply with respect to the taking of any endangered or threatened species by any Indian, Aleut, or Eskimo who is an Alaskan native who resides in Alaska if such taking is for the purpose of consumption or use in a native community or for the purpose of selling or creating for sale in interstate commerce authentic native articles of handicrafts and clothing: *Provided*, That in each case such taking is not accomplished in a wasteful manner. As used in this paragraph—

(A) "consumption or use in a native community" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(B) "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking by Indians, Aleuts, or Eskimos is an endangered or threatened species, and that such taking materially and negatively affects the threatened and endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, or Eskimo. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such

regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 or the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared: *Provided*, That no such regulation shall be established which is in contravention of any provision of the Marine Mammal Protection Act of 1972.

PENALTIES AND ENFORCEMENT

SEC. 12. (a) CIVIL PENALTY.—(1) Any person who—

(A) knowingly violates any provision of this Act or any regulation or permit issued under this Act, which prohibits the taking, importing, exporting, shipping, receiving, or otherwise moving in interstate or foreign commerce of any endangered or threatened species of fish or wildlife, or commits any act made unlawful under section 10(a) of this Act, may be assessed a civil penalty by the Secretay of not more than $10,000 for each violation;

(B) commits any act made unlawful under section 10(a) of this Act, or violates any other provision of this Act, or any regulation or permit issued under this Act, may be assessed a civil penalty by the Secretary of not more than $1,000 for each such violation.

No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each prohibited act is a separate violation. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may by his own attorneys institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action solely on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties authorized by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) CRIMINAL VIOLATION.—(1) Any person who knowingly and willfully violates any provision of this Act, or of any regulation or permit issued thereunder, shall, upon conviction, be fined not more than $20,000 or imprisoned for not more than one year, or both.

(2) The head of any Federal agency which has issued a lease, license, permit, or other agreement authorizing the use of Federal lands, including grazing of domestic livestock, to any person who is convicted under paragraph (1) of this subsection may immediately modify, suspend, or revoke such lease, license, permit, or other agreement. The Secretary may suspend, cancel, or refuse to issue for a period of up to one year Federal hunting or fishing permits or stamps with respect to any person who is convicted under paragraph (1) of this subsection. The United States shall not be liable to pay any compensation, reimbursement, or damages in connection with any such modification, suspension, or revocation made pursuant to this section of any lease, license, permit, stamp, or other agreement.

(c) REWARDS.—Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the civil penalty or fine paid, but not to exceed $2,500, to any person who furnishes information which leads to a finding of civil violation or a conviction of a criminal violation of any provision of this Act or any regulation or permit issued thereunder. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

(d) ENFORCEMENT.—(1) The provisions of this Act and any regulations or permits issued under this Act shall be enforced by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, or all Secretaries. Each such Secretary may utilize, by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or any State agency for purposes of enforcing this Act.

(2) The judges of the district courts of the United States and the United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process as may be required for enforcement of this Act and any regulation issued thereunder.

(3) Any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating, in furtherance of the enforcement of this Act may execute and serve any arrest warrant, search warrant, or other warrant of civil or criminal process issued by any officer or court of competent jurisdiction. A person so authorized may search and seize, with or without a warrant, to the extent authorized by law. Any fish, wildlife, property, or item so seized shall be held by any person authorized by the Secretary, the Secretary of the Treasury, or the Secretary of the Department in which the Coast Guard is operating pending disposition of civil or criminal proceedings, or the institution of an action in rem for forfeiture of such fish, wildlife, property, or item pursuant to paragraph (4) of this subsection, except that the Secretary may, in lieu of holding such fish, wildlife, property, or item, permit the owner or consignee to post a bond or other surety satisfactory to the Secretary.

(4) All fish or wildlife, or plants taken, possessed, sold, purchased, offered for sale or purchase, transported, delivered, received, carried, shipped, exported or imported contrary to the provisions of this Act, any regulation issued under this Act, or any permit issued thereunder, and all guns, traps, nets, and other equipment, vessels, vehicles, aircraft, and other means of transportation used to aid the taking, possessing, selling, purchasing, offering for sale or purchase, transporting, delivering, receiving, carrying, shipping, exporting or importing of any fish or wildlife, or plants in violation of this Act, any regulation made pursuant thereto, or any permit issued thereunder shall be subject to forfeiture to the United States.

(5) All provisions of law relating to the seizure, forfeiture, and condemnation of a vessel for violation of the customs laws, the disposition of such vessel or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act. The powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Treasury Department shall, for purposes of this Act, be exercised or performed by the Secretary or by such persons as he may designate.

(e) REGISTRATION.—(1) Any person who engages to any extent in business as an importer of fish or wildlife must register with the Secretary of the Treasury his name and the address of each place of business at which, and all trade names under which, he conducts such business.

(2) Any person required to register with the Secretary of the Treasury under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish or wildlife except nonendangered and nonthreatened shell fish or fishery products which are imported or exported for human or animal consumption or recreational purposes, made by him and the subsequent disposition made by him with respect to such fish or wildlife; and

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his places of business, an opportunity to examine his inventory of imported fish or wildlife and the records required to be kept under subparagraph (A) of this paragraph and to copy such records.

(3) The Secretary of the Treasury, after consultation with the Secretary, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(f) ENFORCEMENT REGULATIONS.—(1) The Secretary, the Secretary of the Treasury, and the Secretary of the Department in which the Coast Guard is operating, are authorized to promulgate such regulations as may be appropriate to enforce this Act, and to charge reasonable fees for expenses to the Government connected with permits authorized by this Act, including processing applications and reasonable inspections, and the transfer, board, handling, or storage of fish, wildlife, or plants and evidentiary items seized and forfeited under this Act. All fees collected pursuant to this subsection shall be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the services. Appropriated funds may be expended pending reimbursement from parties in interest.

(g) CITIZEN SUITS.—(1) Except as provided in paragraph (2) of this subsection, any person may commence a civil suit on his own behalf to enjoin any person, including the United States and 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 provision of this Act or regulation issued under the authority thereof. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any such provision or regulation, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after written notice of the violation has been given to the Secretary, and to any alleged violator of any such provision or regulation;

(B) if the Secretary has commenced action to impose a penalty pursuant to subsection (a) of this section; or

(C) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of any such provision or regulation.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Secretary or a State agency).

(h) COORDINATION.—The Secretary of Agriculture and the Secretary shall provide for appropriate coordination of the administration of this Act with the administration of the animal quarantine laws (21 U.S.C. 101–105, 111–135b, and 612–614) and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306). Nothing in this Act or any amendment made by this Act, shall be construed as superseding or limiting in any manner the functions of the Secretary of Agriculture under any other law relating to prohibited or restricted importations or possession of animals and other articles. No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. Nothing in this Act shall be construed as superseding or limiting in any manner the functions and responsibilities of the Secretary of the Treasury under the Tariff Act of 1930, including, but not limited to, section 527 of such Act (19 U.S.C. 1527), relating to the importation of wildlife taken, killed, possessed, or exported to the United States in violation of the laws or regulations of a foreign country.

ENDANGERED PLANTS

SEC. 13. The Secretary of Agriculture, in conjunction with other affected agencies, is authorized and directed to review species of plants which are endangered or threatened, and methods of providing adequate protection including legislation for such species. He shall report the results of such review to Congress, not later than one year after the date of enactment of this Act. For purposes of this section, there is authorized to be appropriated not to exceed $250,000.

CONFORMING AMENDMENTS

SEC. 14. (a) Section 4(c) of the Act of October 15, 1966 (80 Stat. 928, 16 U.S.C. 668dd(c)), is further amended by revising the second sentence thereof to read as follows: "With the exception of endangered and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 in States wherein a cooperative agreement does not exist pursuant to section 6(c) of such Act nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the System."

(b) Section 10(a) of the Migratory Bird Conservation Act (45 Stat. 1224, 16 U.S.C. 715i(a)) and section 401(a) of the Act of June 15, 1935 (49 Stat. 383, 16 U.S.C. 715s(a)) are each amended by striking out "threatened with extinction," and inserting in lieu thereof the following: "listed pursuant to section 4 of the Endangered Species Act of 1973 as endangered or threatened species,".

(c) Section 6(a)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9(a)(1)) is amended by striking out:

"THREATENED SPECIES. — For any national area which may be authorized for the preservation of species of fish or wildlife that are threatened with extinction." and inserting in lieu thereof the following:

"ENDANGERED AND THREATENED SPECIES.— For lands, waters, or interests therein, the acquisition of which is authorized under section 5 of the Endangered Species Act of 1973, needed for the purpose of conserving, protecting, restoring, or propagating endangered or threatened species of fish, wildlife, or plants."

(d) The first sentence of section 2 of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 406k–1), is amended to read as follows:

"SEC. 2. The Secretary is authorized to acquire areas of land, or interests therein, which are suitable for—

"(1) incidental fish- and wildlife-oriented recreational development,

"(2) the protection of natural resources,

"(3) the conservation of endangered or threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973, or

"(4) carrying out two or more of the purposes set forth in paragraphs (1) through (3) of this section, and are adjacent to, or within, the said conservation areas, except that the acquisition of any land or interest therein pursuant to this section shall be accomplished only with such funds as may be appropriated therefor by the Congress or donated for such purposes, but such property shall not be acquired with funds obtained from the sale of Federal migratory bird hunting stamps."

(e) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) is amended—

(1) by striking out "Endangered Species Conservation Act of 1969" in section (1)(B) thereof and inserting in lieu thereof the following: "Endangered Species Act of 1973";

(2) by striking out "pursuant to the Endangered Species Conservation Act of 1969" in section 101(a)(3)(B) thereof and inserting in lieu thereof the following: "or threatened species pursuant to the Endangered Species Act of 1973";

(3) by striking out "endangered under the Endangered Species Conservation Act of 1969" in section 102(b)(3) thereof and inserting in lieu thereof the following: "an endangered or a threatened species pursuant to the Endangered Species Act of 1973"; and

(4) by striking out "Endangered Species List, authorized by the Endangered Species Conservation Act of 1969," in section 202(a)(6) thereof and inserting in lieu thereof the following: "endangered species list and threatened species list published pursuant to section 4(c)(1) of the Endangered Species Act of 1973".

(f) Section 2(l) of the Federal Environmental Pesticide Control Act of 1972 (Public Law 92–516) is amended by striking out the words "by the Secretary of the Interior under Public Law 91–135" and inserting in lieu thereof the words "or threatened by the Secretary pursuant to the Endangered Species Act of 1973".

REPEALER

SEC. 15. The Endangered Species Conservation Act of 1969 (sections 1 through 3 of the Act of October 15, 1966, and sections 1 through 6 of the Act of December 5, 1969; 16 U.S.C. 668aa—668cc-6) is repealed.

APPLICABILITY WITHIN STATES

SEC. 16. (a) STATE PLAN.—By the end of the first year after the date of enactment of this Act, a State may establish a plan for endangered and threatened species in accordance with this Act. A plan is in accordance with this Act if it meets or exceeds the requirements set forth in section 6(c) of this Act and represents an effective response to the Nation's need to conserve, protect, restore, and propagate endangered and threatened species of fish or wildlife. Upon the establishment of such a plan, the Governor or the head of the State agency shall promptly transmit a certified copy to the Secretary.

(b) DETERMINATION BY SECRETARY.—Within ninety days after the Secretary receives a certified copy of a State plan established under subsection (a) or subsection (d) of this section, the Secretary shall make a determination whether such State has established a plan for endangered and threatened species in accordance with this Act. Unless the Secretary determines, pursuant to this section, that a State plan is not in accordance with this Act, the plan shall go into effect in such State on the date designated in the plan. In no event shall such State plan go into effect less than three months or more than nine months after the date of its establishment.

(c) PERIODIC REVIEW.—The Secretary shall periodically, but not less than once every three years, review each State plan for endangered and threatened species which has been approved under subsection (b) of this section and for which there is experience, to determine whether such plan is still in accordance with this Act and to evaluate the success of such plan in terms of the policy of this Act. To facilitate such review, the Governor or the head of the State agency in each such State shall submit to the Secretary periodically all information relevant and requested by the Secretary. The Secretary shall report to the President and Congress simultaneously each year on the results of such reviews, including any recommendations for legislation.

(d) NO STATE PLAN.—Except as to species listed in Appendix I of the Convention, the provisions of this Act regarding the management and taking of any State's resident species shall become applicable in their entirety within a State fifteen months after the date of enactment of this Act unless, prior to such date, the Secretary has made a determination under subsection (b) of this section that such State has established a plan for endangered and threatened species in accordance with this Act: *Provided*, That if, within fifteen months of the date of enactment of this Act, the Secretary finds that a State which does not prevent the taking of a species listed by him as endangered does not provide adequate protection for that species, he may by regulation implement the provisions of subsection 10(a) of this Act with respect to that species in that State. If, at any time thereafter, the Secretary upon petition makes a determination, pursuant to subsection (b) of this section, that a State has established a plan for endangered and threatened species in accordance with this Act, such plan shall go into effect and the provisions of this Act regarding the conservation and management of any species shall cease to be applicable or in effect within such State on a date to be designated by the Secretary. If, after a State plan in accordance with this Act is in effect within a State, the Secretary makes a determination, pursuant to subsection (c) of this section, that such plan is no longer in accordance with this Act, the provisions of

this Act regarding the management and taking of any species shall go into effect within such State and such plan shall cease to be in effect on a date to be designated by the Secretary.

(e) PROCEDURE.—(1) Before making any determination under this section, the Secretary shall publish a notice in the Federal Register and afford the State and all interested parties a reasonable opportunity to present their views by oral and written submission.

(2) The Secretary shall notify in writing the Governor of the affected State of any determinations made under this section and shall publish these determinations with reasons therefor in the Federal Register.

(3) Any determinations made by the Secretary under this section shall be subject to judicial review in accordance with chapter V of title 5, United States Code, in the United States court of appeals for the circuit in which is located the State whose plan is the subject of such determination or in the United States Court of Appeals for the District of Columbia Circuit. Any such review shall be instituted within sixty days from the date on which the determination made by the Secretary is published in the Federal Register.

(f) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of this Act shall become effective in their entirety upon the date of enactment of this Act.

MARINE MAMMALS ACT

SEC. 17. CONFLICTS.—Except as otherwise provided in this Act, no provision of this Act shall take precedence over any more restrictive conflicting provision of the Marine Mammal Protection Act of 1972.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 18. For purposes of this Act, other than section 6 and section 13 of this Act, there are authorized to be appropriated such sums as are necessary, not to exceed $3,960,000 for the fiscal year ending June 30, 1974; not to exceed $6,660,000 for the fiscal year ending June 30, 1975; and not to exceed $8,870,000 for the fiscal year ending June 30, 1976.

SEC. 19. (a) That, in accordance with section 3(b) of the Wilderness Act (78 Stat. 892; 16 U.S.C. 1132(b)), those lands in the Daniel Boone National Forest, Kentucky, comprising the Pioneer Weapons Hunting Area and consisting of approximately seven thousand three hundred acres, are hereby designated as wilderness.

(b) As soon as practicable after this Act takes effect, a map of the wilderness area and a description of its boundaries shall be filed with the Interior and Insular Affairs Committee of the United States Senate and House of Representatives and such map and description shall have the same force and effect as if included in this Act: *Provided, however*, That correction of clerical and typographical errors in such legal description and map may be made. A copy of such map and description shall be on file and available for public inspection in the offices of the Chief, Forest Service, United States Department of Agriculture.

(c) The wilderness area designated by this Act shall be known as the Cave Run Wilderness and shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness areas, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

(d) Nothing in this Act or the Wilderness Act shall be construed as precluding the construction of a Zilpo recreation site access road generally on a route extending northward from Forest Development Road Numbered 129 generally skirting the eastern boundary of the Pioneer Weapons Hunting Area, or as affecting or modifying in any manner the 1962 Cooperative Management Plan between the Department of Fish and Wildlife Resources of the State of Kentucky and the Department of Agriculture involving the designation of the Pioneer Weapons Hunting Area within the Daniel Boone National Forest.

The title was amended, so as to read: "A bill to provide for the conservation, protection, restoration, and propagation of threatened and endangered species of fish, wildlife, and plants, and for other purposes."

Mr. TUNNEY. Mr. President, I move that the Senate reconsider the vote by which the bill was passed.

Mr. PASTORE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. TUNNEY. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the bill, S. 1983, which was just passed.

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

AMENDMENT OF COMMUNICATIONS ACT OF 1934

Mr. PASTORE. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1090.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1090) to amend the Communications Act of 1934, to extend certain authorizations for the Corporation for Public Broadcasting and for certain construction grants for noncommercial educational television and radio broadcasting facilities, and for other purposes which was to strike out all after the enacting clause, and insert:

That (a) section 396(k)(1) of the Communications Act of 1934 is amended to read as follows:

"(k)(1) There is authorized to be appropriated for expenses of the Corporation $50,000,000 for the fiscal year ending June 30, 1974, and $60,000,000 for the fiscal year ending June 30, 1975."

(b) Section 396(k)(2) of such Act is amended by striking out "1973" and inserting in lieu thereof "1975".

(c) Section 391 of such Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 391. There are authorized to be appropriated for the fiscal year ending June 30, 1974, and for the succeeding fiscal year such sums not to exceed $25,000,000 for the fiscal year ending June 30, 1974, and $30,000,000 for the succeeding fiscal year, as may be necessary to carry out the purposes of section 390. Sums appropriated under this section for any fiscal year shall remain available for payment of grants for projects for which applications approved under section 392, have been submitted under such section prior to the end of the succeeding fiscal year."

SEC. 2. (a) Section 399 of the Communications Act of 1934 is amended by inserting "(a)" after "SEC. 399." and by inserting at the end thereof the following new subsection:

"(b)(1) Except as provided in paragraph (2), each licensee which receives assistance under this part after the date of the enactment of this subsection shall retain an audio recording of each of its broadcasts of any program in which any issue of public importance is discussed. Each such recording shall be retained for the sixty-day period beginning on the date on which the licensee broadcasts such program.

"(2) The requirements of paragraph (1) shall not apply with respect to a licensee's broadcast of a program if an entity designated by the licensee retains an audio recording of each of the licensee's broadcasts of such a program for the period prescribed by paragraph (1).

"(3) Each licensee and entity designated by a licensee under paragraph (2) which retains a recording under paragraph (1) or (2) shall, in the period during which such recording is required under such paragraph to be retained, make a copy of such recording available—

"(A) to the Commission upon its request, and

"(B) to any other person upon payment to the licensee or designated entity (as the case may be) of its reasonable cost of making such copy.

"(4) The Commission shall by rule prescribe—

"(A) the manner in which recordings required by this subsection shall be kept, and

"(B) the conditions under which they shall be available to persons other than the Commission,

giving due regard to the goals of eliminating unnecessary expense and effort and minimizing administrative burdens."

(b) The section heading for such section 399 is amended by inserting at the end "; RECORDINGS OF CERTAIN PROGRAMS".

Mr. PASTORE. Mr. President, S. 1090 would require all noncommercial radio and television stations receiving Federal assistance to keep audio recordings of each broadcast of a program in which issues of public importance are discussed.

Mr. President, this legislation passed the Senate on May 7, 1973, and subsequently passed the House on Friday, July 20.

As passed by the House, it differs little from the bill passed by the Senate.

Specifically, it authorizes appropriations of $5 million less for the Corporation for each of the fiscal years 1974 and 1975.

It also shortens the authorization period for appropriations for the public broadcasting facilities construction program from 4 years to 2 years, that is, fiscal years 1974 and 1975 instead of fiscal years 1974, 1975, 1976, and 1977. In the process, however, it increases the authorization for fiscal year 1975 from $25 million to $30 million.

In my judgment, under the circumstances, the differences between the House and Senate versions of S. 1090 are not substantial enough to warrant a conference.

The House bill is fully in accord with the intent of the bill as the Senate passed it. It will enable the Corporation and the facilities program to continue and modestly grow.

I cannot let this opportunity pass, how-

ever, without once again emphasizing the need for a permanent financing plan for the Corporation. I hope that the administration will soon submit such a program.

I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. PASTORE. Mr. President, this action has been cleared with the other side. I have talked with the minority leader and also with the Senator from Tennessee (Mr. BAKER), who is the minority member of our subcommittee. What I am doing is satisfactory to them. They have no objection.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Berry, one of its reading clerks, announced that the House insisted upon its amendment to the bill (S. 1888) to extend and amend the Agricultural Act of 1970 for the purpose of assuring consumers of plentiful supplies of food and fiber at reasonable prices, disagreed to by the Senate; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. POAGE, Mr. FOLEY, Mr. SISK, Mr. RARICK, Mr. JONES of Tennessee, Mr. TEAGUE of California, Mr. WAMPLER, Mr. GOODLING, and Mr. MAYNE were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8070) to authorize grants for vocational rehabilitation services, and for other purposes; asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. PERKINS, Mr. BRADEMAS, Mrs. MINK, Mr. QUIE, and Mr. ESHLEMAN were appointed managers on the part of the House at the conference.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H.R. 8825) making appropriations for the Department of Housing and Urban Development; for space, science, veterans, and certain other independent executive agencies, boards, commissions, and corporations for the fiscal year ending June 30, 1974, and for other purposes; agreed to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and that Mr. BOLAND, Mr. EVINS of Tennessee, Mr. SHIPLEY, Mr. ROUSH, Mr. TIERNAN, Mr. CHAPPELL, Mr. GIAIMO, Mr. MAHON, Mr. TALCOTT, Mr. MCDADE, Mr. SCHERLE, Mr. RUTH, and Mr. CEDERBERG were appointed managers on the part of the House at the conference.

JOB TRAINING AND COMMUNITY SERVICES ACT OF 1973

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 1559, which will be stated.

The assistant legislative clerk read as follows:

A bill (S. 1559) to provide financial assistance to enable State and local governments to assume responsibilities for job training and community services, and for other purposes, which had been reported from the Committe on Labor and Public Welfare with an amendment in the nature of a substitute.

The PRESIDING OFFICER. Debate on S. 1559 is limited to 1 hour, to be equally divided and controlled by the Senator from Wisconsin (Mr. NELSON) and the Senator from New York (Mr. JAVITS), with 30 minutes on any amendment, debatable motion, or appeal.

Who yields time?

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, and ask unanimous consent that the time for the quorum call not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. NELSON. 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. NELSON. Mr. President, the legislation before the Senate today represents the culmination of 4 years of effort to decentralize responsibility for manpower programs in order to enable States and localities to assume primary responsibility for carrying out training and employment programs in accordance with locally determined needs.

In the Job Training and Community Services Act of 1973 the Labor and Public Welfare Committee has reported a bill which provides the legislative basis for special revenue sharing for manpower programs.

At the outset, let me point out that the funding recommended by the committee for this legislation—despite increases in the cost of programs—is exactly the same as Congress appropriated for the same programs in 1973—$1.88 billion. Therefore, no part of the President's overall budget increase of $19 billion between 1973 and 1974 can be attributed to this legislation. If all legislation held the line on spending at last year's level—as the committee recommends for this bill—then the budget would in fact be balanced.

In his budget message in January of this year, the President proposed a program of manpower revenue sharing. The President said:

> The 1974 program is based upon a reevaluation of the Federal government's role in these areas. The primary responsibility for most of these activities, other than those for veterans, rests with State and local governments. The proper Federal role is primarily that of helping State and local governments finance their own activities while conducting directly those few programs that can be done efficiently and effectively only by the Federal government.

I have long held the view that Federal programs can best be administered at the State and local level. The pending bill embodies the manpower revenue sharing approach endorsed by the President. The bill, in all significant respects, is consistent with the administration's plans.

The administration's budget in January proposed to undertake administrative changes designed to move in the direction of manpower revenue sharing during fiscal year 1974—the current year.

We are hopeful that this bipartisan legislation we have worked out can be enacted into law promptly in order that the Labor Department can begin to implement the manpower revenue sharing program and have the new system fully in place by July 1, 1974.

The bill we are presenting to the Senate would replace the Manpower Development and Training Act of 1962 and title I of the Economic Opportunity Act of 1964 as the basic legislative authorities for Federal manpower programs.

This year the Subcommittee on Employment, Poverty, and Migratory Labor held 20 days of hearings on manpower legislation and related issues, beginning in February and ending in May. The subcommittee held 15 hearings around the Nation—in Wisconsin, Ohio, Iowa, New York, and California. Five days of hearings were held in Washington, specifically on manpower legislation.

On April 12, Senator JAVITS and I introduced S. 1559, the Job Training and Community Services Act of 1973. The bill was marked up in subcommittee on May 15 and by the full Labor and Public Welfare Committee on June 14.

The bill reported by the Labor and Public Welfare Committee provides for turning over to State and local elected officials the major responsibility for job training programs as well as local initiative community action activities.

In order to carry out the legislation, the bill authorizes the appropriation of such sums as may be necessary. The Manpower Development and Training Act, which the pending legislation replaces, currently authorizes such sums as may be necessary and the administration has requested an extension of that authorization. The committee report sets forth the estimate of costs based on a continuation of the fiscal year 1973 levels (S. Rept. 93-304, page 23).

Last year, the total authorization for manpower training was $1.55 billion and funds for community action were $329 million—for a total of $1.88 billion. The committee believes that Governors, mayors, and county officials can adequately carry out their new responsibilities for manpower programs and community services under this legislation if we provide an amount equal to funds appropriated for the same activities during fiscal year 1973, a total of $1.88 billion.

If the sum of $1.88 billion were appropriated, under the bill's provisions $1.55 billion would be used for job training and $329 million for local community services activities.

Eligible prime sponsors for carrying out job training and community services programs would be States, cities of 100,000 population, and counties of 150,000

population. In special cicumstances, the Secretary of Labor could recognize a qualified city or county below those population limits. City and county prime sponsors would plan and administer programs within their areas and the State would be the prime sponsor responsible for the balance of State areas outside local prime sponsorship areas.

Of the funds available under the bill for job training, 75 percent would be allocated to State and local governments designated as prime sponsors under the legislation. The remaining 25 percent would be available to the Secretary to carry out special responsibilities, including the Job Corps, programs for Indians and migrants, technical assistance, and research and development activities.

The chief elected officials—Governors, mayors, and county officials—would have the final authority with respect to the programs for which they are responsible as prime sponsors. They would be assisted in planning and evaluation by broadly based employment and training councils would consist of community action agencies, other community-based organizations, vocational education and employment service agencies, other organizations with expertise in the field of training, and business and labor. One-third of the council's membership must be representative of population groups in the community to be served.

In order to receive funds, each prime sponsor would prepare its own program statement specifying programs and projects for which it intends to use the funds and establishing goals for those programs. The employment and training council would make recommendations to the prime sponsor concerning the program statement. If the program statement meets the provisions of the law, the Secretary must provide the financial assistance to which the prime sponsor is entitled. Under this legislation, Federal officials will no longer approve or disapprove individual projects. The purpose of the legislation is to assure that prime sponsors will be entitled to use their allocations for meeting locally determined manpower needs in their own discretion. The bill provides that the program statement must be made public and the opportunity for comment must be afforded to the Governor, area planning council, appropriate State and local agencies and officials, and community action agencies, and other community-based organizations.

State and local prime sponsors are not required to maintain any particular categorical programs. Eligible activities describing recognized programs are simply listed as examples of activities prime sponsors may fund, but other job training activities are eligible as well.

Eligible activities under the legislation include the full array of manpower training programs now being carried out. However, local and State prime sponsors would not be limited to these activities. They would be free to meet the needs of their particular localities in whatever way appears wisest to local authorities. Eligible activities are detailed in section 201(b) (1) through (15) on pages 50 to 56 of the bill.

The eligible activities in the bill include:

Mainstream programs, to provide work on conservation, recreation, beautification, and other projects for older workers and others with little chance of finding regular employment.

New careers programs, to provide training and jobs with upward mobility for the poor and unemployed in such areas as health, education and child care.

Neighborhood Youth Corps programs, to provide part-time employment to youngsters to help them stay in school, jobs, and training for those over 16 who have left school, and summer employment for poor young people.

Opportunities industrialization centers—OIC—and jobs for progress—Operation SER—programs, both of which provide comprehensive services to prepare and place people in jobs through community-based training programs.

Job opportunities in the business sector—JOBS—programs to provide financial incentives to businesses to train and employ the disadvantaged.

Skill centers, programs now run under the MDTA—to provide institutional training programs for the poor.

Job development programs, including employment centers and mobile units accessible to urban and rural poverty areas.

Special programs for offenders, to help them with training and securing employment.

Programs to meet the needs of Indians.

Programs for migrant and seasonal farmworkers.

Special programs for persons with limited English-speaking ability.

Programs for middle-aged and older workers.

Programs for unemployed and underemployed engineers, scientists, and technicians.

Public service employment programs, providing transitional jobs for the unemployed, including related training.

In order to encourage areawide planning the bill contains authority for the Governor of each State to provide for multicounty planning areas. Each area would have a planning council made up of representatives of local communities. Outside of areas served by city or county prime sponsors, the Governor would have final authority to approve programs. However, the area planning councils would prepare program statements and have the right to comment upon any changes the Governor made. City and county prime sponsors, while independent, would be included in planning areas and area planning councils would review their program statements and be able to give advice.

Within the State prime sponsorship area, cities and counties with at least 75,000 population would be program agents. They would have specific dollar allocations and could operate the manpower programs. However, planning for their programs would be carried out by the multicounty area planning councils and be included in the State plan submitted by the Governor.

The apportionment of funds among State and local prime sponsors and program agents is based upon two factors—unemployment and the adult population below the lower living standard budget of the Bureau of Labor Statistics. However, during fiscal years 1974 through 1976, each State and local area would be held harmless at the same proportionate share of manpower funding received during fiscal year 1972. In fiscal year 1977, the hold harmless provision would no longer apply and the formula specified in the bill would be applicable.

NEED FOR MANPOWER REFORM

This year, as in the past, witness after witness testified at great length on the difficulties of attempting to plan sensible programs and operate them in an orderly manner when the difficulties of dealing through the Federal bureaucracies are so overwhelming.

Manpower programs are now administered directly from Washington through the 10 regional offices of the Department of Labor.

The legislation proposes to reduce the number of contractors to a total of 378 prime sponsors—State, city, and county—in contrast to the 10,000 or more separate entities that now contract directly with Washington to run the programs.

The current pattern of administration includes three Federal agencies—the Department of Labor, the Department of Health, Education, and Welfare, and the Office of Economic Opportunity—although OEO no longer administers any manpower programs directly. OEO programs delegated to the Labor Department, however, often operate through local community action agencies.

At the State and local level there exists a tangle. Some programs are funded from HEW through State vocational agencies—others from the Labor Department through the employment service. Some programs draw funds through the Department's regional offices. Still others are funded directly from Washington.

Private groups like the JOBS program, opportunities industrialization centers, Operation SER, and the Urban League have been funded as national contracts by the Department.

It is not unusual to find one community operating a mainstream program, a Neighborhood Youth Corps program, a new careers program, and a concentrated employment program. Each has a different, complex set of guidelines for application procedures and of reporting requirements.

Often when an application is sent to a regional office it is returned for revisions and additional information not once or twice but time and time again. Sometimes applications approved at the regional level are rejected at the national level.

And often it is very difficult to deter-

mine whether an application is being frustrated because it does not meet the letter of the guidelines, or because there isn't enough money in the till and it is easier to find difficulties in the application than to give a program an honest no.

The provisions of the Manpower Development and Training Act and of title I of the Economic Opportunity Act are written in quite general terms leaving broad discretion to the Secretary of Labor. This is especially true concerning the distribution of money. The Secretary has not hesitated to use this discretion to make changes in the way things are operated, changes that are often made in the midst of the fiscal year.

These repeated changes in administrative requirements and reallocations of funds often appear capricious when viewed from the local level and have contributed a great deal to the pressure for decentralization of control of manpower programs.

One result in massive confusion and frustration and a conviction among manpower experts that a much better delivery system for the Nation's major manpower training effort must be developed.

However, unless manpower decentralization is carried out through legislation those operating the program in the field cannot be assured of its legality and cannot have assurance of its stability.

Moreover, the decisions about the size and the powers of prime sponsorships, the relative strengths of State and local governments, the structure of the allocation formula are all extremely difficult questions about which thoughtful men can and do disagree strongly. They are precisely the kinds of questions that ought to be joined and resolved in the legislative process, where all can be heard and disagreements compromised, not imposed by Federal bureaucrats.

The concept of reform of manpower programs through legislation is strongly supported by Governors, mayors, and county executives.

Speaking for the National Governor's Conference, Gov. Patrick J. Lucey of Wisconsin said:

> . . . we must reorganize and reform manpower programs as they are currently structured, eliminate needless fragmentation and competition, and take advantage of the manpower planning revolution which has occurred at the State level in the past 2 years.
>
> We want comprehensive manpower reform—or "manpower revenue sharing"—through the enactment of legislation by Congress, and not through unilateral action, however well-intentioned, by the Department of Labor. Major policy decisions ought to be made by elected representatives, and not by administrators acting without the benefit of legislative guidance.

Mayor Stanley A. Cmich, Canton, Ohio, testified:

> The policy of the National League of Cities and the U.S. Conference of Mayors in the area of manpower is longstanding and clear. This policy has been articulated before a variety of congressional committees in the past, including your own, Mr. Chairman. We are here today again to urge Congress to enact legislation which embodies this policy.
>
> The basic principles of this policy are as follows:
>
> Enactment of manpower reform legislation which embodies the basic principles of program decategorization, program decentralization, and program consolidation.
>
> Enactment of manpower reform legislation which provides cities with the opportunity to become prime sponsors of manpower programs.

The counties' position as put in the record by John Klein, county executive, Suffolk County, N.Y., stated:

> The National Association of Counties advocates manpower reform legislation during this current session of Congress. This law shall create greater job opportunities for the unemployed and underemployed.
>
> We appreciate the current administrative efforts to decentralize and decategorize manpower programs. However, specific legislation is the only acceptable means for defining the complex roles and clarifying the broad issues found in manpower today.

The bill we are offering today, then, represents the committee's best efforts, after nearly 4 years of consideration, to present legislation carrying out the principles of decentralization and special revenue sharing upon which the administration, the Congress, and the State and local governments concerned with manpower programs are in fundamental agreement.

A number of specific issues merit discussion in greater detail.

THE ISSUE OF PRIME SPONSORSHIP

From the beginning there has been agreement that in larger cities and counties local citizens and officials are in a better position to plan and administer manpower programs than the people in the State capitals. Efficiency at the local level would not be improved simply by substituting a distant bureaucrat in the State capital for a distant bureaucrat in the regional office or in Washington. Moreover, many have recognized that there is often tension between large cities and State governments.

However, there has been strong disagreement on the proper size for city and county prime sponsors. The National League of Cities would prefer that cities of 50,000 be prime sponsors. Under the Emergency Employment Act the administration chose cities and counties of 75,000 population to serve as program agents administering the public service employment program.

The committee recommends prime sponsorship for cities of 100,000 and counties of 150,000. Each of these which desires to be a prime sponsor would have to establish an employment and training council and procedures for planning, operating and evaluating a comprehensive manpower program.

However, in recognition of the concerns of smaller cities and counties which have been administering the Emergency Employment Act efficiently, the bill provides that units of 75,000 can be "programed agents" operating their own programs, although the planning and evaluation responsibility would rest with the governor and with planning councils covering a broader area.

The legislation also gives the Secretary the authority to recognize prime sponsors smaller than the population limits of 100,000 for cities and 150,000 for counties when he determines that there is a special need and that a smaller community is as capable as the State would be to organize and conduct comprehensive training programs.

THE ROLE OF EMPLOYMENT AND TRAINING COUNCILS

Drawing the larger community into the process of planning and operating programs for local employment and training needs was a fundamental purpose of the committee in drafting the bill. For too long we have considered the problems of full employment largely from the point of view of the national economy. For too long we have considered the problems of manpower training largely from the point of view of professional program operators.

Employment and training problems must be considered together. And they must be the urgent concern of the entire community, not just the program professionals.

The committee believes that making Governors and mayors and county officials responsible for manpower programs is a help. This step recognizes that economic growth and training for jobs are crucial activities for state and communities and that they deserve the attention of the highest elected officials. The committee also believes that it is necessary to go beyond elected officials and to engage the active participation of those people from the business and labor communities that know most about these employment problems. It is crucial, in the judgment of the committee, that those individuals and community groups that receive services under manpower programs play a major role in the design of programs. The legislation requires that one-third of the members of the council be representative of the people served.

The committee bill also provides that community action agencies be represented on the council. Community action agencies have played a crucial role in bringing manpower programs to bear effectively on the problems of the poor, have provided professional opportunities for able people from minority backgrounds, have provided a link to the concerns of poverty communities not found elsewhere within city and State bureaucracies, and are storehouses of knowledge about the conduct of manpower programs. The legislation also provides that other community-based groups, such as opportunities industrialization centers and Operation SER, should be represented on the council in those communities where they are established.

The council must, of course, include representatives of those agencies—such as the Employment Service, Vocational Education, and Vocational Rehabilitation—who are responsible for carrying out manpower training programs or providing public service employment jobs.

It is the committee's hope that effective cooperation between the councils and mayors, county officials, and Governors can lead to a greater understanding across the Nation of the tie between jobs and poverty and can lead to creative solutions to the problems of unemployment, underemployment, and manpower training.

Examples exist in many communities of what can be done through cooperation. In Milwaukee, for instance, as part of the LEAP program, the Construction and Building Trades Council, the Urban League, the OIC, the Employment Service, and some 12 industries are cooperating in a program under which minority youngsters have secured apprenticeships in industrial trades. The cooperation of industries has made it possible to guarantee employment at decent wages and with future advancement to those recruits who completed the training phase of the program. Too often, at present, these programs are small scale. An effective employment and training council ought to make it possible to operate a citywide program on the same basis of cooperation and farsighted planning.

PUBLIC SERVICE EMPLOYMENT

The Emergency Employment Act expires this year. In separate legislation, the committee is recommending that it be extended, and focused more sharply on the needs of veterans, the poor, and the long-term unemployed. These proposals are included in S. 1560, the Emergency Employment Act Amendments of 1973.

However, we also recognize that public service employment programs should be eligible as an integral part of local manpower programs. So the public service employment program is included among the eligible activities under the bill.

NATIONAL PROGRAMS

A number of effective programs have been funded by the Secretary with his share of manpower funds—currently about 30 percent of the total appropriations under the MDTA and title I of the EOA. The Secretary's share would be set at 25 percent of the funds authorized by our legislation.

Among those programs are efforts on behalf of Indians and migrants, groups for which we have long recognized a special Federal responsibility.

Other programs which can best be carried out as special Federal programs include the Job Corps and the job opportunities in the business sector program carried out in conjunction with the National Alliance of Businessmen—called the NABS–JOBS program—and the computerized job bank.

The legislation would, therefore, continue Secretarial responsibility for Indians, migrants, the Job Corps, the computerized job bank, and JOBS.

It would also make it a responsibility of the Secretary to see to it that OIC and SER are given every opportunity to make the transition from Federal support to integration with State and local programs in an effective manner, with no sharp cutoff of support. To be specific, the legislation would require the Secretary to continue funding the OIC and SER programs with national funds through fiscal year 1974 while local programs are being organized. Thereafter, local prime sponsors would be expected to give due consideration to continued support at the local level, where representatives of these organizations should be given representation on State and local councils in the capacity as community-based organizations.

COMMUNITY ACTION AGENCIES

Title III of the legislation provides a meaning of continuing Federal support for activities carried on by community action agencies at the local level, agencies now threatened with loss of support because of the failure of the administration to request local initiative funds in the budget for fiscal year 1974.

Local community action agencies are at the heart of the effort—now nearly 9 years old—to help local communities organize their resources to provide better services for the poor and thus to relieve the distress of poverty and help individuals and families to escape.

The programs carried on vary widely with local community needs.

They include:

Operating Headstart programs and centers.

Running community health and dental programs.

Providing overhead for national emphasis manpower programs such as Neighborhood Youth Corps and Mainstream and the concentrated employment programs.

Running their own manpower programs, including running outreach centers and providing adult basic education and job development.

Economic development efforts, including establishing cooperatives, both for consumers and for production.

Consumer action and consumer counseling and assistance programs.

Housing services for the poor and housing development corporations.

Day care programs.

Running neighborhood service centers.

Under title III of the pending bill, funds would be made available for community service activities.

There would be no requirement that community action agencies be funded. That would be entirely a local decision. But funds would be set aside for the kinds of activities now carried on by community action agencies. And we require that community action agencies be given due consideration and expect that effective programs will be refunded.

Back in 1971 the administration favored basically this approach. Frank Carlucci, then OEO Director, praised community action agencies for the maturity they had achieved and promised that local communities would have sufficient funds under administration revenue-sharing plans to continue them.

In the 1974 budget the administration asks no funds for community action agencies, but states—p. 106, appendix to the budget for fiscal year 1974:

If the constituencies of individual communities desire to continue providing financial support to local community action agencies, general and special revenue sharing funds could be used.

Title III, then, will simply provide the funding needed by States and local communities so that continuing community action agencies is a genuine option. Without Federal funds it is unrealistic to expect hard-pressed local jurisdictions to make major outlays for institutions that are devoted to the interests of a relatively small fraction of the community.

The committee believes we have a responsibility to States and communities, and to the poor, to see to it that funds are not stopped for these vital activities. Such funding is relevant to manpower legislation since community action agencies provide a substantial amount of the overhead costs for running present concentrated employment, Neighborhood Youth Corps, and Operation Mainstream programs in cities and rural areas all across the Nation.

BACKGROUND OF MANPOWER PROGRAMS

In order to understand our present legislative situation, it is helpful to review briefly the history of manpower programs.

By the time President Kennedy took office in 1961, the promise of full employment set forth in the Employment Act of 1946 seemed more and more a piece of wishful thinking. Unemployment averaged 6.8 percent in 1958 and was at 6.7 percent in 1961.

Legislation had been proposed to deal with two separate aspects of the problem. Senator HUMPHREY had attempted in a series of bills beginning in 1957 to revive the Civilian Conservation Corps programs to help unemployed young persons. And Senator Paul Douglas had pushed through Congress the Area Redevelopment Act to try to create jobs and retrain workers in areas where technological change—such as in mining and meatpacking—had cost well-paid workers their livelihood. The ARA was vetoed twice by President Eisenhower.

Kennedy endorsed both the Douglas and the Humphrey approaches. The ARA became law in 1961—including a small manpower training program—and hearings were held on a Youth Employment Act. In 1962 the concept of Federal support for training including stipends for the technologically unemployed was greatly expanded with the passage of the Manpower Development and Training Act.

The program was designed to be operated through State vocational education agencies and the Federal-State employment service with a substantial portion of the funds reserved to the Secretary of Labor to carry on experimental and demonstration programs.

In 1964—after the rediscovery of poverty in America—the Humphrey programs for unemployed young people were incorporated into title I of the Economic Opportunity Act. The programs included the Job Corps, both rural con-

servation camps and larger urban Job Corps centers, and the Neighborhood Youth Corps.

The OEO programs were operated through community action agencies or private nonprofit agencies and business firms on a contractual basis.

In later years additional programs were added to the Economic Opportunity Act, including job programs for older people in rural areas—Operation Mainstream—and programs to provide training and jobs with advancement possibilities—the new careers program. Other "categorical" programs such as job opportunities in the business sector—JOBS—were created by the Department of Labor.

The manpower effort under the MDTA and EOA grew from some $56 million in 1963 to slightly over $1 billion in fiscal year 1969, when the Nixon administration took office. For fiscal year 1973 the Congress appropriated $1.550 billion.

At the heart of the concept of manpower training is the assumption that after a person has completed the program there will be a job.

Programs that carry out this purpose work magnificently well.

In Wisconsin, for instance, over the past winter nearly 200 formerly unemployed, or severely underemployed men have been trained in the shipbuilding trades at the North East Wisconsin Technical Institute at Sturgeon Bay in Doar County. They have all been hired at jobs paying $3.05 an hour in the expanding bay shipbuilding yards right in Sturgeon Bay.

Federal outlays for training make sense when they lead to jobs at decent pay. The welfare savings and tax returns will more than repay the investment. The added productivity over a worker's lifetime makes job training—where there is a job at the end of the training—a worthwhile investment.

But in many parts of the Nation—especially poorer rural areas where farming provides fewer and fewer jobs as well as in congested inner city poverty areas—the heart of the problem is the lack of jobs at decent pay.

Training alone cannot close the job gap. We must have the jobs.

Recognition of the need for jobs was the main thrust behind the ARA legislation. Unfortunately neither the ARA nor its successor agency the Economic Development Administration—EDA—have ever had anything like adequate funding. Aside from a roadbuilding program in Appalachia the EDA had less than $300 million in 1973 for the entire Nation.

Recognition of the need for jobs was behind my efforts in 1964 to persuade the Congress to adopt a major conservation jobs program—to be financed through an increase in the tax on cigarettes. In hearings on that legislation we gathered testimony from State park commissioners around the Nation and established that there was ample work to do if the dollars to pay for it were available. That effort finally led to the Operation Mainstream program by amendment of the Economic Opportunity Act in 1965.

Recognition that jobs are at the heart of the poverty problem led the President's National Advisory Commission on Civil Disorders—the Kerner commission—to recommend a program of 1 million public service jobs, and other commissions to repeat the recommendation.

However, the administration saw organizational problems as crucial for manpower programs.

In August 1969, President Nixon called for the decentralization of manpower programs to:

> . . . make it possible for State and local governments to respond to the needs of the individual trainee.

The administration proposed the Manpower Training Act to carry out its intent.

On Labor Day in September of 1969—just after the President called for a decentralization of the existing manpower program—we announced that we would explore the possibilities of developing a major public service employment program to close the job gap.

The Subcommittee on Employment, Manpower, and Poverty held some 22 days of hearings between November of 1969 and May of 1970 gathering information on the functioning of manpower programs in cities from coast to coast including Los Angeles, Corpus Christi, Milwaukee, Cleveland, and New York.

In the spring and summer of 1970 we prepared legislation that would accomplish both ends—decentralization of manpower programs and a beginning of a public service employment program.

When we brought the Employment and Training Opportunities Act of 1970 to the Senate floor containing both manpower reform and public service employment, it passed by a substantial margin of 68 to 6 in September of 1970. Amendments seeking to weaken the public service employment part of the bill were handily defeated.

The committee heard repeated testimony that organizational reform was needed, but that the fundamental difficulty lay in the lack of jobs, especially jobs at decent pay.

Unfortunately, when the bill reached the President's desk in mid-December the decision was made to veto. It was a most unfortunate decision in my judgment and based on a misreading of the bill. The veto message said that the public service employment title of the bill would lead to dead end jobs and would be make work. But, in fact, the bill's public service employment title contained strong provisions to assure training, upgrading and that persons would be helped to find unsubsidized jobs.

In January of 1971, I introduced a bill based on the language in the President's veto message in which he recognized that a "temporary program of transitional public service jobs might be a useful element" in a manpower program. On the first of April the Senate overwhelmingly passed the Emergency Employment Act.

The President signed the bill on July 12 and at the President's request Congress voted appropriations immediately.

I am pleased to report that the Emergency Employment Act has been a great success. It is not nearly large enough, but it has laid to rest fears that a public jobs program would be a "make work" program.

The Emergency Employment Act has been evaluated by the General Accounting Office, the National Manpower Policy Task Force, the Urban Coalition, and the administration. All reports agree that the jobs have been meaningful and met real needs.

The subcommittee was occupied during 1972 with efforts to extend the Economic Opportunity Act. That legislation extended the Job Corps, Neighborhood Youth Corps, mainstream, and concentrated employment program.

During the time between the veto of the comprehensive manpower bill in December of 1970 and the beginning of 1973 a consensus developed among those active in the field about the principal features of a decentralization of the manpower programs.

By 1973 the counties and the Governors had joined the mayors in supporting legislative action to achieve manpower revenue sharing. Despite disagreements about details—especially as to the number and size of prime sponsorship areas—the States, cities, and counties are in remarkable agreement on the basic outline of a balanced system of decentralized manpower planning and administration.

They are united, specially, on their insistence that manpower reform be carried out through the legislative process.

CONCLUSION

In conclusion, let me say that the legislation now before the Senate represents a milestone in the development of manpower policy in this Nation.

For more than 10 years now—since the passage of the Manpower Development and Training Act in 1962—we have been attempting to grapple with the very difficult problem of providing training and jobs for the unemployed and the disadvantaged. We have learned much, gained much experience. We have now learned enough so that it is time to move away from a program run directly from Washington and more fully to engage the creative ability of American States and communities in the effort.

The greater involvement of State and local officials and citizens in this effort will be the result of the passage of this landmark legislation. I hope that it receives the support of the Senate.

Mr. President, I ask unanimous consent that the section-by-section analysis of the bill be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section provides that the Act may be cited as the "Job Training and Community Services Act of 1973".

TITLE I—STATE AND LOCAL SPONSORSHIP OF PROGRAMS

Section 101. Statement of purpose.

This section states that it is the purpose of the Act to establish a flexible and decentralized system of State and local programs for job training and community services for economically disadvantaged, unemployed, or underemployed persons, to meet locally determined needs, and to assure that such training and services lead to employment and enhanced self-sufficiency.

Section 102. Authorization.

This section authorizes the appropriation of such sums as may be necessary for each of fiscal years 1974 through 1977. The section also authorizes advanced funding of an appropriation during the preceding fiscal year.

Section 103. Transitional provisions.

Subsection (a) of this section provides that, during fiscal year 1974, the Secretary is authorized to continue to provide financial assistance in accord with the Manpower Development and Training Act, title I of the Economic Opportunity Act, and the Emergency Equipment Act.

Subsection (b) provides that such transitional authority shall not be construed to postpone the designation of prime sponsors and implementation of other provisions of the Act. The Secretary shall continue to contract or otherwise provide financial assistance for carrying out national programs of demonstrated effectiveness through fiscal year 1974.

Section 104. Prime sponsors.

Subsection (a) of this section provides that eligible prime sponsors of programs under the Act shall be the following: States; cities of at least 100,000 population; counties of at least 150,000 population; consortiums of adjoining local governments serving a labor market area or substantial portion thereof if a city of 100,000 or a county of 150,000 population is included; and local governments or consortiums thereof without regard to population which the Secretary determines to serve a substantial portion of a labor market area or to be a rural area having high unemployment, and to have demonstrated the capability for adequately carrying out programs, a special need for services, and that it will carry out such programs and services in the area as effectively as the State.

Subsection (b) authorizes the Secretary to designate a county as prime sponsor covering areas both outside and within the boundaries of eligible cities within its jurisdiction if it demonstrates the capability for more effectively carrying out the purposes of the Act than the particular cities covered. Before such a designation, the Secretary shall, where appropriate, encourage consortium arrangements involving the affected counties and cities.

Subsection (c) provides that the Secretary shall approve the designation of any eligible prime sponsor which submits a satisfactory prime sponsorship plan meeting the requirements of the legislation.

Subsection (d) provides for an opportunity for hearing and appeal to the Secretary prior to disapproval or withdrawal of approval of a prime sponsor.

TITLE II—JOB TRAINING PROGRAMS

Section 201. Programs authorized.

Subsection (a) of this section provides that programs receiving financial assistance under this title shall include training and related services to economically disadvantaged, unemployed, or underemployed individuals, and others in need of training or retraining, to secure and retain employment consistent with their full potential.

Subsection (b) provides that programs assisted under this title may include but are not limited to the following: mainstream programs, new careers, neighborhood youth corps, opportunities industrialization centers, jobs for progress, job opportunities in the business sector, skill centers and institutional training, special job development programs with public or private employers, special programs for offenders, programs for Indians, programs for person of limited English-speaking ability, programs for middle-aged and older persons, programs to assist unemployed and underemployed engineers, scientists and technicians, and public service employment programs for unemployed and underemployed persons.

Subsection (c) provides that sums made available for public service employment programs from appropriations to carry out this Act shall be used in accordance with the requirements of the Emergency Employment Act of 1971 to the extent consistent with the requirements of this Act.

Section 202. Allocation of funds.

Subsection (a) of this section provides that, of the amounts available for carrying out this title, 75 per centum shall be apportioned among the States and the remainder shall be available to the Secretary for carrying out his responsibilities under this title and title I. Apportionments among the States are to be based on the proportionate numbers of unemployed persons and of adults who or whose families have a total annual income below the lower living standard budget in each State, with no less than $1,500,000 to be apportioned to any State and $150,000 to be apportioned among the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Subsection (b) provides that funds apportioned to each State shall then be apportioned geographically within the State to prime sponsorship and program agent areas on the basis of unemployment and families below the lower living standard budget. In the balance of State areas not served by local prime sponsors and program agents, the State is to make apportionments on an equitable basis taking into account unemployment and families below the lower living standard budget.

Subsection (c) provides that during fiscal years 1974 through 1976 all States and local areas shall be held harmless at the same share of manpower funding received during fiscal year 1972.

Subsection (d) provides that 15 percent of all apportionments within a State shall be available to the State to provide services to individuals of the area from which each such apportionment is reserved.

Subsection (e) provides for making apportionments on the basis of the latest satisfactory data.

Subsection (f) provides authority for the Secretary to reallocate unused apportionments, after notice and consideration of comments from Governors and affected prime sponsors.

Section 203. Employment and training councils.

This section provides that each prime sponsor shall establish and maintain an employment and training council to recommend program statements, goals, policies, and procedures. Members of the council are to be appointed by the chief executive of the unit of government. The membership shall include representatives of agencies and organizations in the field of job training and community services; and not less than one-third of the council's members shall be representative of significant segments of the client community.

Section 204. Program statements.

This section sets forth the provisions to be included in the program statement to be submitted by each prime sponsor in order to receive financial assistance each year. The Secretary shall provide financial assistance to each prime sponsor to carry out the program statement upon determining that the program statement is consistent with the provisions of this title and was made public prior to submission, and that an opportunity to make comments was afforded to the area planning council, the Governor, appropriate State and local agencies, community action agencies, and other community based organizations in the area.

Section 205. Special responsibilities of the Secretary.

This section sets forth responsibilities to be carried out by the Secretary, utilizing funds available to him under section 202(a)(2) (up to 25 percent of the funds for this title).

Subsection (a) of this section provides that, out of funds available to the Secretary, he shall set aside amounts for employment and training programs meeting the special needs of Indians and migrants. Funds shall be reserved in the proportions which the numbers of Indians and of persons in migrant families, respectively, bear to the Nation's low-income population.

Subsection (b) authorizes the Secretary to provide special assistance to continue on-going programs of demonstrated effectiveness and to carry out research, technical assistance, evaluation, labor market information, and job matching responsibilities. The Secretary's funds are available for the Job Corps and special programs, including services for middle-aged and older persons.

Subsection (c) provides for the Secretary to supplement efforts of local prime sponsors in meeting the special needs of population groups such as middle-aged and older persons and bilingual programs, and to assure the continuation of a system of efforts by the National Alliance of Businessmen and the private sector, and of opportunities industrialization centers, jobs for progress, and similar programs. In addition, the Secretary is to give special consideration to manpower training for offenders and to job training programs for those unemployed as a result of the closing of Federal facilities which has resulted in substantially increasing the unemployment rate in a labor market area.

Section 206. Comprehensive State planning role.

Subsection (a) provides that funds set aside for the State (15 percent of each State's apportionment) shall be used for services by State agencies responsible for employment and training, to provide additional financial assistance as incentives for consortium arrangements for joint prime sponsorship and for special programs in rural areas, to develop and publish economic and labor market information, to provide technical assistance, and to carry out model manpower training programs for offenders.

Subsection (b) provides that each State shall provide for multicounty planning areas throughout the State, for establishing and maintaining area planning councils consisting of representatives from local governments in each such planning area and additional members appointed by such representatives, for area planning councils to prepare those portions of the State's program statement affecting the balance of each planning area outside local prime sponsorship areas and to review and comment upon local prime sponsor's program statements, for delegating administrative responsibilities as program agents to units of general local government serving at least 75,000 persons, and for coordinating planning area arrangements with other planning agencies in the States, and for making arrangements for listing all suitable employment openings of Federal contractors and subcontractors with local offices of the State employment service.

Section 207. Coordination.

Subsection (a) of this section provides that the Secretary of Labor shall obtain the concurrence of the Secretary of Health, Education, and Welfare before issuing rules, regulations, standards of performance, or guidelines with respect to health, education, or welfare services under this title.

Subsection (b) provides that, with respect to manpower training programs for offenders, the Secretary of Labor shall enter into appropriate agreements for coordinating such programs with programs under the Justice Department and the ACTION agency.

Section 208. Special conditions.

This section sets forth certain conditions which must be met in order to receive financial assistance under this title, including standards and protections with regard to work and training conditions.

Section 209. Allowances and compensation.

This section provides for payment of allowances and compensation benefits to persons receiving training under this title.

TITLE III—COMMUNITY SERVICES FOR THE ECONOMICALLY DISADVANTAGED

Section 301. Funds available.

This section provides that 17.5 percent of the sums appropriated to carry out this Act shall be made available by the Secretary to prime sponsors for community services for the economically disadvantaged under this title.

Section 302. Eligible activities.

This section provides that each prime sponsor shall use funds under this title for community services programs for economically disadvantaged persons carried out by public or private nonprofit agencies or organizations, with due consideration for community action agencies. Local initiative eligible activities are spelled out in the section.

Section 303. Allocation of funds.

This section provides for allocation of funds among the States on the basis of the number of welfare recipients, unemployed persons, and poor persons; but the Secretary shall provide for all areas to be held harmless with no lower share of funds than such area received for community action programs for fiscal year 1972.

TITLE IV—GENERAL PROVISIONS

Section 401. Failure to administer activities and programs in accordance with national purposes.

This section provides for the Secretary to revoke a prime sponsorship designation when he determines that a prime sponsor is maintaining a pattern or practice of discrimination in violation of section 403(d) of the Act or otherwise failing to serve equitably the significant segments of economically disadvantaged, unemployed, or underemployed persons, or is incurring unreasonable administrative costs, or is failing to give due consideration to continued funding of manpower programs of demonstrated effectiveness or failing to give special consideration to the programs referred to in section 205(c) or is failing to assure that training and other services have a reasonable prospect for leading to appropriate employment opportunities or enhancing self-sufficiency, or is otherwise materially failing to carry out the purposes and provisions of the Act. The Secretary is directed to continue programs in the area by directly funding public or private nonprofit agencies.

Section 402. Definitions.

This section defines terms for the purposes of the Act.

Section 403. Special limitations and conditions.

This section lists various administrative requirements, reporting requirements, prohibitions, and procedures which the Secretary is responsible for enforcing.

Section 404. National Employment Opportunities Council.

This section provides for the President to appoint a National Employment Opportunities Council to advise the Federal Government in respect to policies in administering the Act.

Section 405. Reports.

This section provides for the Secretary of Labor to make reports, including an annual report, with respect to manpower programs and policies.

Section 406. Administrative provisions.

This section authorizes the Secretary to make necessary grants, contracts, and agreements, and to acquire necessary property for the purposes of carrying out the Act.

Section 407. Cooperation among agencies.

This section directs each Federal department to cooperate with the Secretary of Labor and directs the Secretary to utilize all available private resources in carrying out his responsibilities.

Section 408. Interstate agreements.

This section gives the consent of Congress to interstate compacts and agreements to facilitate compliance with the provisions of this Act.

Section 409. Labor market information.

This section provides for the Secretary to gather by survey and to publish regularly data on unemployment, underemployment, and job vacancies by States, labor market areas, rural areas, cities, and poverty neighborhoods.

Mr. NELSON. Mr. President, I ask unanimous consent that I may suggest the absence of a quorum with the time to be charged against both sides.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, may I know the parliamentary situation and what time remains?

The PRESIDING OFFICER. The pending legislation is S. 1559. The Senator from Wisconsin has 17 minutes remaining. The Senator from New York has 28 minutes.

Mr. JAVITS. I yield myself 5 minutes.

Mr. President, I wish to announce that I will yield, out of my time, such time as the Senator from Ohio (Mr. TAFT), a member of the committee, and the Senator from Colorado (Mr. DOMINICK) may desire in respect of this measure; so I will confine myself to a brief statement.

I have joined the Senator from Wisconsin (Mr. NELSON) in bringing this bill to the Senate because I believe it represents the only orderly way in which, in this period—when we are between an act that has expired in terms of its individual application by law and possibly new administrative proposals which the administration may make.

It represents an effort on the part of its sponsors, Senator GAYLORD NELSON, chairman of the Subcommittee on Employment, Poverty and Migratory Labor, and myself, to effect manpower training reform legislatively along the principles of the administration's proposals for so-called manpower special revenue sharing.

MANPOWER REFORM THROUGH LEGISLATION

Reform of our manpower training programs has eluded us for almost 4 years; first proposed by the administration in its Manpower Act of 1969, which I introduced in the Senate, it suffered a serious setback when the Congress responded with its own proposal, the Employment and Manpower Act of 1970, vetoed by the President in December 1970.

This year, the administration indicated in its fiscal 1974 budget proposal that it would not submit comprehensive legislation, as it had before, but would accomplish "manpower revenue sharing" under an extension of existing authority; to that end it submitted a simple extension of the Manpower Development and Training Act which expired this June 30; regulations are soon to be published although that extension has not been approved by the Congress.

Mr. President, manpower reform can elude us again unless the Congress and the Executive join together in writing it into law and that is the gist of this proposal—an invitation to the administration to abandon its present plans to accomplish reform administratively through unilateral regulations under an extension of existing authority.

Mr. President, President Nixon said, on March 4, 1971, in submitting his legislative proposal for manpower revenue sharing:

> The active Federal commitment to manpower training and development was a good idea in 1962 . . . and it is an even better idea today.

We agree—manpower training is an even better idea today—with the crushing needs of the disadvantaged and the welfare recipients, the future needs for paraprofessionals in a society subject to swift technological change, and the legitimate desires of all citizens for continuing education and training.

Manpower training is not a "flop" to be rejected—but a worthwhile and necessary effort to be expanded and reformed.

President Nixon emphasized in that same message:

> But one of the great lessons of the dramatic Federal Government growth in the 1960's is that even a good idea like this can fall short of its promise if the way by which it is carried out, runs against the grain of the Federal system. By converting the Nation's manpower programs from categorical grants to Special Revenue Sharing, we can play to the strengths of the Federal partnership, teaming Federal dollars with State and local decision-making.

We agree with that as well.

But we do not agree that the executive should proceed on its own to accomplish decentralization and decategorization.

This is a matter of the greatest national importance and it requires a new national commitment—joined in by the executive and the legislative branches together so that it has the best possible direction for the future and so that the

change to the new system is accomplished in an orderly matter on a timetable under law, not inflicted arbitrarily or in a "strong-armed" way by the executive branch.

It is a matter of great complexity requiring the involvement of all interested parties; we are dealing here with the relationship between State and local governments, as we are with the role of the Federal Government per se, and those governments should have their "day in court" in the legislative sense.

Therefore, I would consider it most unfortunate if the administration, by the promulgation of guidelines or rules, should endeavor to install a program of its own under the guise of special revenue sharing which would substitute the administration's judgment for the congressional and executive judgment together.

So, Mr. President, the issue here is to do something which will codify the congressional will, coupled with the Executive's will, because the President will have to sign any bill, without leaving a vacuum either between programs or because we have not acted and the administration has acted alone through the Secretary of Labor. That is the long and short of it.

We believe that this particular program could properly be described as the first special revenue-sharing program, so much weight do we give the States and the localities, both in terms of sponsorship and in terms of decategorization of heretofore categorized programs. We believe further that the administration, even if it took this very bill, could properly claim that we have passed the first special revenue-sharing bill.

I do not expect that they will take this very bill; but the other body may make it possible, by simply passing a straight extension or other legislation, to work out these problems, which we believe would represent a reconciliation of our views and those of the administration in a House-Senate conference.

We intend—both Senator NELSON and I—so seriously to endeavor to arrive at an agreed upon bill, not only with our brethren in the other body, but also with the administration, that we have a right to say to the Senate that this will be our course of action.

So, Mr. President, on that ground, and because the differences in respect to recommended authorization as opposed to the administration's proposal are, relatively speaking, de minimis. We hope eventually for agreement.

For all those grounds, Mr. President, I hope very much that we will be the least encumbered in endeavoring to arrive at this agreed upon position and that the bill may be voted out by the Senate as is, because I think that will put us in the best position to pursue the most constructive line, which I have outlined.

May I say, too, before I close, that it is much easier for me to do this than for Senator NELSON. He is of a party which has a majority of the Senate and the House, and he is very skilled in the manpower field. He has devoted a great deal of his life in the Senate to it, and he would have every right to take a dug-in, doctrinaire position. He has chosen not to do so; and because his devotion to an ultimate result is greater than any doctrinaire position, he knows best what he ought to do so far as manpower training is concerned. I would be less than honest if I did not make that clear to the Senate. I think we owe him a great debt for his willingness to proceed along the general lines which this bill represents.

(At this point, Mr. KENNEDY assumed the chair.)

Mr. NELSON. I say to the Senator from New York that it was not a very difficult decision on my part. I happen to agree with the Senator from New York and with the administration on the concept of manpower revenue sharing.

As the Senator knows, we both have advocated turning the major responsibility for manpower programs over to State and local governments for a long time. In a discussion some 2 years ago with Secretary Hodgson, we agreed upon the general outline of a proposal to turn these functions over to State and local governments. I believe very strongly that this is an important concept and that the management will be more efficient and more effective at that level. I emphasize that this bill embodies the same concept that the administration has been advocating for some 3 or 4 years on manpower revenue sharing.

I wish to say for the record, so that it is clear, that this bill came out of the Committee on Labor and Public Welfare by a unanimous bipartisan vote. That was a remarkable achievement, considering the reluctance—at least, in the past—of many members to take control of these programs away at the Federal level and place them at the State and local level. A good deal of the success of working this out has been due to the cooperation of the Senator from New York.

Mr. JAVITS. I am grateful to my colleague, now, with the general background, I comment now on the manner in which this bill would accomplish the key elements of the administration's objectives—decentralization and decategorization.

MAJOR ELEMENTS OF THE BILL

Title I would establish a system of prime sponsors. As a general matter, States, cities of 100,000 and counties of 150,000 would have the right to be prime sponsors planning and administering their own programs and dealing directly with the Department of Labor; cities and counties having 75,000 population but not large enough to be prime sponsors would be guaranteed specific allocations of funds and could develop and fund programs within their area, but planning would be carried out by area planning councils. Under this formulation, the Secretary would deal directly with approximately 378 sponsors, compared with as many as 10,000 grantees at the present time.

Under title II, prime sponsors would be able to conduct a broad list of "eligible activities" including training and supportive services, counseling and related activities; the bill make clear that previous "categorical" programs—that is programs previously authorized under existing law—are among the "eligible activities." These include Mainstream, New Careers, Neighborhood Youth Corps, Opportunities Industrialization Centers, Jobs for Progress, Jobs in the business sector, and similar efforts.

Transitional public service employment is included as an eligible activity provided that it meets generally the requirements set forth in provisions of the Emergency Employment Act of 1971 except that "new hires" must be from among unemployed or underemployed persons who are from economically disadvantaged backgrounds or are long-term unemployed.

I am pleased that the committee adopted these provisions—which I proposed—to insure that the transitional nature of the EEA program is replicated and that, to the extent manpower funds are rechanneled to public service employment they will principally benefit those most in need, thus observing the original purposes of the acts which this bill would replace; in this way transitional public service employment can be used as a complement for training.

It should be noted, however, that the principal source for public service employment, the Emergency Employment Act, would be extended under S. 1560, the "Emergency Employment Amendments of 1973," sponsored by Senator NELSON and me— reported by the committee at the same time as this bill but to be considered later on in the session.

Mr. President, under title II, prime sponsors would have to go through very little "red tape." To receive assistance a prime sponsor must submit to the Secretary a "program statement" which in very broad terms shall describe how the prime sponsor plans to proceed. The Secretary determines only that these provisions are consistent with the purposes of the title and its provisions and that certain procedures have been followed with respect to comment on the program statement by other units of Government, and agencies and organizations having a particular interest.

Mr. President, special note should be taken of the comprehensive planning role given to the States under this bill; in addition to serving as prime sponsor, a State will receive 15 percent of the State's allocation for use by the State at its discretion for the provision of services throughout the State, providing additional financial assistance as incentives for the designation of consortium arrangements, developing and publishing information regarding labor market conditions, providing technical assistance and carrying out special model manpower training programs and related services for offenders; as I shall explain the latter is of particular interest to me.

Mr. President, title III, "Community Services for the Economically Disadvantaged" would permit these same prime sponsors to carry out a wide range of antipoverty efforts.

This title—for which there is a reservation of 17.5 percent of funds under the

act—was originally included by Senator NELSON and myself in the bill as a "fallback" in case the current community action "local initiative" activities do not receive funding for this fiscal year, as the administration proposed, and in any event, as a possible means of dealing with the continuation of community action agencies in the "special revenue sharing" format over the longer term.

It now appears that such an authority may not be necessary—at least as to fiscal 1974 since the House of Representatives has already appropriated a sufficient amount as a part of the HEW-Labor appropriations bill—for continuation of the existing program through this fiscal year, and similar Senate action is expected. However, in light of some uncertainty, it is advisable to keep this aspect and by the time manpower legislation is considered in conference with the House, the appropriations situation should be completely clarified.

Mr. President, while this bill basically adopts the "revenue sharing" approach—with all the elements of flexibility and decategorization I have outlined—there are two very important differences.

First, the Federal Government—while it will keep a "hands-off" policy with respect to day-to-day decisionmaking, must retain the right and duty to step back in if funds are diverted from their benefits.

To that end, section 401, which I included and which applies to titles II and III, requires the Secretary to revoke prime sponsorship and install himself in the position of a prime sponsor upon a determination that any such sponsor is discriminating against minorities, incurring unreasonable administrative costs, failing to give due consideration to insure that training and other services have a reasonable prospect of leading to employment, or otherwise materially failing to carry out the purposes of the act.

The Federal Government must clearly do more—if the integrity of Federal funds is to be maintained—than act merely as a payroll clerk or "putting the money out there" and running from it. We in the Congress have a continued duty to assure that mechanisms are established to insure accountability in terms of established national purposes.

Second, some—but very few—"categories" are contained in this bill.

These provisions are set forth principally in section 205 of the bill and they include the Job Corps, the JOBS program and Opportunities Industrialization Centers, and programs for offenders.

The committee felt very strongly that these efforts are now of essentially a "national" nature and should be maintained from the Secretary's funds—25 percent of those appropriated—as such so long as they are not woven into the local fabric.

It is important to note that with respect to the first two programs, the Job Corps and the JOBS program, the administration itself has indicated on occasions its fidelity to the maintenance of these efforts as such: The so-called "Esch substitute" proposed on the House floor on behalf of the administration over a year ago excepted the Job Corps from decategorization and in the case of the JOBS program, it is my understanding that President Nixon has already written the National Alliance of Businessmen pledging continuation of their efforts.

Mr. President, I am particularly pleased with the adoption by the committee of a number of provisions offered by Senator SCHWEIKER and myself for the continuation of the Opportunity Industrialization Centers effort—begun by Rev. Leon Sullivan in Philadelphia—and now spread to 110 communities including a number of very worthwhile efforts in my own State of New York; these provisions are identified beginning on page 14 of the report.

I am most gratified with the acceptance by the committee of provisions which I offered for special manpower efforts for offenders and persons charged with crimes.

This has been a matter of great priority to me, expressed in S. 2962, the "Comprehensive Correctional Training and Emoplyment Act" which I introduced last year as a separate matter, and one whose importance has been imprinted on my mind through my trips to correctional institutions in my own State with no training facilities and those, such as the one at Rikers Island, N.Y., which has the benefit of manpower training.

We held a hearing there last year and heard from the participants in the manpower program themselves—and without exception they testified as to the value of the program in economic and psychological terms.

The very sad fact is that 85 percent of offenders lack any marketable skills upon release and that ex-offenders have unemployment rates three times the norm, contributing to the problem of recidivism which hits two-thirds of those who leave prison.

Mr. President, this area is clearly one deserving of separate attention in a separate bill, but rather than take that course I have, as other Members of the Congress, woven the basic authority into the fabric of this comprehensive bill.

As noted on page 16 of the committee report:

> The bill authorizes special manpower training programs and related educational and other services and assistance for offenders, including pre-trial or other intervention programs, programs for offenders under sentence, pre-release job furloughs, bonding assistance, job development programs with public or private employers (including incentive payments, programs in residential and non-residential centers and half-way houses, programs to train professional and paraprofessional personnel to serve the training and employments needs of offenders and other activities to meet such needs).

Mr. President, for all of these efforts the bill authorizes "such sums" for fiscal year 1974 and for each of the succeeding fiscal years. In this case, the committee departed from its normal practice of including ceilings, so as to avoid a confrontation with the administration on the amount.

However, the committee did express its feeling on the matter of appropriations in a statement on page 4 of the Committee report (93–304) as follows:

> The Committee believes that governors, mayors, and county officials can adequately carry out their new responsibilities for manpower programs and community services authorized in this legislation only if they are provided an amount equal to funds appropriated for the same activities during fiscal year 1973, a total of $1.88 billion.

The administration has requested for these same activities a total of $1.3 billion.

We believe that the States and cities should have no less to do the job than the Federal Government has had in the past. The administration's position may be described as "decentralization at a discount." But I believe that the "flow of responsibility" must be accompanied by more than a "trickle" of funds; otherwise, at the outset, we will only undermine the credibility and capability of State and local government which revenue sharing is designed to improve.

Mr. President, before concluding, I wish to note another important aspect of the bill.

No criticism of our present manpower training efforts has been more prevalent—and justifiably so in many cases—than that training does not lead to a job.

To remedy this, I added in committee in section 203(4) a requirement that the Manpower Council be required to establish procedures for the certification—by either panels of representatives of labor and management established for that purpose or by the Council, as required by the Secretary—that training and other services have a reasonable prospect of leading to appropriate employment opportunities. Both labor and management officials and experts in the manpower field with whom we have consulted consider this to be a very desirable provision over the long term and I hope that as this bill becomes law—as I hope it will—that the Secretary will implement this section in the strongest of ways so that the shortcomings of the last decade under Federal direction will not be repeated under essentially State and local control.

For all of these reasons I urge passage of the committee bill.

Mr. DOMENICI. Mr. President, will the Senator from New York yield?

Mr. JAVITS. May I say, too, before I yield—and I shall yield in an instant—that I wish to acknowledge, also, the great contribution which was made by Senator TAFT, the ranking member of the subcommittee, which is embodied in this bill. The Senator, of course, will speak on his own time.

I yield to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, may I ask for the time status? I do not want to take Senator TAFT's time.

The PRESIDING OFFICER. The Senator from New York has 22 minutes.

Mr. JAVITS. I yield 2 minutes.

Mr. DOMENICI. I should like to share a few thoughts with the Senator from New York on this bill.

As the Senator knows, prior to com-

ing here, I was the mayor of a city of some 250,000. As I left office some 3½ years ago, one of the recommendations I made to the citizens, was that in spite of the Federal Government running job training programs, a city, even as small as ours, needed what I called a job training czar; because I found, in my small city, that there were some 12 independent training programs, from SET to the Job Corps, all being run sort of by themselves. I left with the hope that the city could run all the Federal money through one funnel and sort of take care of local needs. I should like to share what happened as a result.

Without legislation, that city and county of some 300,000 has precisely in operation what the Senator is doing by legislation. However, they have done it by administration. The regional office in Dallas has crossed categorical grant lines, pooled the job training money, taken an enormous chance, I assume, but said to that city and county, "Set up this council, head it with a labor czar, and we will fund it with all the job training money that you would have otherwise got through the categorical grant system."

So in a very real way they are the forerunners of this bill, as far as how it will work at the local level by election of local officials to set into operation a council with a labor czar, and with all the funds for job training going to one person. We know now after six months' operation that it is working admirably well. Duplicity is gone and, indeed, they are focusing on the job training needs of that area rather than merely putting in the money because they have a grant. They have taken the vocational institutes and put them into one part. That will be an excellent jurisdiction for us to look at. I am sure that some of the staff already have done that. I compliment the Senator for putting it into this legislation. I think it will work.

Mr. JAVITS. I thank the Senator for his comments.

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

Mr. JAVITS. I yield 10 minutes to the Senator from Ohio.

The PRESIDING OFFICER (Mr. KENNEDY). The Senator from Ohio is recognized.

Mr. TAFT. I thank the Senator.

At the outset I would like to commend the chairman of the subcommittee (Mr. NELSON) and the Senator from New York (Mr. JAVITS) for their very effective work for S. 1559. This legislation can be a great improvement in our manpower training system in this country.

Mr. President, providing training programs for individuals so they can help themselves, is one of the most important ways by which a government can help its citizens.

Manpower training is an example of a government program with this potential. Such programs provide training and assistance to unemployed and underemployed. These programs, coordinated with local public school systems and industry, are not only vocationally directed, but also oriented toward stressing motivation, self-reliance, and the importance of securing and maintaining a job.

On April 19 and 30 respectively, I brought the Senate Manpower Subcommittee to Dayton and Akron to hold hearings on the current status of Federal manpower training programs.

One of the things I found was that these two cities, Dayton and Akron, which are about the same size, have completely different experiences with regard to success of different types of manpower training programs. In one area an institutional training center filled the principal objective and in another area OIC and institutional training seemed to do the job. In both communities however it was quite apparent there was great duplication in many manpower training programs. For example, in Dayton testimony was presented stating that there were approximately 28 or more programs in which the Federal Government had a role in manpower training.

As ranking minority member of the subcommittee, I had an opportunity to hear first-hand the views of the city officials, program administrators, business community leaders, labor organization officials, and program participants. I was quite impressed with the interest and response I received with regard to manpower training.

There are many areas, however, in which constructive improvements can be made regarding Federal involvement in manpower training. Specifically as I previously mentioned, there has been an overproliferation of manpower training programs at the local level and a lack of regional and comprehensive planning. S. 1559, helpfully will correct many of these problems and I endorse the basic principles contained in the bill. I believe the bill reflects a responsible approach with regard to Federal support for manpower training and community action programs.

I am especially pleased to see that S. 1559 adopts a revenue sharing approach for both of these programs, as local communities will thus be able to implement and fund programs that are responsive to their needs.

I am concerned, however, with provisions of S. 1559 that permit use of manpower funds for public service employment programs. Prime sponsors may be tempted to put too much emphasis on these programs at the expense of other constructive manpower training programs. For example, a city that is a prime sponsor may be faced with personnel budgetary problems and feel that it is advantageous, if not necessary, to channel manpower moneys to meet this problem through public service employment programs.

While such employment positions are to be oriented toward training and are to be transitional in nature, pressures still will exist to channel manpower funds to public service employment. I recognize the need for some type of selective public service employment program other than through general or special revenue sharing funding, although I do not agree with the committee's approach to extend the Emergency Employment Act. I believe manpower training programs should be separate from public service employment programs, and that the latter should be structured to meet the needs of areas that have extremely high unemployment along the lines I suggest in my additional views with S. 1560.

I also wish to call to the attention of the Senate certain of the testimony on this point. In the hearings we had before us, Kenneth Young, department of legislation, AFL–CIO, I asked the following question, and he gave the following answer:

Senator TAFT. I take it you really think there is a serious danger that, if you just open up public employment as an eligible activity, it will have the effect of squeezing out other manpower training.

Mr. YOUNG. I think it could well be, Senator.

I think it presents a very serious problem for a local sponsor.

If you have the total funds less the present funding levels, when you tie everything together, then in fact what you are saying, it seems to us, you are telling a prime sponsor, "Yes, you have some flexibility, but your real flexibility is what you are going to cut back on," and I think, in terms of local officials, he is going to be extremely reluctant to lay people off the local payroll for one thing.

Second, I am not sure that he may not be correct, because this is providing a job, and he has got to balance that versus somebody that may be in a training program.

I know that members of this committee have gone and discussed at great length this whole problem of substitution of EEA funds for NYC funds, but it is in this sort of area that I see a very serious problem.

We would like to see it spelled out. If public services employment will be in a comprehensive bill, keep it as a separate title with separate authorization for that reason.

I also believe certain adjustments are necessary with regard to the population levels established in section 104 of the bill for prime sponsors. Specfically, I believe the population level for cities which is currently 100,000 in the S. 1559 should be at a level of 75,000. Further, I believe an adjustment is necessary in the population level established for prime sponsorship by counties. Currently, the bill requires a county or comparable unit of general local government have a population of 150,000 or more persons other than the number of persons that would be included within the population of any city designated as a prime sponsor under section 104. This level, I believe, is somewhat too high and perhaps would be more responsive to the needs of the country at a level of 100,000. With regard to this point I ask unanimous consent that a letter from the Cuyahoga County, Ohio, commissioners be printed in the RECORD.

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

COUNTY OF CUYAHOGA,
Cleveland, Ohio, July 10, 1973.

Hon. ROBERT TAFT, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: The Manpower Reform Bill S. 1559, "Job Training and Community Services Act of 1973" contains certain provisions which negate the role of County

Government in manpower programs. Counties have clearly demonstrated their capabilities in administering manpower programs through their excellent work with PEP. Their performance has been equal to, if not better than, any other prime sponsor. Counties are regional in nature and therefore are the logical choice for manpower planning and program implementation.

The maximum decategorization of programs and decentralization of authority essential in providing the necessary flexibility to prime sponsors make the following provisions of S. 1559 unacceptable as presently written.

First, the population criteria for prime sponsorship eligibility on the part of the counties remains at 150,000, exclusive of any city over 100,000 population within the county. Although this does not affect Cuyahoga County, it does make the following seven counties in the State of Ohio ineligible as prime sponsors.

Allen	111,144
Greene	125,057
Lucas	100,552
Richland	129,997
Columbiana	108,310
Licking	107,799
Portage	125,868

(Population figures per 1970 Census—less Cities over 100,000 within County.)

Cuyahoga County advocates the adoption of 100,000 or more population as the criteria for prime sponsorship.

Second, the present two part allocation formula is based upon unemployment and the Bureau of Labor Statistics lower living Standard. Cuyahoga County advocates the addition of the "Numbers in the labor force" in an equally weighted allocation formula.

Third, based upon the 1970 census data on unemployment, poverty and workforce, two-thirds of those who need manpower services reside in suburban and rural areas. The present 100% Hold Harmless Clause completely ignores that fact. No logical explanation is plausible for ensuring the major portion of available funds be allocated to the prime sponsors representing one-third of the population requiring assistance. Cuyahoga County does not support an absolute Hold Harmless Clause in manpower reform legislation.

Fourth, the role of the State in providing manpower services is admittedly important. The provision setting 15% of each State's allocation for the use of the Governor does not, however, take into account that portion of services provided by other prime sponsors. Cuyahoga County advocates the adoption of a minimum of 5% and a maximum of 10% for the use of the Governor based upon the percentage of balance of State services not provided by other prime sponsors.

Sincerely,

BOARD OF COUNTY COMMISSIONERS,
FRANK R. POKORNY, *President.*

Mr. TAFT. Mr. President in supporting the bill I would ask the Senator from Wisconsin (Mr. NELSON) if I could have his assurance that these matters will be fully considered in conference and that every reasonable effort be made to see that an adequate solution is arrived at with the House on these matters.

Mr. NELSON. I wish to say to the Senator, concerning the size of the population of eligible prime sponsors being based at 100,000, that I personally think that probably is about the best population level. I realize that the Senator from Ohio believes it would be better if it were set at 75,000. Members of the other body have views that it should even be half as much as 100,000. Of course, that issue will be in conference because I know how some of the Members of the other body feel. I am confident that we will be able to reach a reasonable agreement on what that prime sponsorship population level should be.

One of my reasons for favoring the 100,000 level is to reduce as far as possible the number of entities the Department of Labor must work with.

The Secretary of Labor has pointed out that manpower programs have been carried out through contracts with 10,000 contractees around the country. This legislation would cut that number down to 378 prime sponsors. I agree with the Senator from Ohio, who will be one of the Members of the conference, that the prime sponsorship population level will be discussed in conference and an accommodation reached.

As to the matter of public service employment, I share the concern of the distinguished Senator from Ohio that the fact that public service employment is an authorized activity might lead some prime sponsors to believe that they are encouraged to utilize all or half or a major portion of the manpower funds simply to provide public service employment because that is the easiest thing to do and benefits the prime sponsors. By authorizing public service employment, it is not the intention of our committee to encourage prime sponsors not to have a balanced manpower training program. We were reluctant not to authorize public service employment because it might be a very valuable aspect of the total manpower training program and they might want to spend part of their money on some jobs they thought were best.

The PRESIDING OFFICER. The time of the Senator from Ohio has expired.

Mr. NELSON. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. NELSON. I therefore assure the Senator that it is not our intent that public service employment be funded to the exclusion of training programs. I think we ought to discuss this issue in conference. I think that when we bring back the conference report, the statement of the managers should emphasize that it is not our intent that a disproportionate share of manpower funds be used for public service employment under this bill. If some prime sponsor is inclined to do that, I think it must be called to the attention of the Secretary of Labor who has authority to approve whether or not they are complying with the law. It would be my interpretation that if they did not proceed to develop a broad and balanced manpower program, they are not complying with the law.

Mr. TAFT. Mr. President, will the Senator yield me 2 additional minutes?

Mr. JAVITS. Of course.

Mr. TAFT. Mr. President, I appreciate very much the remarks of the chairman of the subcommittee on the action expected in the conference. With diligent efforts and reasonable compromise in these areas in conference, I believe the Congress will be able to send an excellent bill to the President.

Mr. President, I also would like to bring to the attention of the Senate the very fine work that the opportunities industrialization centers of America have conducted in the manpower training field. This organization's work throughout the country under the leadership of Rev. Leon H. Sullivan, has truly been a significant factor in providing job training opportunities for many disadvantaged citizens. Earlier this year I joined with Senator SCHWEIKER in cosponsoring S. 136, the Opportunities Industralization Assistance Act of 1973. While it was not possible to incorporate every part of this bill in S. 1559, it was possible to include many important provisions with regard to OIC. I am hopeful that these provisions will be responsive to the needs of OIC centers throughout the country including the outstanding centers in my State.

I ask unanimous consent that a letter from Reverend Sullivan regarding S. 1559, and the importance of enacting manpower legislation into law, be printed in the RECORD.

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

JULY 16, 1973.

Senator ROBERT TAFT, Jr.,
Old Senate Office Building,
Washington, D.C.

DEAR SENATOR TAFT: Thank you for giving OIC your support as a cosponsor of S. 136, the Opportunities Industrialization Assistance Act of 1973.

Your endorsement helped make possible the inclusion of OIC in the Nelson-Javits comprehensive Manpower Bill which was reported out on Monday, July 9, to the Senate. In that Bill, the Schweiker Amendments guarantee the continuation and expansion of OIC work as an integral part of the nation's manpower delivery system.

Our 110 community-based Boards of Directors and the tens of thousands of citizens of all races and creeds whom they serve, deeply appreciate your efforts on their behalf.

As the legislative process is carried out in the House of Representatives, and eventually a Bill is agreed upon in conference, it is my hope and prayer that we will have a Bill that the President can sign and make it possible for us to look forward to the expansion of OIC work in the State of Ohio.

With warm personal regards, I am,

Sincerely,

LEON H. SULLIVAN,
Chairman of the Board, OIC's of America.

Mr. TAFT. Mr. President, I yield back the reminder of my time.

Mr. JAVITS. Mr. President, I yield myself 2 minutes.

I wish to associate myself with the views expressed by the Senator from Wisconsin (Mr. NELSON) respecting public service employment. These views key directly into the bill.

It will be noted on page 56 of the bill, paragraph (15) of section 201(b) refers to transitional employment for unemployed and underemployed persons as an eligible activity and that under subsection (c) funds made available for public service employment from appropriations are to be used only for programs consistent with the requirements of the Emergency Employment Act "to the extent that such requirements are consistent with the provisions of this act."

In order to tie that into the text, it is necessary to look at page 93 of the bill,

item (h), which, in the case of "new hires" expressly limits the utilization of manpower training funds, "unemployed and underemployed persons who are from economically disadvantaged backgrounds or have been unemployed for not less than 15 weeks immediately prior to employment under such program."

This means that if public service employment programs are established under this bill they must benefit principally those most in need—the focus of the authorities which this act would replace.

But beyond this, our intent that manpower training funds not be squeezed out by public service employment, is established further in section 401(a)(3) which I included on page 87, lines 1 to 7, inclusive, where the Secretary can turn a program off, because it fails to give "due consideration to continued funding of programs of demonstrated effectiveness" for manpower training under the Manpower Development and Training Act or the Economic Opportunity Act.

In short, our purpose is to make public service employment eligible as a complement to training, but by no means to allow it to intrude upon, distort, or take unto itself an appreciable aspect of what we contemplate by manpower training and the manpower training provisions.

I wish to point out that we will be debating another law with respect to public service employment—possibly next week. That is on the bill S. 1560. There we go to great pains to make it clear that we expect the basic and appreciable public service employment to stand on its own two feet rather than utilize the cover of this bill to bring it in through the back door.

Mr. President, I yield myself 1 more minute.

That is our intention, and I join the Senator from Wisconsin (Mr. NELSON) in affirming that we will do our utmost to see that this intention is reflected also in whatever report comes on the manpower training bill.

Further, I wish to point out that the title of this bill is "Job Training and Community Services Act of 1973." That also is clearly the fundamental thrust of the bill.

Mr. President, the Senator from Colorado (Mr. DOMINICK) wishes to be recognized in connection with the bill. He is momentarily not available. For that reason I would suggest that perhaps the Senator from Wisconsin can yield some time. If not, I will ask for a quorum call.

Mr. NELSON. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may ask for a quorum call, without the time being charged to either side.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. JAVITS. Mr. President, I yield myself 1 minute.

Mr. President, I call attention to the fact that the Senator from Colorado (Mr. DOMINICK), because of duties in another committee, may find it impossible to come to the floor.

The Senator from Colorado has written individual views on the pending bill. Those views are found at page 32 of the committee report.

Mr. President, I would like to read those into the RECORD, as the Senator from Colorado may desire to have them in the RECORD since he may be a member of the conference. However, he may desire to expand upon those views a little later.

The individual views of Mr. DOMINICK read as follows:

> While I generally support the action of the Committee in reporting the manpower bill, I do not agree with the striking of the authorization figure of $1.8 billion to be replaced by the authorization of "such sums as may be necessary." I have long felt that it was the duty of committees to set prices on bills rather than leaving them open ended. To use open ended funding is to invite fiscal irresponsibility without limitation. One of the functions of Congress is to set the limits on spending, and at the present time when we are in the midst of spiraling inflation, this Committee should have assumed that responsibility.

Mr. President, I am sure—and I hope that the Senator from Wisconsin (Mr. NELSON) will agree with me—in view of the legislative situation we face in respect to this manpower training bill, that when we come back with a definitive conference report that we expect the Congress to act on, we will have met the views of the Senator from Colorado with respect to "such sums as may be necessary."

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I yield myself 1 additional minute.

Mr. President, I also commend the Senator from Colorado for the outstanding role he has taken in support of the "Operations SER provisions" of the manpower training bill which deals with Spanish-speaking persons and the availability to them of this kind of training. It has been a very gifted initiative.

Mr. President, I am prepared to yield back the remainder of my time. I gather that the Senator from Colorado (Mr. DOMINICK) may wish to expand on his views later. However, he is not here to do so at the present time.

Mr. NELSON. Mr. President, I yield myself 1 minute. Every Senator who has served on the Committee on Labor and Public Welfare with the Senator from Colorado is aware that he has consistently over the years objected at any time to any bill that carried a provision authorizing "such sums as may be necessary." I think that fundamentally his position is correct and that it is much better and wiser in almost every instance for the authorizing committee to spell out what the maximum authorization for a particular program is.

Mr. President, in this particular case it was the wish of the administration to authorize "such sums as may be necessary." In requesting an extension of the Manpower Training and Development Act, the administration itself requested the "such sums as may be necessary" authorization. That is the reason we included it in the bill.

Although it is possible for an appropriation to exceed what the authorizing committee may have desired, in this case I do not think there is any such problem. We have carefully spelled out our recommendation in the committee report itself, in which we are recommending appropriations at exactly the amount that was appropriated for the past year—a total of $1.88 billion.

Mr. President, I am prepared to yield back the remainder of my time.

Mr. JAVITS. Mr. President, I am prepared to yield back the remainder of my time.

Mr. NELSON. Mr. President, we would like to have the yeas and nays on final passage.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JAVITS. 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. JAVITS. Mr. President, I ask for the yeas and nays on final passage.

The yeas and nays were ordered.

Mr. JAVITS. Mr. President, I yield back the remainder of my time.

Mr. NELSON. I yield back the remainder of my time.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

Mr. DOMINICK. Mr. President, during the hearings on S. 1559, one of the groups appearing before our committee was Jobs for Progress, Inc., generally known as SER—the Spanish word for "to be." I would like to take this opportunity to share some of the history of this organization with my colleagues and bring to their attention the fine record of this organization.

SER is a job training program designed in part to work for and assist Spanish-speaking Americans. It was

formed in 1965 and has grown in size such that it now has operations in 14 States as well as the District of Columbia. During fiscal year 1972, SER trained 5,305 people of whom 3,748 were placed directly on a full-time basis and 2,380 received supportive services. Placement rates of 79 percent have been attained and the Labor Committee in its report on S. 1559 specifically recognized the proven effectiveness of Operation SER. For every $1 spent on an enrollee in 1972, the return to the community in the form of increased earnings is $1.24. The programs of SER, however, are not limited to education and placement. SER also has programs designed to meet specific community interests dealing, among other things, with manpower shortages in the professions, rehabilitation of first offenders in the criminal justice system and the promotion of community resources.

SER is presently funded through a national contract with the Department of Labor, and it was concern over the discontinuance of funding for SER that earlier this year led to a letter signed by 17 Senators directed to the President on behalf of SER. I ask that a copy of that letter be printed at the end of my remarks. As I understand it, the Department of Labor presently still has the SER grant proposal under consideration and I would again take this opportunity to urge favorable consideration of the application. One of the major problems in breaking down barriers to opportunities for employment for the disadvantaged has been the inability of a significant number of poor people to fully participate in manpower training, because of limited English-speaking abilities. The 1970 census reports indicate that in this country there are over 10 million Americans for whom Spanish is the primary language. It has been further estimated that 70 percent of all male Spanish-surnamed Americans work in the lowest occupational categories—as operatives, laborers, or service workers. I believe that it should be of primary concern to all of us that a successful bilingual training program be continued. Previously this year I joined in introducing legislation now pending before the Labor Committee to provide increased opportunities for people with limited English-speaking abilities.

S. 1559 contains strong language endorsing concepts of bilingual emphasis in manpower training and I would commend other members of this committee for their recognition of and interest in this problem. I believe that Operation SER has demonstrated itself to be a successful bilingual program and has proven its worth as a manpower organization.

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

APRIL 24, 1973.

HON. RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are very much concerned about the future of Jobs for Progress, SER, a manpower development training program funded through the Department of Labor. The primary objective of SER is to decrease unemployment and underemployment among Spanish-speaking Americans, and your Administration has been supportive of SER for the last four years—most recently in the March, 1973, "Manpower Report of the President."

Since its inception, SER has demonstrated that it is one of the most effective investments the Federal government has made in manpower training. The effectiveness of this program is demonstrated by the success of its graduates in securing employment and the support of the business community which has successfully utilized the program by employing its graduates.

It is significant to point out that during the 1971–72 operating year SER was successful in providing training and jobs for 5,345 Spanish-speaking citizens—44 percent of whom were placed in breakthrough jobs, positions where no Spanish surnamed person had ever before been employed. For the first six months of the 1972–73 operating year, SER has reduced the per trainee cost of job training and placement by 52 percent, and has placed 71 percent of its trainees in breakthrough positions.

These statistics illustrate that SER has achieved its objectives and the objectives envisioned by the Federal government in its overall manpower policy. It has provided real employment opportunities for disadvantaged citizens to become self-sufficient and productive members of our society and contributors to the economy.

We certainly agree with the general objectives of eliminating waste in government, and the need for reform of the Federal government's role in manpower training. Nevertheless, we are of the unanimous belief that SER's national funding process should be continued under the current arrangement, and we further believe that such a position is consistent with the goals just mentioned. Our concern is not that local funding agencies would not recognize the need to assist Spanish-speaking persons; rather our concern is that the type of coordination necessary to effectuate a successful bilingual manpower program is sufficiently developed at the local level. We request, therefore, that you give serious consideration to continuing SER's national funding at present levels through fiscal year 1974 so that it can establish effective liaison with local funding agencies.

Sincerely yours,

John Tower, Alan Cranston, Charles H. Percy, Birch Bayh, Dick Clark, Paul J. Fannin, Edward M. Kennedy, George McGovern, John V. Tunney, Peter Dominick, Joseph M. Montoya, Warren G. Magnuson, Howard W. Cannon, Pete V. Domenici, Philip A. Hart, Gale W. McGee, and Adlai E. Stevenson, III.

Mr. PELL. Mr. President, the legislation before the Senate, the Job Training and Community Service Act of 1973, is an essential step toward fulfilling the manpower requirements of our country. The legislation authorizes programs that are necessary to permit individuals to gain the job skills required to participate fully and productively in the economy.

This legislation has a particular and timely importance to my own State of Rhode Island. As a direct result of actions taken by the Department of Defense, we in Rhode Island are faced with an unemployment problem approaching economic disaster. Earlier this year the Defense Department announced the virtual closing of naval bases at Newport and Quonset Point in my State. These base closings will mean the direct loss within the State of Rhode Island of approximately 22,000 military and civilian jobs. According to the best estimates available, the base closings will result in an increase in the unemployment rate from the current level of less than 6 percent, to an unemployment rate of from 11 to 15 percent unemployment.

From the time that the base closings were first rumored, I have tried in every way I could to persuade the Defense Department that the decision was unwise, and contrary to our national interests on both economic and national defense grounds. Yesterday, with my senior colleague, Senator PASTORE, and other New England Members of Congress, I met with President Nixon on these base closings. At that meeting, it became apparent that there will be no change in the administration's decision to close these naval facilities.

I continue to believe that the Defense Department and the administration decisions are outrageously wrong. But I am also convinced that we must now turn our attention and our energy and our full efforts to the difficult problems of conversion and adjustment.

Because the economic crisis confronting Rhode Island is caused directly by an action of the Federal Government, I believe the Government has a particular responsibility to assist in the economic adjustment.

For that reason, I presented to the Labor and Public Welfare Committee, on behalf of myself and Senators KENNEDY and CRANSTON, an amendment to this bill requiring the Secretary of Labor to give special consideration, in allocating discretionary manpower funds, to areas or States which face unusual unemployment problems because of cutbacks at Government facilities.

I believe very strongly that Rhode Island and other areas that suffer a Government-made economic disaster deserve special consideration from the Government in adjustment assistance. Accordingly I am pleased that the Committee on Labor and Public Welfare agreed to include my amendment in the bill.

The amendment will help provide vital job training to the thousands of Rhode Island citizens who, after years of faithful service as Government workers, face the loss of their jobs, because of the unreasonable and, I believe, unjustified decision by the administration.

The Job Training and Community Services Act of 1973 is important to the economic well-being of our country; it is a vital and urgent necessity to my own State of Rhode Island, and I urge approval of the bill.

Mr. SCHWEIKER. Mr. President, as we look back over the entire record of antipovery and manpower training programs, public and private, I think that there is almost unanimous agreement that few programs have been as successful as the OIC program, the Opportunities Industrialization Centers. This program started by Rev. Leon Sullivan, in Philadelphia, obtained its first prime contract with the Government in fiscal year 1972. Today, there are 101 OIC's in operation and over 38,000 persons have been enrolled in these programs to date. Over 21,000 have been trained and almost 10,000 have been directly placed in paying jobs. The cost per enrollee is only

$562, and the cost per placement is $1,677.

Solely as a matter of cost effectiveness, I am certain that very few programs, public or private, could claim such a record. We have heard a great deal about the poor pulling themselves up by their bootstraps, Mr. President, and yet in many cases, I think that the Federal Government has taken away the boots at the same time that the poor have been trying to pull themselves up by the straps. For that reason, I introduced in subcommittee an amendment to S. 1559, in order to protect OIC during the transition from categorical grant support to manpower revenue sharing.

The result of my amendment, as accepted, will be to protect OIC's eligibility for a national contract with the Department of Labor for another year, instead of cutting off OIC funds this fall. In addition, language has been added to the bill and report to insure that OIC representatives will serve on the employment and training councils to be set up in the cities and States which will be "prime sponsors" of the manpower revenue-sharing programs, and that the OIC representatives will be involved in the development of these plans at the State and local level. In addition, OIC will have the right to comment to the Secretary of Labor and to State and local officials concerning the use of manpower revenue-sharing funds at the State and local level. In any case where State or local "prime sponsors" have not given fair consideration to OIC, OIC will be able to take its case directly to the Secretary of Labor.

I am quite sensitive, Mr. President, to the efforts of the floor manager of this legislation to pass a "clean" manpower revenue-sharing bill, without piling on a number of exceptions which will extend the categorical grant programs. I share this concern, and I am in favor of an orderly transition into manpower revenue sharing. But at the same time, I think that having set the goals of full employment and improved manpower training at the Federal level, we must stand behind our commitment, and we must insure that the transition from categorical support to manpower revenue sharing does not shortchange those who have believed in and participated in this Federal commitment.

No one has worked harder, and no one has had more success than Rev. Leon Sullivan and those involved in the OIC program, and I commend them for their outstanding success. In the final analysis, the cure for poverty is earning money, and the accepted way to make money in the American society has always been gainful employment. The OIC's will permit those Americans at the low income and poverty levels to obtain gainful employment and so we could not mount a more successful battle in the war on poverty than by encouraging and sustaining the OIC program.

Thank you very much, Mr. President.

Mr. TOWER. Mr. President, I support S. 1559, the Job Training and Community Services Act of 1973 and urge the Senate to approve it.

The bill replaces title I of the Economic Opportunity Act and the Manpower Development and Training Act with a comprehensive program that recognizes the positive aspects of manpower revenue sharing and the need to bring policymaking closer to the people affected by the programs. I commend the Senate Labor and Public Welfare Committee for their constructive work on this bill and their recognition of the need for basic reform of Federal manpower training programs.

Instead of narrowly drawn categorical programs administered by the Department of Labor, the Job Training and Community Services Act of 1973 would establish cities with a population of at least 100,000 people and counties with a population of at least 150,000 people as prime sponsors for the operation of manpower programs in their areas. The bill also includes authority to designate governmental units that do not fall within the above population criteria when it is obvious that special manpower problems exist requiring a different administrative setup.

Mr. President, I am also very much in support of the specific attention which S. 1559 gives to bilingual job training. I submitted testimony to the Subcommittee on Employment, Poverty and Migratory Labor in support of S. 414, the Bilingual Job Training Act introduced by Senator DOMINICK and myself and cosponsored by 17 other Senators. While S. 1559 does not contain all of the specific provisions within the Bilingual Job Training Act, I am satisfied that my bill had a sufficient impact upon the committee's final deliberations on the pending measure.

For instance, section 201(b)(5) specifies Operation SER, Jobs for Progress, the most successful Spanish-speaking manpower training program and other similar programs designed to assist bilinguals as entities that are eligible for funding by State and local governments. Section 401(a)(3) gives the Secretary of Labor authority to revoke prime sponsorships of those program agents who fail to recognize the unique employment problems of Americans with limited English-speaking ability.

Additionally, the legislation includes provisions that will make it possible for such community based manpower organizations as Operation SER, Jobs for Progress, and the Opportunities Industrialization Centers—OIC—to actively participate with State and local manpower planning and sponsoring agencies in the setting of priorities on the State and local level.

Section 103(b) of the bill would require the Secretary of Labor to continue the national contracts of Operation SER and the Opportunities Industrialization Centers through fiscal year 1974. I have contacted the administration on behalf of both of these organizations urging the continuation of the national contracts through fiscal year 1974. I am very confident that these organizations will be able to compete effectively for manpower revenue-sharing funds. However, I do think that national funding should continue through fiscal year 1974 so that both of these organizations can have some time in establishing effective liaison with State and local governments that will have primary administrative authority over Federal manpower funds.

Mr. President, I support this legislation, because it achieves two basic interrelated policy goals that I believe are essential for reform of existing manpower programs. The legislation decentralizes the entire Federal manpower training effort and specifically promotes bilingual job training at the State and local level.

Federal administration and control of manpower training programs has resulted in a less than totally successful effort in this area. Narrowly drawn categorical programs have resulted in confusion, a lack of flexibility in planning and experimentation and a general sense of frustration among those participating at the State and local level. President Nixon's strong argument in support of decentralizing these programs has forced everyone to recognize that basic reform was essential. I am confident that through the cooperation of States, local governments, and community-based organizations such as Operation SER we can achieve much more successful results in providing employment opportunities for those Americans that lack only the technical skills to become more productive members of our economy.

Mr. HUMPHREY. Mr. President, the important legislation the Senate is acting upon today, S. 1559, Job Training and Community Services Act of 1973, calls for significant revisions in the operation of programs under the Manpower Development and Training Act, for which a 4-year extension is authorized. It rejects administration plans to discontinue funding for antipoverty Community Action Agencies in fiscal 1974—rather, 17.5 percent of the funds authorized to be appropriated under this legislation are to be used for carrying out effective programs by these agencies.

The Governor of Minnesota, the Honorable Wendell R. Anderson, wrote to me in May, 1973, to explain his serious concern that four basic principles be implemented to strengthen manpower programs:

First, manpower reform must be accomplished through legislation—not through administrative action, as intended by the White House, which could only result in a high degree of uncertainty regarding future program operations.

Second, any proposed decentralization of the planning and administration of manpower programs must go hand-in-hand with the maintenance of adequate funding for these programs—otherwise, a cruel deception would be worked upon State and local governmental units.

Third, programs should be decategorized to provide State and local governments the flexibility required to allocate available funds to meet their own particular manpower needs.

Fourth, to integrate manpower programs with related human resource programs, and to provide for comprehensive manpower planning, a strong role for States in the manpower planning process must be maintained.

I believe these four basic requirements

are fulfilled in the Job Training and Community Services Act of 1973. The philosophy of this bill is that manpower programs can best be planned and administered at the State and local level, but with the financial support, technical assistance, and oversight of the Federal Government to insure that programs are carried out in accordance with legislatively established national objectives. States and localities would now be enabled to address effectively their particular and varying job training requirements, and categorical programs are redesignated as eligible activities for selection by State and local prime sponsors in response to actual manpower needs.

It is expected that Federal assistance for manpower programs will be no less than $1.88 billion annually, the amount appropriated for fiscal 1973. Of sums available for job training programs, 75 percent would be apportioned among the States on the basis of unemployment and population living below the Bureau of Labor Statistics lower level budget—or $7,000 for a family of four at the time of the 1970 census. However, during fiscal years 1974 through 1976, each State and local area would be held harmless at the same share of manpower funding received during fiscal 1972.

Prime sponsors, operating their own programs and dealing directly with the Department of Labor, could be States, cities of 100,000, and counties of 150,000. Cities and counties with more than 75,000 people could develop area programs on the basis of guaranteed specific allocations of funds, subject to the decisions of area planning councils serving multi-county areas within the State.

I particularly commend the provision for assuring participation by those who would be directly affected by these manpower programs, in their planning and evaluation, through the requirement that prime sponsors be willing to set up broadly based employment and training councils. These councils can also help assure that actual jobs are available at the end of the job training tunnel, a requirement that must be given the highest importance in the future funding of manpower programs.

I am also gratified that certain programs will remain the direct responsibility of the Secretary of Labor—including the Job Corps and programs for Indians and migrants. An Indian on a reservation confronts pervasive unemployment frequently in excess of 50 percent, while the Indian relocated to the city under a seriously misconceived priority of Indian manpower programs experiences not only frequent joblessness but also profound cultural shock and extensive discrimination. Migrant and seasonal farmworkers, already at the bottom of the economic ladder, are severely restricted in participation in manpower development and training programs and in obtaining job opportunity information. It is essential that Federal assistance funds be earmarked to assure an equitable allocation of manpower program services to these important sectors of our population.

Senators will also recall my continuing direct interest in maintaining the Job Corps, most recently in support of continuing the level of funding for fiscal 1974 at $183.4 million, in connection with final congressional action on the latest continuing appropriations legislation. I have been deeply concerned over cutbacks in this vital program by the administration, and I strongly believe that the Job Corps should be maintained at a full operating level. It is an excellent program that has achieved good results in serving low-income young men and women, aged 14 to 21, who need further training, education, or counseling to secure meaningful employment and to pursue their education. Critically high rates of unemployment among youth in areas of poverty make it essential that this program be continued.

I applaud amendments added to this bill in committee, to help meet the serious employment needs of two important groups of American citizens, our veterans, and engineers, scientists, and technicians adversely affected by the Nation's economic shift away from defense-related production. It is essential that everything possible be done to provide job training and employment opportunities for Vietnam-era veterans and veterans with service-connected disabilities, confronting unemployment far in excess of the national average. Moreover, I have publicly urged for many months that effective national programs of assistance be developed on behalf of professional and technical persons, who have experienced sudden job displacement as a result of defense contract terminations, and I am an original sponsor of important legislation to establish comprehensive programs to utilize their skills in launching new initiatives in community development and in meeting our serious domestic social welfare needs.

Finally, Mr. President, I wish to express my particular gratification at changes made in the original legislation by the committee to maintain the vital role of Opportunities Industrialization Centers—OIC's—and jobs for progress—SER—in job training programs. SER has achieved a highly commendable record as a manpower program addressed to the vital employment needs of Spanish-speaking citizens. Operating in some 14 States, the program has provided comprehensive services and established an excellent record in the efficiency of its operations.

I have been privileged to know the Reverend Leon H. Sullivan, chairman of the board of OIC's of America, for a number of years as a personal friend. It has been with respect and admiration that I have witnessed his unremitting efforts over the past 9 years to develop this nonprofit self-help organization for job training of minorities. Today, there are centers in 110 communities, and by the end of 1972, OIC had provided free skills training and placement to 116,000 persons, of whom 71 percent are still employed on those jobs. OIC represents self-help, self-determination, and self-reliance, and its decisive beneficial impact in communities across the Nation clearly requires the continuation and expansion of OIC works as an integral part of the Nation's manpower delivery system.

Mr. President, I urge favorable Senate action on the Job Training and Community Services Act of 1973.

Mr. President, I wish to commend the Senator from Wisconsin (Mr. NELSON) for his untiring efforts in developing and sustaining these manpower training programs. Also we owe a special note of thanks to the Senator from New York (Mr. JAVITS).

JOBS AND JOB TRAINING PROGRAMS: S. 1559 AND S. 1560

Mr. MOSS. Mr. President, manpower programs have provided one of the many arenas for the contest of the budget between the President and Congress. By announcing in his fiscal year 1974 budget his intent to, first, withhold funds for the emergency employment act programs, second, reduce many other manpower programs, and third, implement revenue sharing in this area without specific legislative approval, the President has substantially challenged much of the progress that has been made in these areas.

Manpower programs definitely have needed reform and improvement. Instead, the President has cut funds and directed these lesser moneys through new channels, but he has not applied any imagination to program innovation or improvement.

I support the legislation that has been reported from the Senate Labor and Public Welfare Committee as a responsible way of accomplishing the decentralization of manpower programs and the continuation of public employment programs. While this legislation is before the Congress, I believe it would be helpful to have wide circulation of the thinking of two people who are recognized experts in manpower programs, Dr. Sar A. Levitan and Dr. Garth L. Mangum. They have written a very useful review of present administration proposals, framed by a series of probing questions about the overall nature of manpower programs since their inception. I ask that this article be included in the RECORD at this point.

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

U.S. MANPOWER PROGRAMS: RETREAT OF REFORM?

(By Sar A. Levitan, Garth L. Mangum)

Pre- and postbudget pronouncements by the Administration are signaling major shifts in policy directions and substantial cuts in the budgets for several programs. The budget not only suggests a reversal of expenditure trends which have prevailed over the past 10 years but it also promises reallocation among programs and geographical areas as well as major shifts in administrative responsibilities. Here, the authors examine the impact of the proposed budget cuts and reallocations, to attempt to forecast the implications of budgetary and policy changes, and to compare the winners and losers among programs with their strengths and weaknesses as demonstrated over a decade of experience.

After 12 years of sustained expansions, manpower efforts will be retrenched begin-

ning in fiscal 1974 if the Nixon Administration's budget proposals are accepted. However, the overall reduction in manpower expenditures is not large. The recommended 1974 manpower appropriation of $4.8 billion represents a cutback of $489 million from estimated current year outlays, but is still substantially above the expenditures for fiscal 1972. More significant are the gains and losses among particular programs.

Comparison of the proposed 1974 budget with present outlays is difficult not only because current figures are, at best, estimates but also because the President vetoed the fiscal 1973 HEW-Labor appropriation. Although manpower appropriations were not in dispute at the time, the Administration currently is proposing that Congress rescind some $375 million from the combined Department of Labor and Office of Economic Opportunity outlays.

Not all programs would be equally affected. Proposed outlays for veterans, vocational rehabilitation and public assistance recipients would be boosted, while other training and work support programs administered by the Labor Department would be curtailed and the funding of public employment under the Emergency Employment Act of 1971 would be terminated. The dismantling of OEO is to be accompanied by a shift of most of its specific manpower programs to the Department of Labor, but a substantial amount of manpower activities undertaken by Community Action Agencies will disappear.

Instead of the present categorical Labor Department programs costing $1,638 million in fiscal 1972 and an estimated $1,382 million in fiscal 1973, the Administration's budget would provide $1,164 million—a 29% reduction in two years—to be allocated to a single revenue sharing program composed of MDTA and EOA funds which would provide block grants to cover the same efforts. Considering the estimated rise in prices over the two-year period of about 8%, the actual decrease in effective resources available for programs that will be absorbed in fiscal 1974 under revenue sharing would be in excess of 37% below fiscal 1972 levels.

The impact of a more austere budget for MDTA and EOA programs is compounded by the planned termination of the Public Employment Program. During the fiscal year outlays for the institutional, on-the-job training and other work support programs, which are to be combined under the revenue sharing plan, plus Emergency Employment Act funding will amount to an estimated $2,470 million compared with $1,734 million in fiscal 1974. This constitutes an overall cut of 30%, excluding the declining value of the dollar because of inflation.

Dr. Levitan is research professor of economics and director of the Center for Manpower Policy Studies, The George Washington University. Dr. Mangum is McGraw professor of economics and director of the Human Resources Institute, the University of Utah. The authors are, respectively, the current and past chairman of the National Manpower Policy Task Force.

If manpower revenue sharing becomes a reality, the responsible officials in the state houses, country court houses, and city halls would have to determine how to distribute the limited funds. It would be a violation of the spirit of revenue sharing to dictate what should be continued and what should be eliminated. Therefore, attempts to second-guess the allocation of manpower revenue sharing funds by the broad categories indicated in the Special Analysis of Federal Manpower Programs by the Office of Management and Budget is only an indication of what would happen if the current distribution of funds among programs was applied to the smaller pie that presumably would be available in 1974.

Uncertainty is added by suggestions that unobligated Emergency Employment Act funds might be utilized for a variety of other manpower programs. Unless the successful transition rate under the Public Employment Program can be dramatically increased, the cutback in EEA funds would require the layoff of many of the 150,000 workers hired by state and local governments under the program, or else the allocation of regular state and local funds to maintain EEA workers on the payrolls.

Almost all the anticipated EEA funds remaining would be needed to employ the disadvantaged persons hired under the program. Even if the Administration hopes materialize and aggregate employment is reduced by mid-1974 to 4.5%, many communities may still suffer considerable job deficits. For them, the withdrawal of funds from public employment to bolster other manpower efforts would be a case of robbing Peter to pay Paul. The abolition of community action agencies and the retrenchment of other special programs that concentrate on the needs of central cities will further increase pressures upon state and local authorities to absorb community service workers displaced from these programs and thus accentuate the pressures on reallocating the reduced manpower funds. One possibility is that mayors will use manpower revenue sharing funds for direct employment both to offset the loss of these programs and because of the political popularity of job creation. Longer range efforts such as manpower training are therefore likely to absorb the major cuts.

WINNERS AND LOSERS

The Work Incentive Program (WIN) is potentially the chief beneficiary among manpower programs in the 1974 budget. The 1971 Talmadge Amendments to the Social Security Act requires that all employable welfare recipients register for assistance under WIN. Training is to be provided for those who are not ready for work, and the others would be placed in jobs and provided needed supportive services, including child care. Although the Administration proposes that the WIN budget, excluding supportive services, would be more than tripled from final 1973 levels, and child care services for welfare recipients would be expanded even more.

The Administration is also proposing additional funds for the training and rehabilitation of veterans, with nearly one-third of a billion dollars proposed for fiscal 1974. With the end of hostilities in Vietnam, few new casualties are expected, but the outlays for vocational rehabilitation will be expanded to serve previously disabled veterans. Outlays in veterans training programs are the result of boosts in stipends and not increased enrollments.

While funds for WIN and veterans will be expanded in accordance with congressional mandate, youth programs are likely to be the major victims of the budget cuts. No funds are allocated for 1973 summer NYC. Communities are being advised to use any uncommitted Emergency Employment Act funds for this purpose. But this would, of course, place youth in competition with adults already working or potentially employable in EEA-supported jobs.

Job Corps activities also are to be sharply curtailed. Financing from the revenue sharing funds retained at the Federal level would amount to $111 million in fiscal 1974, compared to $188 million in 1972, a cut of 41%. Nonetheless, the budget anticipates that man-years of training in Job Corps centers would be reduced by only 26% to a total 17,000. The apparent discrepancy is based on the expectation that some facilities would be picked up locally.

The major "savings" in manpower outlays for 1974 is the proposed termination of the Emergency Employment Act. The *Budget for Fiscal Year 1974* anticipates that by the end of 1974 unemployment will drop to 4.5%, diminishing the need for publicly supported jobs, and that the prospective clients would be "more effectively served by regular manpower training programs" (p. 131). The language might have implied a boost in resources for the regular manpower training programs in order to carry out the expanded mission. As we have seen, however, the revenue-shared funds are also going to be cut with the likelihood that the "chief elected political executives" will likely choose to allocate much of the remaining revenue sharing funds to replace the popular creation programs.

In addition to cuts in total expenditures, the revenue sharing route proposed by President Nixon also involved shifts among programs. Those programs, which have as their primary targets the disadvantaged, minorities, central cities and depressed areas, will feel the brunt of the cuts. The public service employment concept, accepted by the Administration after veto because of the persistence of unemployment, has apparently not increased in popularity within the Administration. Manpower programs appealing to "middle America" are to be maintained or modestly expanded. Only the continued commitment to turn "welfare into workfare" is to be rewarded with substantially expanded funds. As the overall Federal budget increases by nearly $19 billion between fiscal 1973 and 1974, manpower efforts, particularly for the disadvantaged, have a clearly lowered priority.

REVENUE SHARING

President Nixon's Administration early declared decentralization and decategorization to be the keystone of its manpower policy. Congress endorsed decentralization and included it in the 1970 comprehensive manpower legislation which the President vetoed because it was insufficiently decategorized and because it included an unwanted public employment program. Despite a seeming consensus for some form of decentralization and decategorization, legislation has become bogged down over three issues:

1. President Nixon's request for manpower revenue sharing did not involve the level of Federal supervision required by Congress.

2. Advocates of particular programs have argued for each as exceptions to the general principle of decategorization, while several of the categories, programs such as public employment and community action, are not acceptable to the Administration.

3. Governors and mayors have never been able to agree on their relative roles in decentralization.

No official pronouncement on the mechanics of revenue sharing accompanied the budget. However, subsequent administrative pronouncements from the Labor Department have begun to clarify policy intentions. After a decade in which urban areas were favored targets for manpower funding, the trend is apparently to be sharply reversed. A new allocation formula giving equal weight to labor force size, unemployment and family income shifts the balance sharply in favor of the suburbs.

Boston may serve as one example of the redirection of funding and policy. Initial Federal instructions to the city's manpower planners were to assume a $14 million fiscal 1973 allocation (including EEA) for planning purposes. The new formula will reduce Boston to $5.2 million for fiscal 1975. Meantime Cambridge, across the Charles River, will experience a five-fold expansion in its previously modest allocation, and smaller and more affluent suburbs may find themselves in the manpower business for the first time. Boston's experience is duplicated across the nation.

WHY CUT MANPOWER BUDGETS?

There are three possible explanations for the decision to cut back on manpower budgets after 10 years of persistent increases:

1. The problems addressed by the programs may have been reduced in seriousness to lower priority than other issues or may have been discovered to be misconstrued.

2. Despite the seriousness of the problem, the programs may have proved ineffective and, consequently, should be abandoned.

3. Social priorities may have changed, either because solution to their problems has become less important to society or because the costs of solution have proved higher than expected.

Each possibility is worth exploring.

HAVE THE PROBLEMS GONE AWAY?

With a booming economy in 1972 and 1973, employment conditions have improved over recessionary levels, but there has been no abrupt change which would suggest that employment problems have been or are on their way to being solved. The number of people looking for but unable to find work averaged 4.8 million in 1972. This is less than in 1971, but it is more than in any previous year in the last three decades. The unemployment rate of 5.6% was exceeded in only five of the postwar years. Conditions have improved in 1973, but not very rapidly. The unemployment rate remains at 5.0%, and is not likely to average much less than this for the whole year.

Unemployment is only part of the problem. In April 1971 it is estimated that there were 5.8 million full-time, nonfarm jobs paying less than $2.00, and 1.3 million less than $1.60. There were an additional 5.3 million part-time jobs under $2.00, and probably a majority of the 3.5 million farm jobs paid no more than this. While many of the people in these jobs are secondary family earners, there were over a million family heads and nearly 300,000 unrelated individuals who worked full-year, full-time in 1971 and remained in poverty. A total of 2.8 million family heads and .8 million unrelated individuals worked at some time yet could not rise out of poverty. The proportion and number of poor family heads who work has declined over the last decade, but this measures only the ability of workers to provide for the most spartan existence. It does not mean that the relative status of those at the end of the labor queue has improved.

Employment problems are unequally distributed geographically and among population groups, and these inequalities persist. In the ghetto area of 60 large cities in 1970, where 70% of the labor force was made up of blacks or Spanish-Americans, the unemployment rate was 9.6%, or almost twice the national average. Over a fifth of the families whose head worked sometime during the year lived in poverty, compared with only 7% of working heads nationally. In rural areas the problems are even worse. In 1971, 6% of all families whose head worked year-round, full-time in nonmetropolitan areas lived in poverty, compared with only 2% in metropolitan areas.

Age, sex and race differentials are significant. In 1972 the unemployment rate for females was a third higher than for males, and the nonwhite rate was twice that for whites. The teenage rate was roughly three times the national average. Since 1960 the first two differentials have increased while the latter has declined very slightly.

In recent years a number of technical points have been raised which suggest that conditions are not as bad as they seem. For instance, it is argued that the growth in unemployment compensation, veterans benefits and welfare have helped to cushion the income losses resulting from unemployment. Benefits have risen and eligibility criteria have liberalized, but the impact on the unemployed is not massive. For instance, in 1963 an average of 1.8 million received unemployment compensation out of the 4.0 million unemployed. In 1972, when unemployment was 5.6% (compared with 5.7% in 1963) and 4.8 milion were unemployed, the average number of recipients was only 1.85 million, or, in other words, a smaller proportion. Welfare is also limited in helping the unemployed. Most of the recipients did not work in the last year and cannot work currently. Able-bodied unemployed males can receive benefits in only 24 states, and there are usually some restrictions. This is not to deny that the programs to help those in distress have fulfilled their mission to some degree; rather, it suggests that many of those who are unemployed are not assisted.

A second argument is that the composition of the labor force and of the unemployed has changed so that the same rate as in the past does not indicate problems of the same severity. In 1960 women represented 33% of the labor force; by 1972 the proportion had risen to 38%. Over the same period the proportion of teenagers rose from 7 to 9%. In 1962, 12% of workers were voluntarily in part-time jobs, compared with 14% in 1972. Teenagers and women are more likely to enter and leave the labor force, and this raises the rate of unemployment. It is often argued part-time job seekers should be of the same concern as full-time workers, since they are only looking for "half" a job.

However, these phenomena must be viewed from the demand as well as the supply side. Jobs traditionally held by women are increasing proportionately and, with changes in technology, education and attitudes, women are qualifying for a broader range of occupations. Opportunities for part-time employment are multiplying. Therefore, women and teenagers are an answer to changing labor market needs, though they also account for a disproportionate share of unemployment.

While unemployment may not mean exactly the same as it did a decade ago, it cannot be dismissed as an employment problem indicator. Teenagers are three times more likely to be unemployed than other workers. As their representation in the workforce rose 2 percentage points between 1960 and 1972, the total unemployment potential increased by .3 percentage points. The increase of women's participation would add roughly another .1 percentage point. But more and more women are family heads, and more of those who are not are working to support themselves or their family's standard of living, and the earnings loss due to unemployment may be just as serious as it is for the family head. Female unemployment on the average may still not produce as much economic deprivation as male unemployment, but the differential must be much less than in the past. Difficulties experienced by youth at the beginning of their labor market commitment may affect their work careers over their lifetimes.

Balanced against the arguments that the unemployment rate overstates the seriousness of employment problems are other equally cogent assertions that it understates them. It has, for instance, been shown that definition changes in 1967 probably reduced the reported rate of unemployment .7% between 1963 and 1969. Other analysts have developed sub-employment indices for central city areas which combine employment and income measures, demonstrating that a much larger proportion of central city populations has employment problems that is indicated by the unemployment rate. Evaluations of rural employment problems indicate an even larger understatement of needs.

The usefulness of the unemployment rate and other labor market measures is thus being questioned from a variety of viewpoints. Whether the real problems are worse or better, and whether the trend is favorable or unfavorable, the fact remains that there are millions of people working at low wages or simply unable to find work. It is also a fact that unemployment, underemployment and poverty in a work-oriented and relatively affluent society imposes a number of additional psychological and social costs having searing effects on the individual and upon the society. There is no evidence of any significant improvement in the last year, or of any conceptual oversight by analysts, which would justify a conclusion that less help is needed for those with employment problems.

WERE THE PROGRAMS INEFFECTIVE?

It is still uncertain after 10 years of effort and experimentation how much of unemployment and low incomes is attributable to the shortcomings of the individuals themselves and how much can be more fairly blamed upon an institutional structure denies them opportunity. Policy emphasis has fluctuated from seeking to improve the skills and employability of people, to outlawing and removing institutional biases which block access to employment opportunities.

The Manpower Development and Training Act and the Job Corps clearly assumed individual skill and education deficiencies which could be removed through training programs. Later, the New Careers Program the National Alliance of Businessmen's Job Opportunities in the Business Sector Program (NABS-JOBS), and the efforts through civil rights legislation and executive orders to eliminate race and sex discrimination in employment all sought institutional change. Experiments with moving jobs to people and people to jobs were also more institutional in their approach.

Programs like the Neighborhood Youth Corps and Operation Mainstream addressed neither problem directly. They were largely palliatives, important in meeting immediate needs for income and employment, but seeking no long-term solutions other than those time itself could buy through the aging process for youth and older workers and the expansion of demand for all. An added development was the punitive drive of the past five years to use manpower programs to get people off welfare by training them if necessary, but before or after that, making them work.

The Public Employment Program (PEP) fits none of this framework. Long advocated as an institutional change mechanism to expand employment opportunities for the disadvantaged, it became a reality as a countercyclical measure to combat persistently high unemployment and as a form of Federal revenue sharing. While PEP gave lipservice to changing public sector employment practices and providing the training needed for upgrading, its primary mission was to hire and put to work members of targeted groups and expand the total supply of employment opportunity. Other manpower efforts, at best, only improve the ability of some to compete for existing opportunities. Whether it filled its promises or not, PEP was directed to the promise of the Employment Act of 1946—i.e., to insure an adequate supply of employment opportunities for all those wanting to work, while the other manpower programs of the 1960s were more concerned with the distribution of existing opportunities.

What did the programs accomplish and why did they not accomplish more? The question is best answered for groups of programs categorized by their objectives. The evidence, strong for MDTA but weak for Job Corps, is that the two programs which attempted to change the employability attributes of their enrollees were moderately successful in doing so. Their success in preparing people to work could be tested only if there were jobs to be had within the limits of their training resources. Both suffered because the incentives were to train for entry-level, high-turnover jobs in order to keep per capita costs low; and because jobs were limited, the program could only provide a "reasonable expectation," of placement. Job

Corps residential costs were high and so was the dropout rate. Still, those who stayed in long enough for employment training were shown to gain substantially from it, though no recent follow-up has been undertaken since the dropout rate has been reduced. MDTA has been shown by numerous evaluation studies to result in improvements in employment stability and earnings, outstripping the program's costs.

The upgrading employment programs, such as New Careers and the Job Opportunities in the Business Sector Program under the auspices of the National Alliance of Businessmen (NAB–JOBS), have had some undeniable impact, but their effectiveness has been questioned. New Careers was able to "cream-off" some of the better educated (mostly females) from among the disadvantaged and elevate them to the entry-level, white-collar jobs. NAB–JOBS probably changed the distribution of jobs somewhat in favor of the disadvantaged, but there are no data to prove it. There is clear evidence that a substantial number of employers did change their recruiting and selection practices to the benefit of the disadvantaged. For none of these programs is there analysis to prove whether the benefits exceeded the costs.

The last-resort public employment programs, Operation Mainstream and NYC, have been popular at the local level, and though there is no proof of any significant and lasting impact on participants, there are some positive contributions outside of the jobs and earnings provided. Operation Mainstream has provided a number of needed public services in rural areas, in addition to providing opportunity for primarily older adult workers. Recent evidence concerning the in-school and summer NYC programs, while showing no positive effect on the likelihood of school completion, suggest that participants do better subsequently in the labor market than similar nonparticipants. In benefit-cost terms, the employment gains outweigh the costs.

The Public Employment Program was an unquestioned success as a job-creating measure, hiring the unemployed quickly to perform needed and worthwhile tasks. Because of the emphasis on speedy implementation and then because of the uncertainty over future funding, progress in enriching the program, in changing institutions and in providing transitional opportunities for the disadvantaged was limited. A more carefully designed and implemented program might build on this positive experience.

Interestingly, given its proposed expansion, the Work Incentive (WIN) program has experienced only limited success in getting welfare recipients off welfare rolls and onto payrolls. Dramatic changes have been made in the last year to emphasize direct placement and to deemphasize training and upgrading. If good jobs could not be found for welfare recipients who had received lengthy preparation, it is doubtful that WIN can now help any but the most employable or that it can escape placing recipients in deadend jobs.

As additional employment factor which ought not to be overlooked is the impact of the staff jobs created in manning manpower programs. Estimated at some 50,000 for manpower programs, plus the numbers in related antipoverty efforts, more than simply employment has been involved. In what has been called the Tammany Hall of the 1960s, many persons from poverty and minority backgrounds have used these staff positions as ladders into a job world formerly closed to them.

In summary, those programs which could be expected to change employability did so and the average enrollee experienced a substantial improvement in earnings as a result. Those designed to provide employment, no matter how temporary, did so and got some useful work done as well, though the extent of institutional change was disappointing.

The only clear failure among manpower programs was the one trying to use labor market weapons to attack what were frequently nonlabor market problems, and this failure was rewarded by an increased budget. Why, then, the frequent reports in the public press from Administration officials, news commentators and even some of the original clients of the Great Society efforts that the programs have proven inefficient?

One reason is the disappointment of inflated expectations. There has been excessive rhetoric in the launching and defending of manpower efforts, and misunderstanding of their role. Proposing programs to aid the unemployed, overzealous advocates promised the reduction of general levels of unemployment. Declaring war on poverty implied, and sometimes promised, its abolition. Neither was possible with the programs at hand, and given the limited resources available under the programs, it is apparent that the real intent fell far short of the rhetoric.

Programs designed to prepare individuals to compete more successfully for jobs could not be expected to create jobs. Unless unfilled demand for labor existed, preparing one to obtain a job implied displacing another who would have otherwise filled it. And even in periods of low unemployment, given the duration and types of training provided, there was no evidence that appreciable numbers of jobs within the reach of manpower program participants were unfilled for want of qualified workers. It is unrealistic to impose the entire responsibility for expanding job opportunities on even those manpower programs designed for job creation. As only one small part of larger national economic policy, they are meant to contribute to the economic well-being of designated groups in the population and to benefit from other policies. Expanding employment opportunities are better effected by other Federal economic levers.

WHAT IS THE GOAL, THEN?

If they do not reduce aggregate unemployment significantly, what good are manpower programs? Their realistic goal is to tilt employment opportunities to achieve greater equality in competition stability, earnings, works satisfactions and career progress, accepting the fact that unless added job opportunities are provided, others may face increased competition as a result. But how can the expenditure of public funds be justified which aids one at the expense of another? The answer is that what is being pursued is the basic objective of American society: to continuously expand personal freedom in its only meaningful and measurable terms, that is the range of choice available to the individual.

Public policy recognizes that poverty, ill health, ignorance, and environmental pollution are no lesser constraints upon actionable freedom of choice as the exercise of arbitrary political powers. Every extension of the franchise diluted the power of each individual vote for those already having voting power. Free public education reduced the competitive advantage of those who could and would purchase their own. Promotion of business enterprise created competition for existing business. Yet all have been justified because they spread opportunity to those who did not have it.

Manpower programs might then be subdivided into three categories: (1) training programs which seek to improve an individual's employability, allowing more successful job market competition; (2) antidiscrimination efforts which seek to remove institutional barriers to equal employment opportunity; and (3) public service employment which creates public jobs for particular individuals or groups. Only the last category can, in most situations, offer employment to some without displacing others and thus reduce general levels of unemployment.

The major goal of all three categories is the most equitable distribution of the employment which is determined by general levels of economic activity—not how many but who is employed. The best measure of success in equalizing employment opportunity is added employment stability and higher earnings for those identified as appropriate target groups for manpower services. Since that in general has been the experience, most of the program, despite their weaknesses in concept and practices, must be counted reasonably successful.

SHOULD PRIORITIES BE CHANGED

Since manpower problems still exist and since the programs have made at least modest contributions to achieving their reasonable objectives, their reasonable objectives, the explanation for retrenchment must lie in changing priorities. The primary goal of the Great Society social programs generally and manpower programs specifically was to improve the condition of the socio-economic lower one-fifth. Whether for crass reasons of political voting power, pragmatic ones of costlines of potential solutions, or simply boredom with the tasks and its rhetoric, the interest of the body politic and its political leadership have shifted to those with more income and less severe problems.

Those programs which have been at the heart of manpower efforts on behalf of the disadvantaged have suffered all of the proposed cuts. Three facts stand out from the 10-year manpower program experience:

The average enrollee in those programs had severe handicaps, but was able to gain in employment and earnings as a result of participation.

Every program had its weaknesses, some of conception, some of design and some of administration, but their effectiveness was also limited by the severity and complexity of the problems which they addressed.

The number of eligibles for every program exceeded by a substantial multiple the resource capacity of the program.

There is no doubt that some manpower expenditures and programs are wasteful. Budget reductions which eliminate fat without cutting any muscle are not unwarranted in a period of budget stringency, though the scale of employment problems and the success of manpower programs to date would seem to argue for improvements without retrenchment. The intent appears to be a lower priority for helping the poor and the disadvantaged who might benefit from sustained support of manpower efforts.

MANPOWER REFORM

Whatever changes in priorities are deemed desirable, clearly public programs should be operated as effectively and efficiently as possible. There is a need, therefore, to periodically reexamine the trends in manpower policy, which becomes more compelling in the light of current proposals to shift the focus of decision-making away from the central bureaucracy.

The case for reforming manpower policy by decentralizing decision-making is persuasive. However, it will be wasteful and harmful to potential participants to proceed without several safeguards. First, to assume responsibility for functions previously performed by Federal representatives, state and local manpower administrators will need to learn how to set objectives, implement plans, monitor performance, and evaluate results. One of the most important elements in this training process will be to arm the state and local agents with the data necessary to assess their population's needs and labor market conditions.

Other safeguards are a clear definition of an accountability mechanism and accompanying performance criteria. It has not been fully clear to what extent the Federal government intends to remain the overseer of manpower programs. Federal manpower

administrators have left themselves the unenviable task of developing guidelines that are not so restrictive as to discourage meaningful local decisionmaking. Federal bureaucrats are inviting the manpower revenue sharing agents to do meaningful planning. In this planning process the incentives to make professional decisions must be greater than the political ones. The overriding goal is to improve on the present Federally dominated manpower system to more effectively and efficiently meet state and local needs.

Several factors may work against success for state and local decision-makers. Most significant, perhaps, is the shrunken manpower budget. Successfully planning the use of limited funds and at the same time absorbing the impact of far-reaching administrative changes is a herculean feat. Another problem is associated with the need to create planning areas that coincide as nearly as possible with labor markets. It is axiomatic that political and labor market boundaries do not coincide. Even a Federal incentive of increased allocations may not be enough to overcome the traditional barriers of intergovernmental relations.

While administrative reforms would not radically improve the effectiveness of manpower programs, they would help. Among the longer term needs are:

A longer range approach to the problem of both individuals and labor markets. The goal should be optimum prospects for career success over the remaining work life—not immediate placement of the unemployed, but a long-run viable workforce and favorable economic development.

Recognition that employment should provide more than income. Manpower planners should also be concerned with job content and that work opportunities are available across the entire labor market spectrum.

The 1946 Employment Act promised an adequate supply of employment opportunities. The promise never has been fulfilled, but we have come closer to that ideal since the goal has been established. The equalization of employment opportunities was promised by the manpower efforts of the 1960s, and significant progress was made. Persistence and pride in the progress of the past decade are still appropriate. Some waste there has been, and unfilled promises—but they are the price of progress toward elusive social goals attempting to overcome age-old obstacles.

Mr. MUSKIE. Mr. President, I am pleased to support the Job Training and Community Services Act of 1973.

The bill would provide $1.88 billion during fiscal year 1974 to State and local governments to meet one of our most basic public needs—job training and employment services for the unemployed and underemployed. It strikes a happy balance between local control and federal oversight by establishing the basis of an effective partnership between State, local, and Federal Governments in the field of manpower training.

The bill recognizes the importance of placing in the hands of State or local officials the authority for matching local training needs with employment needs, and it requires that local resources be used in the training programs.

Greater local control can also mean less duplication. Since the passage more than 10 years ago of the Manpower Development and Training Act, a broad range of special programs has been established to meet the needs of specific groups, such as veterans, older workers, the disadvantaged, the young, and others.

This legislation recognizes the special Federal responsibility to assure continuation of many of these programs, but at the same time it encourages local officials to find and eliminate the inevitable duplication and lack of coordination resulting from this proliferation of specific programs.

State and local officials are most familiar with both the needs of local employers and the needs of the jobless. They will have the power under this bill to match the two needs as much as possible and local officials are best able to enlist local help in preparing the jobless for the work available. My home state of Maine recognized the value of such local initiative in 1967, when Governor Curtis established a system of State and local manpower planning committees to assess local needs and to recommend the most appropriate "mix" of training funds to meet those needs.

The passage of S. 1559 would assign funding authority, in addition to planning authority, to local and regional manpower councils. These councils, representing town and county government, industry, labor, and those who would be served by the job programs, would be equipped to make the best possible use of Federal job training funds.

The allocation formula contained in S. 1559, based on unemployment and family income, will also benefit States like Maine, which have suffered chronic high unemployment and which have income levels below national norms. For example, Maine's unemployment in June was 6.1 percent of the work force, still well above the national average, while more than 60 percent of households had incomes under $8,000 in 1969. States like Maine need the type of automatic "trigger" contained in the bill to release needed employment and training funds.

There are other aspects of the act which are noteworthy:

A new recognition of the importance of language is included in the bilingual manpower programs provision.

The bill recognizes the tragic effects of unemployment on middle aged and older persons, an important provision for Maine, which has a higher percentage of elderly than the national average.

Finally, I note with pleasure that the committee has adopted language which clearly states that Indian tribes under State jurisdiction, as well as those recognized by the Federal Bureau of Indian Affairs, are eligible to receive Federal benefits under the act. This is an important provision for Maine's Indians and Indians in several other States, who have often been denied Federal services in the past as a result of this distinction.

Again, Mr. President, I wish to commend the committee's efforts and hope that this legislation will serve as proof that increased local control does not necessarily mean a complete abandonment of Federal oversight.

Mr. CRANSTON. Mr. President, as a member of the Senate Labor and Public Welfare Committee's Subcommittee on Employment, Poverty, and Migratory Labor for the past 4½ years, I want to express my great admiration for the enormous amount of time and energy and the very effective leadership which Senator NELSON, the chairman of the subcommittee, has contributed to the development of the legislation before us today.

S. 1559 is the result of some 4 years of dedicated work on Senator NELSON's part.

The hearings on comprehensive manpower reform encompass six volumes—reflecting something like 5,000 pages of testimony regarding jobs and job training. The subcommittee has literally criss-crossed the Nation in over 40 days of hearings—including some 22 days of hearing on S. 3867, the Employment and Training Opportunities Act of 1970, the legislation which preceded the bill we are considering today.

Unfortunately, President Nixon vetoed S. 3867 after more than a year of thorough consideration by the subcommittee and the full committee with a view to assuring the most considered and effective legislation possible. In the last year, the subcommittee has worked tenaciously to bring S. 1559, the Job Training and Community Services Act, to the Senate floor today, and I urge the Senate to give its strong support to the reported bill.

Mr. President, I want to thank the distinguished floor manager for his many courtesies to me and for his most sympathetic consideration of the amendments which I offered, which I shall describe in detail later in my statement.

THE IMPERATIVE NEED FOR ENACTMENT OF S. 1559

BLEAK JOB SITUATION

Mr. President, this legislation reaches the Senate at a particularly appropriate time, as our economy is struggling with the effects of the gradually diminishing involvement in Indochina—and attempting to convert war industries to peaceful and constructive pursuits.

At a time when the working people of this country suffer the ever increasing ill-effects of this administration's newest game—economic policy roulette—a game that may soon be the "only game in the country in which everyone is compelled to play—and no one gets to win.

At a time when, although the crushing 1970 unemployment figures of over 6 percent have declined, nearly 5 million Americans are still out of work—and the growing ranks of the poor are more than ever the last to get decent jobs and the first to lose them.

Mr. President, our cities have been crushed by the burdens of meeting the everyday needs of their children—unfortunately, the President's announcement last year that we had "turned the corner" in the battle for cities exists only in the minds of White House speech writers.

The fact is, Mr. President that the cost of living in this country has risen 8 percent in the first 6 months of 1973.

Blacks, browns, Indians, Orientals, women, teenagers and other groups traditionally told to stand at the end of the line continue to search for results after the promising beginnings of the sixties. Yet a recently released U.S. Bureau of the Census survey shows that the gap between black and white income remains as great as it was in 1967. The median income of black families is 59 percent of

that for white families—veritably the same disparity that existed in 1967. This same survey reflects, that though some real progress was made in reducing the number of black Americans with incomes below the poverty line before 1969—dropping from 39 percent in 1967 to 32 percent in 1969—the 32 percent level has remained constant since 1969.

The black jobless rate is 10 percent—compared with 5 percent for the rest of the labor force.

The chicano jobless rate is 8.2 percent.

The jobless rate is near 5.9 percent for women.

The ghettoes, barrios, and Indian reservations of America continue to reflect unemployment rates of way over 20 percent.

THE ADMINISTRATION STRATEGY

In response to these disgraceful statistics—statistics that represent real people—Mr. President, the administration proposes to increase military spending by $5 billion, to spend $30 billion to maintain foreign military bases, and to increase the Federal budget as a whole by some $18.9 billion.

In the process, manpower programs are to be cut back by 30 percent—from a level of $1.6 billion a year to $1.1 billion.

If the administration had not been halted in the unlawful dismantling of OEO, the modestly funded war-on-poverty programs—apparently the one war this administration has not the stomach for—representing less than one-tenth of 1 percent of the Federal budget would now be all but ended.

Programs to aid the inner cities were also to be halted—though yesterday's U.S. District Court decision ordering the release of impounded Federal housing subsidy funds may slow that administration plan.

Mr. President, there is no quarrel between the Congress and the administration about holding down Federal spending. We are all in agreement on the need for an over-all budget ceiling. The dispute is about priorities within the budget and about who will set them, Congress or the President.

The administration policy of reorganizing programs so that responsibility for planning and program administration rests basically with local leaders is a concept embodied in the Job Training and Community Services Act. But swinging the axe against those few existing programs which hold out some hope for America's poor, while pumping additional tens of billions into wasteful Pentagon and foreign military assistance programs is poor economy, and poorer policy, indeed.

SERIOUS JOB DEVELOPMENT TRAINING COMMITMENT NEEDED

If we are truly committed to the work ethic, then we must be truly serious in providing meaningful job opportunities to all our citizens. If work at decent pay is the key to ending poverty in this Nation, it makes no sense to cutback manpower training and employment programs while millions of men and women and hundreds of thousands of Vietnam era veterans remain unemployed.

President, it is really quite a dev- to realize that—without counting alienated workers, underemployed men and women, or those who have dropped out of the labor market because they have dispaired of finding decent employment—nearly 5 million Americans are looking for work. In California alone there were 421,000 men and women looking for jobs in May of this year.

In 1970 AFL–CIO President George Meany called President Nixon's veto of the Employment and Training Opportunities Act of 1970:

A devastating attack on the unemployed, the unskilled, and the poor.

Mr. Meany said it clearly when he said the President's veto was:

A setback for the unemployed but it is only a temporary setback. We intend to do everything in our power to help establish a badly needed national manpower policy and program, including job-creation for the long-term jobless. And we intend to win.

Mr. President, I believe that we will win; we must win. I believe that the hope of our committee in reporting S. 1559—the hope that S. 1559 will provide a beginning which will help us find our way out of the maze of governmental manpower programs, achieve a fair and equitable transition to a peacetime economy, and provide meaningful, decent, job opportunities linked to real jobs—will be realized.

MANPOWER REFORM: DECENTRALIZATION

Mr. President, the experience of the last decade has surely taught us at least one major lesson: Significant reform of the present manpower system—in which far too many decisions affecting specific local needs are now made in Washington—must be accomplished. There is near unanimous agreement on this issue.

Throughout the subcommittee's hearings, witnesses were equally strong in urging that local communities be free to design and operate their own manpower programs within a decentralized manpower system. There are now over 10,000 separate contracts which are administered by the Department of Labor under the Economic Opportunity Act of 1964 and the Manpower Development and Training Act of 1962. Local officials were adamant that this new legislation not make them subordinate to a system operated, basically, by the 50 Governors.

The compromise reflected in S. 1559—which creates a decentralized system of prime sponsors of States as well as cities of 100,000 or more and counties of 150,000 or more—not counting the populations of cities of 100,000 or more which might be within that county—is substantially similar to the 1970 legislation.

Additionally, S. 1559 provides that those cities and counties having populations of 75,000 but not large enough to be prime sponsors would be guaranteed specific allocations of funds and could develop and fund programs within their area as program agents.

This scheme will result, if enacted, in 378 eligible prime sponsors, with possibly an additional 60 communities eligible as program agents. However, as Senator NELSON stated when he and Senator JAVITS introduced S. 1559:

We cannot reform the structure while destroying the substance of our decade-old effort to help the disadvantaged find sustaining employment. The Administration has proposed carrying out decentralization of manpower programs without legislative authority while cutting back funding nearly 30-percent below the 1972 level . . .

Mr. President, in my judgment, there are two overriding issues in the decentralization of manpower training programs. First, the administration, to my mind, proposes to throw out the baby with the bathwater in advocating the elimination of the Federal role in all manpower programs. I am convinced that this sort of overall judgment is not in the best interest of those who are seeking job training. The Economic Opportunity Act of 1964 and the Manpower Development and Training Act of 1962 were initiated, because the job was not getting done at the local level.

Because on local governments have come to understand the benefit of these programs, and in many cases developed the capability to administer them effectively, does not mean that all manpower needs are likely to be dealt with equally by local administrators.

The committee bill, I believe, recognizes the significant difference between decentralization and abrogation of responsibility, and provides, through the Special Responsibilities of the Secretary, section 205 of the bill, for the continuation of the Federal role and Federal oversight of programs where the Federal presence needs to be retained. I have offered several amendments to the bill in this regard, which I will explain later in my remarks.

MANPOWER REVENUE SHARING

Second, perhaps the most important issue is the responsibility of the Congress to take the legislative action necessary to implement a decentralized approach to job training programs. Such broad changes in present law cannot be imposed by Executive fiat—as the administration is now attempting to do.

The administration concept of change is to erase all categorical programs, cutback on funding, and literally to dump emasculated programs into the laps of local governments.

The concept of change is totally tied to the success of the administration's cure—all for all social ills—revenue sharing, and its more precise little brother, "special revenue sharing".

The States, cities, and counties are not buying the administration's carrot stick. The much touted windfalls to flow from general revenue sharing—which was followed by cutbacks or proposed cutbacks in nearly every Federal social program—has created great skepticism.

The U.S. League of Cities National Conference of Mayors, the National Association of Counties, and succeeding Governors testified to the need for legislative action—not administration promises. The Governor of Wisconsin, the Honorable Patrick J. Lucey, told the subcommittee:

Here is the way I view the fundamental issues in manpower reform, and incidentally I believe that virtually all Governors agree on these points:

First, we want comprehensive manpower reform (or manpower revenue sharing, if that term is preferable) *through the enactment of legislation by the Congress.* We appreciate the efforts of the Labor Department to move in this direction without waiting for legislation, but we see real danger in attempting to carry out a historic shift in national manpower policy without any legislative guidance. If Congress fails to act, then presumably the Administration will have to go ahead without legislative guidance, but such failure would be tragic, I assure you.

During Assistant Secretary of Labor Kolberg's March 29, 1973, confirmation hearing before the Senate Labor and Public Welfare Committee, I raised the very important issue of the legal and statutory basis for the administration's attempt to implement manpower revenue sharing—MRS as it is called in Manpower Administration jargon—and requested the new Assistant Secretary to submit the Department of Labor Solicitor's opinion in this regard.

Mr. President, I ask unanimous consent that the Manpower Administration's almost pitiful response to be printed at this point in the RECORD.

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

AUTHORITY UNDER MDTA TO IMPLEMENT REVENUE SHARING

U.S. DEPARTMENT OF LABOR,
Washington, D.C., May 3, 1973.

Memorandum for William H. Kolberg:

This is in response to your request for an opinion on legal authority under the Manpower Development and Training Act to implement the Administration's revenue sharing goals. As you know, this matter has been under consideration for some time previous to my assuming the position of Solicitor.

At the heart of the revehue sharing philosophy are the concepts of decategorization of manpower programs and the decentralization of planning and administration to State and local governments. The Administration submitted a revenue sharing proposal to the last Congress which would have afforded wide lattitude in achieving these objectives. Existing law does impose some limits upon our authority to achieve revenue sharing through administrative action which were not present in the earlier proposal. Nevertheless, the MDTA does contain considerable flexibility which will allow us to go far in implementing revenue sharing on an administrative basis. This memorandum deals with some of the major legal issues inherent in an administrative approach to revenue sharing under MDTA. It does not deal with the Economic Opportunity Act. Broader authority exists under that law to implement revenue sharing.

AUTHORITY TO DEAL WITH LOCAL GOVERNMENTS

Title II of the MDTA refers to agreements between the Secretary of Labor and State governments. This title does not include specific reference to agreements between the Secretary and local governments. It should be noted however, that section 306(a) of the Act provides broad authority for the Secretary to enter into such contracts or agreements as he deems necessary to carry out the provisions of the Act. Moreover, a substantial legal argument exists for the proposition that the term "State" can be read to include agreements with political subdivisions of the state.

It should be noted that any agreement with a State government might provide for a pass-through of funds to local governments and for local administration of the programs. Thus, while specific legislative authority would leave no doubt as to our authority to deal directly with local governments, a strong legal argument can be made that this can be reached through adminstrative action.

A related issue concerns the authority of the Department of Health, Education, and Welfare to deal directly with local governments. Presently, Part B of Title II provides with some exceptions that the Secretary of HEW is responsible for providing institutional training through arrangements with State education agencies. These provisions of the law, of course, would not be changed under an administrative approach to revenue sharing.

It is clear that successful efforts to decentralize our manpower effort and make it more flexible and responsive will require the closest possible cooperation between the Departments of Labor and HEW.

FLEXIBILITY OF FUNDING

Present legislative authority does contain significant categorization of funds. These legal requirements will, of course, have to be observed. At the same time both the Economic Opportunity Act and the Manpower Development and Training Act are broadly phrased statutes, which provide considerable flexibility. Projects may be and indeed have been jointly funded under various sources of statutory authority. These moneys must be separately accounted for and must be utilized in accordance with the specific statutory provisions from which they are derived. Although these requirements will impose significant administrative burdens, the obstacles to a very substantial degree of joint funding are not insuperable.

CONCLUSION

The present law provides considerable authority to shift the focus of planning and implementation of manpower programs to State and local governments. While the present law contains some impediments, much can be done through administrative action.

WILLIAM J. KILBERG,
Solicitor.

Mr. CRANSTON. Mr. President, as I am sure my colleagues will note, this is hardly an inspiring analysis or firm legal ground upon which to base a policy decision of this magnitude. Consequently, on June 6, 1973, I wrote to the Assistant Secretary seeking a full legal opinion on the authority under which the administration proposed to implement this plan. I ask unanimous consent that that letter appear in the RECORD at this point as well.

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

JUNE 6, 1973.

Hon. WILLIAM D. KOLBERG,
Assistant Secretary of Labor for Manpower, Department of Labor, Washington, D.C.

DEAR MR. SECRETARY: I am writing to express my concern about the Department of Labor's response to my request during your March 29, confirmation hearing before the Labor and Public Welfare Committee for the Solicitor's opinion regarding the authority under which the Administration proposes to implement Manpower Review Sharing (MRS). You will recall that at that time I requested a full analysis, with citations and an analysis of the existing law.

The May 3, 1973, memorandum from Solicitor Kilberg, which you subsequently submitted to the Committee, does not, to say the least, provide a strong legal basis for administrative implementation of Manpower Revenue Sharing. Rather, it seems a rather casual conclusory paper to provide some legal justification for a course already administratively decided.

I, therefore, request that the Solicitor's office prepare a full legal opinion on the legal authority under the M.D.T.A. and the Economic Opportunity Act of 1964, for the Department of Labor Manpower Administration's actions to implement MRS—preparation for which I understand has already reached final stages. I ask that this opinion be specific in terms of all provisions of law relied upon and any possible limitation, and include a thorough and specific discussion of all aspects of this matter, especially relevant legislative history.

In sum, I do not find the "conclusion" of Solicitor Kilberg's memorandum to be at all conclusive and am rather shocked that you should embark upon such a major administrative policy with such apparently slender underpinnings. I hope that you will respond to my request for full discussion and explication of the Department's legal authority as soon as possible.

Thank you in advance for your continuing cooperation.

Sincerely,

ALAN CRANSTON.

Mr. CRANSTON. Mr. President, to date, I have not receive an answer.

Mr. President, I should like at this point in my remarks to call to the Senate's attention portions of the House report and opposition to minority views on the Manpower Development and Training Act Extension, H.R. 7950—House Report No. 93–288—which states:

EXCERPT FROM HOUSE COMMITTEE REPORT

MANPOWER REVENUE SHARING PROHIBITION

In addition to extending the MDTA for an additional year, the Committee included a provision barring the implementation of Manpower Revenue Sharing by administrative guideline and regulation. The President's budget for fiscal 1974 revealed the Administration's plan to implement Manpower Revenue Sharing by executive fiat, notwithstanding the fact that both the House and the other body had rejected the concept in the preceding Congress.

The Department claims, in an opinion from its Solicitor, to have sufficient authority under MDTA to go forward with this plan. In addition, high-ranking officials of the Labor Department have indicated to the Committee that, as far as they are concerned, they have their orders, and congressional action or inaction is immaterial to them. These statements seemed to confirm the publicly reported statements of Mr. Kenneth Cole, Executive Director of the White House Domestic Council who announced several months ago that irrespective of what Congress did, the Administration was going ahead with Manpower Revenue Sharing.

This Committee intends to grapple once again with the complicated issues involved in comprehensive manpower reform. But we will not be bullied or blackmailed into hasty action through the device of a blatantly illegal arrogation of authority on the part of the Labor Department.

The language in section 1(c) of the bill would effectively prevent the Labor Department from carrying out its announced intentions by maintaining in force and effect the system under which manpower programs were being operated as of June 1, 1973.

* * * * *

OPPOSITION TO THE MINORITY

The minority members, while endorsing an extension of MDTA, took vigorous exception to the language barring the Labor Department from implementing Manpower Revenue Sharing. There follows a listing of the major arguments advanced by the minority in committee and elsewhere, together with the committee's answers to those arguments.

1. *Argument.*—There is substantial agreement on what needs to be done in the way of manpower reform; indeed, most of the Administration proposals reflect the Employment and Manpower Act of 1970 which was

passed by both the House and the other body. Why stop the Labor Department from going forward?

Answer. There are major areas of disagreement yet unresolved. The enactment referred to was vetoed by the President on the grounds that it contained a program of public service employment. We still feel such a program is essential, the President still disagrees, and the proposed regulations and plans of the Labor Department do not provide adequately for public service employment.

There are other important differences between the proposed regulations and the vetoed bill which need not be detailed here. Suffice it to say that the vetoed bill was a hard-fought compromise in which each side gave up some things in order to gain others. The proposed regulations carefully include the items which the Labor Department sought and exclude the important items we had bargained for in the vetoed bill.

In addition, most of the parties concerned with manpower reform—governors, mayors, county officials, and vocational educators—object strongly to the implementation of Manpower Revenue Sharing through guideline and regulation. The National Governors Conference, which met recently, adopted a policy statement to that effect. These groups want the issues in manpower reform debated and settled by Congress, not bureaucrats.

2. *Argument.*—Because Congress has failed to act on comprehensive manpower reform, it has forfeited its right to object to these proposed regulations.

Answer. This is an astonishing proposition whose proponents argue that since the Administration has made a "reasonable" proposal and since efforts to enact comprehensive manpower reform into law have failed over the last 4 years, the Administration now has the right to go forward and implement its proposals without the authority to do so from Congress. First, the committee would remind members that the reason we do not have comprehensive manpower reform on the books is that the President vetoed the Employment and Manpower Act of 1970. Beyond that, however, the Committee feels that the Department of Labor does not have the Constitutional or other legal authority to make fundamental changes in the manpower services system created in two Acts of Congress unless and until the Congress shall act to authorize such changes.

Executive agencies and departments cannot be permitted to arrogate to themselves the right to fundamentally alter programs created by laws without seriously weakening the principles which underpin, a Constitutional government of laws.

This department, in particular, has had a history of indifference to the intent of Congress, and, in some instances, has altogether ignored provisions in the statutes. The time is long overdue for the Congress to "send them a message."

3. *Argument.*—If we adopt this bill with the language preventing the Labor Department from implementing Manpower Revenue Sharing we will kill the chances for comprehensive manpower reform, which is badly needed.

Answer. This is a ridiculous assertion. Both the MDTA, if extended as provided in this bill, and title I of the Economic Opportunity Act will expire on June 30, 1974. Clearly the Congress will have to address itself to the issue of comprehensive manpower reform before that deadline.

Second, if the Labor Department is permitted to implement Manpower Revenue Sharing by regulation and guideline, there will no longer be any need for comprehensive manpower legislation from the Administration's point of view. Indeed, based on their opinion that they have sufficient authority to go forward under MDTA and EOA, the Department has not even submitted a comprehensive manpower proposal for congressional consideration this year. All they have requested is a simple extension of MDTA. The Committee finds it difficult to believe that the Department will bargain in good faith on comprehensive manpower legislation if they no longer need it to achieve their objectives.

4. *Argument.*—If we enact this limitation, the President will just veto the bill.

Answer. There is no conceivable reason for him to do so except to protect the Labor Department in carrying out an arrogant, illegal, action. A veto would, needless to say, create a severe hardship for the many persons enrolled in MDTA programs and for vocational educators and other providers of manpower services.

The House must decide the issue on the merits, and we must hope that Congressional rejection of the plan to institute Manpower Revenue Sharing by administrative fiat will persuade the President that it would be unwise to insist on proceeding with this plan.

Mr. President, under this legislative authority cloud and the rather clear expression of congressional interpretation by members of both the House and the Senate authorizing committees, the Manpower Administration still plans to implement M.R.S.—in fact, has already begun to do so in several areas—without issuing any guidelines in either draft form or in the Federal Register.

I think that perhaps this issue, as much as any other, demands the most expeditious consideration of S. 1559 by the Congress.

AMENDMENTS ADOPTED IN COMMITTEE

Mr. President, as I indicated at the outset of my remarks, I offered quite a number of amendments to S. 1559 when it was considered in subcommittee and full committee and was fortunate to secure acceptance of these amendments in the bill now before the Senate. I would like, now, to make clear for the record my purposes in offering each of these amendments, and what I hope to achieve by them.

AUTHORIZED PROGRAMS

Mr. President, section 201 of title I of S. 1559, as reported, lists as eligible activities many of the programs which had previously been so-called categorical programs—though they are not mandated for continued funding in the bill. This section reflects the committee's concern that, while wishing to be responsive to the President's 1970 veto message, it must be clear that S. 1559 in no way intends or suggests an end of successful manpower programs presently being conducted. In fact, the bill as reported specifically authorizes the continuation of effective programs, at local discretion.

Amendments I offered in subcommittee to include programs and projects to meet the special job training needs of Indians, migrant and seasonal farmworkers, and individuals of limited English-speaking ability—now clauses (10), (11), and (12) in section 201(a) of the reported bill were adopted in subcommittee so that these programs were specifically authorized job-training programs.

I firmly believe that we must exercise the greatest scrutiny of existing and future manpower programs, in order to insure that the hard-won visability of these groups—sweated out over the last 10 years—is not lost in the maze of the competing demands which will inevitably be made upon the local governments once S. 1559 is enacted and implemented.

BILINGUAL JOB TRAINING

Toward this same end, I offered an amendment—in which I was to be joined by Senator KENNEDY and Senator JAVITS—in full committee which is contained in the bill before us today. This is section 403(j) under Special Limitations and Conditions, which directs the Secretary, prior to approving financial assistance under the act for bilingual manpower programs, insure that they contain specified components designed to effectively meet the special job training needs of limited English-speaking people.

In February of this year, Senator PELL, the chairman of the Education Subcommittee, and I, as chairman of the Special Subcommittee on Human Resources, cochaired field hearings in Los Angeles on bilingual education and bilingual manpower programs.

The February field hearings made clear, once again, that the challenge of employment is no "challenge" at all for citizens of limited English-speaking ability. Rather it is condemnation to the lowest paying jobs, the least security, the most minimal opportunities for advancement, and the grossest indignity in finding that a rich cultural heritage has no value in the American marketplace.

One of the biggest difficulties in effective job training for limited English-speaking men and women is the lack of programs in which their primary language is spoken. Moreover, information about job training availability, employment opportunities, materials for training programs, and personnel who are bilingual, are often negligible.

Mr. President, there is clearly a need for job training programs designed to meet the needs of these Americans. It is a tragic waste of valuable manpower to relegate this segment of our population to the most limited employment opportunities.

My amendment provides for the development of training courses and materials in the trainee's primary language, the availability of special training programs to increase the opportunities for employment and advancement; and the teaching of skills that do not require a high proficiency in English and of a specialized English vocabulary that is necessary for the performance of specific occupations.

The amendment further provides for programs which encourage individuals to develop and capitalize on their bilingual ability, and for programs which will be conducted at times—such as on evenings or weekends—so that presently employed individuals can improve their job opportunities by attending training programs without jeopardizing their present jobs.

Other provisions of the amendment include special training for instructors and others, who will participate in bilingual manpower training and placement programs, and the development of specialized supportive services to encourage employees to hire persons trained

under this program and to provide followup after they are employed.

Mr. President, I ask that the description of this section from the committee report (No. 93–304) be printed at this point in the RECORD.

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

BILINGUAL MANPOWER PROGRAMS

The Committee accepted an amendment proposed by Senator Cranston of California, Senator Kennedy of Massachusetts, and Senator Javits of New York to provide for the establishment of procedures to stress the need for and to ensure that bilingual manpower programs carried out under the provisions of the Act adequately reflect the special job training and employment needs of limited English-speaking men and women.

Several measures designed to improve manpower training programs and job opportunities were referred to the Committee for consideration during deliberations on S. 1559. Both this year and during previous hearings, the Committee received considerable testimony attesting to the compelling need for special procedures to ensure programs meet the job training and employment needs of persons with limited English-speaking ability.

For example, 1970 census figures indicate that there are over 10 million Americans for whom Spanish is the primary language. Over 1 million are in Los Angeles, over 2.5 million in California. They make up 10 percent of the population of New York City, and 40 percent of the population of New Mexico. According to a study done by Thompson Lewin Associates, Inc., for the Manpower Administration in 1971, nearly one in every four Spanish-speaking adults is illiterate in English.

Equal Employment Opportunity Commission figures for 1970 show that 70 percent of all male Spanish-surnamed Americans work in the lowest occupational categories—as operatives, laborers or service workers. In March 1972, the unemployment for workers of Spanish origin was about a third higher than that for the total labor force—with about 250,000 jobless persons in the Spanish-speaking workforce, or an unemployment rate of 8.2 percent of the total Spanish-speaking labor force.

Across the Nation these high rates of unemployment and continued concentration in low-paying jobs have reduced family income among Spanish-speaking Americans to far below that for Anglo families. The median income for all Spanish-surnamed families was $7,500 in 1971—over $3,000 less than that of Anglo families—whose median income in 1971 was $10,700. Moreover, more than half of the Mexican-American families have incomes of less than $3,000 a year.

In San Francisco the Chinese-speaking population increased from 37,900 to 62,000 between 1961 and 1968, primarily due to eased immigration quotas. During field hearings in San Francisco in 1970, L. Ling-Dhi Wang, then Vice President of the Chinese-American Democratic Club, San Francisco, told the Committee:

The language barrier and discrimination have deprived many of our people of the right to basic education, limited our employability outside Chinatown and caused high rates of unemployment and underemployment in what has become the most popular ghetto in the world and mecca of tourism—Chinatown.

San Francisco is not alone in being specially impacted by the settlement pattern of immigrants. Data developed in one 1968 study indicated that four out of seven immigrants in 1968 indicated an intent to settle in cities over 100,000. Review of the 1972 annual report of the Immigration and Naturalization Service reveals that this pattern has not perceptibly changed since 1968. The fourteen cities most frequently mentioned in the 1972 annual report were:

New York	75,977
Los Angeles	18,403
Chicago	18,051
Miami	10,247
San Francisco	8,464
Honolulu	4,383
Houston	3,924
Philadelphia	3,424
Newark	3,361
Washington	3,240
Detroit	3,190
El Paso (2,700 from Mexico)	2,986
San Antonio (1,796 from Mexico)	2,349
Boston	2,109

For those born in China or Taiwan, the largest number intended to settle as follows:

New York	4,190
San Francisco	1,434
Los Angeles	903
Chicago	661
Honolulu	334
Oakland	262
Seattle	199
Washington, D.C.	197

Those born in Mexico stated an intent to settle most frequently in the following places:

Los Angeles	7,076
Chicago	3,539
San Francisco	2,846
El Paso	2,700
Houston	2,476
San Antonio	1,796
San Diego	1,190
Dallas	795
Santa Ana	764
San Jose	509

For Cubans, the intended pattern of settlement emphasized the following:

Miami	6,654
New York	2,844
Los Angeles	967
Chicago	728
Elizabeth	525
Newark	417

Published data are not available for intended city of settlement for other Latin American countries. However, among the aliens from those countrise who registered in January 1968, as permanent residents of the United States, six out of ten from Central America were residing in New York and California and seven out of ten from South America were living in those two States. The Committee is advised that these patterns have not substantially altered since the 1968 data was compiled. It believes the data should be updated.

The challenge of assimilating immigrants into the employment market is concentrated in relatively few urban centers. Since national policy brings this about, Federal funds should be available to assist these localities.

The amendment accepted by the Committee would direct the Secretary to ensure that bilingual manpower programs conducted under the Act contain components—specified in the legislation—tailored especially to meeting effectively the national responsibility to provide job training opportunities to those men and women handicapped by a language barrier in their search for satisfactory employment.

MIDDLE-AGED AND OLDER PERSONS

Persons who are age 45 or older account for 17 percent of total unemployment, 26 percent of long-term (15 weeks or longer) unemployment, and 34 percent of very long-term (27 weeks) unemployment. Yet middle-aged and older persons constituted only 4.9 percent of all new enrollees in manpower and training programs in FY 1972. Even in the Mainstream program, individuals 45 years of age or older constituted less than a majority of all participants.

Middle-aged and older persons are subject to the most catastrophic effects of unemployment—probably to a greater extent than any other age category. These are the years of major family responsibility—growing children, college tuition, mortgage payments, a higher incidence of serious illness. There can be no doubt that this age group is in great need of the programs contemplated in this Act. Many believe that the need for such programs by middle-aged and older persons exceeds that of any other group.

AEROSPACE AND DEFENSE WORKERS

Mr. CRANSTON. Mr. President. Under section 201(b) of the reported bill—I was pleased to join with the chairman of the Labor and Public Welfare Committee (Senator WILLIAMS) in cosponsoring an amendment to deal with the very real—though somewhat regional—problems of unemployed engineers, scientists, and technicians, clause (15) of section 201(b) is designed to encourage State or local prime sponsors to develop programs for this group of professionals and paraprofessional—for whom, as stated in the committee report:

The trauma of unemployment has been particularly severe. . . . For many in this group, the current period of unemployment has been their first nonworking experience since becoming members of the labor force.

In California, estimates are that nearly 180,000 jobs have been lost in the last 18 months as a result of Federal defense and aerospace funding cuts.

BASE CLOSINGS

With the proposed—and I think ill-conceived—domestic base closings planned by the administration, it is expected that this group of workers will be even harder hit. To help deal with this, Senators PELL, KENNEDY, and I offered an amendment under the special-responsibilities-of-the-Secretary section—205(c)(6)—to provide that, in the provision of financial assistance under section 204 of bill, the Secretary shall give special consideration to job training programs serving individuals who are unemployed because of the closing of such government facilities.

In California alone, it is estimated that, should the administration base closing plans be implemented, over 5,000 workers would become unemployed at the Hunters Point Naval Shipyard. The Hunters Point area of San Francisco already has an unemployment rate average of 17 to 18 percent.

While we had originally sought in our amendment to earmark specific funding in the bill to guarantee some equitable treatment of these individuals, we felt that the compromise developed in committee was more appropriate in view of the attempt in the rest of the reported bill to preclude the specific earmarking of funds.

PUBLIC SERVICE EMPLOYMENT

Mr. President, section 201(c) was offered by Senator JAVITS and I in an effort to ensure that the highly successful structure, requirements, standards and job programs created under the Emergency Employment Act of 1971, would continue to be utilized in public service

employment programs funded and conducted under the provisions of section 201(b) of the reported bill.

EMPLOYMENT AND TRAINING COUNCILS

The subcommittee also accepted suggestions to add "other community-based organizations," such as Jobs for Progress—Operation SER—or the Urban League, and representatives of significant segments of the poverty population, and veterans organizations among the groups which are to be included as members of the Councils under section 203(2) of S. 1559. A similar amendment was also accepted in section 203(7) of the bill.

I have long felt that one of the most glaring deficiencies in job training programs is the inadequacy of specific information about individual programs—particularly with regard to evaluations of program effectiveness. I offered two amendments which I feel are aimed at salvaging some of these deficiencies.

First, under section 203(8) the local training and employment council must submit to the Secretary plans for the council to provide for objective evaluations of program effectiveness under the act. These evaluations should be carried out by persons, groups, organizations or firms not themselves directly involved in federally supported programs providing manpower training, employment, or supportive services.

Second, the Secretary is given the responsibility in section 205(b)(3) not only to provide technical assistance but also to provide for an ongoing program of monitoring and evaluating the effectiveness of programs and projects in carrying out the purposes and provisions of that title. The committee feels it is essential, in view of the broad discretion being given in title I to local and State officials to determine and carry out manpower training priorities, that the Secretary conduct a significant monitoring and evaluation program with respect to program performance on a nationwide basis. The committee also notes the effective evaluations carried out by the General Accounting Office of the Emergency Employment Act and other manpower programs. It expects that the GAO will continue to carry out such evaluations.

TRAINING FOR JOBS—NOT TRAINING FOR TRAINING'S SAKE

Mr. President, the biggest failing of existing adult manpower training programs of the past has been the failure—with the exception of the Emergency Employment Act programs—to provide strong linkages to real jobs. As I stated earlier in my remarks, I firmly believe that this is an absolutely indispensable aspect of any meaningful manpower reform bill. Because of my strong feelings in this regard, I offered several amendments, designed to tie the training authorized under S. 1559 to real jobs.

During field hearings I chaired on the 1970 Employment Opportunities and Training Act, Mr. President, I was particularly struck by the testimony of one witness in Los Angeles who appeared before the subcommittee. His name is Sedgie Collins, and he comes from Watts. He said:

> I have been in just about every program that has been there in the community from Neighborhood Youth Corps to the Concentrated Employment Program to just about all the programs. This is not really helping me because I am 21 years old and I was 18 when I started (and) it hasn't helped me get a job in all this time.
>
> Sedgie Collins, the young black man who has yet to find a decent job despite three or four different federally funded training programs is typical of dozens of trainees.

Mr. President, the committee adopted two amendments which I offered intended to provide the greatest stress on the funding of manpower training programs with jobs at decent pay available for those who successfully complete training.

Section 204(a)(7) of the reported bill requires that each prime sponsor's annual program statement shall include provisions to assure that priority in funding training projects will be given to those employment preparation programs which have obtained commitments from public and private employers to employ trainees who successfully have completed training in meaningful jobs—at the minimum or prevailing wage, whichever is higher—for which the trainees will be trained. This provision does not mean that any less priority should be given to programs such as Neighborhood Youth Corps and Mainstream which provide work-experience directly, but does provide for priority, in choosing among training programs which do not provide work as such, to those programs where there is a job commitment at the conclusion of training.

Section 204(b)(3) of the reported bill follows up on these commitments by conditioning future funding of a prime sponsor on the ability of the sponsor to demonstrate that it has done everything possible to (first) implement the priority set forth in the program statement, described above, (second) insure that employment commitments made pursuant to the funding of such projects were fulfilled by prospective employers who made such commitments, and (third) where such commitments have not been fulfilled, place the successful trainee in comparable employment or employ the trainee itself.

VETERANS EMPLOYMENT PROVISIONS

Mr. President, as chairman of the Health and Hospitals Subcommittee of the Veterans' Affairs Committee, and the past chairman of the Subcommittee on Veterans' Affairs of the Labor and Public Welfare Committee prior to the Legislative Reorganization Act of 1970, I have known not only some of my most satisfying experiences as a Senator, but also some of my most frustrating. Congress struggle to give higher priority to veterans programs has been a constant battle throughout the Nixon administration. The administration has been particularly short-sighted, and, I think, negligent in fulfilling the responsibilities of the Government in the area of veterans' employment. The administration makes great fanfare out of programs such as "Hire the Vet," yet in May, the unemployment rate for 20- to 24-year-old veterans was at 8.7 percent—far above the then national average of 5 percent.

The administration has been guilty of every kind of foot-dragging, statistical mumbo-jumbo, and outright refusal to implement the law, with respect to veterans employment.

I am particularly pleased, therefore, that the committee incorporated several provisions into the bill, which I authored, to stress the importance of manpower training programs meeting the employment needs of returning veterans of the Vietnam era and of veterans with serious service-connected disabilities. I believe that the committee report states clearly the intent of these provisions, and I intend to closely scrutinize the administration's implementation of these most important aspects of the law. The committee report, in part, reads:

> The Committee is committed to the proposition that the Federal Government has a cardinal responsibility to do all possible to provide necessary education, training, and meaningful jobs—utilizing, where possible, their special military experience and training—for returning veterans and those with serious service-connected disabilities. Very strong amendments were also adopted in S. 1560, the Emergency Employment Act Amendments of 1973 also being reported today, to provide for a high proportion of public service jobs for these veterans under the Emergency Employment Act.

Mr. President, the amendments added to the reported bill responded to questions I raised in committee hearings regarding the Secretary of Labor's carrying out the new responsibilities placed upon him in chapter 41 of title 38, United States Code, as added by Public Law 92-540, title V, which I authored, known as the Veterans Employment and Readjustment Act of 1972. These questions focused on the failure to assign one assistant veterans employment representative—AVER—for each 250,000 veterans residing in each State and to implement the direction to require every Federal contractor and subcontractor to give "special emphasis" to the employment of Vietnam era and service-connected disabled veterans—a responsibility in addition to the mandatory job listing requirement set forth in that title.

Under my amendments in the reported bill—

First. The Secretary—in section 205(b)(5)—has a special Federal responsibility to utilize in the nationwide computerized job-bank and matching program the listing of all suitable employment openings in local employment service offices and the requirement that special emphasis in employing certain veterans be provided by all Federal contractors and subcontractors—as required by section 2012(a) of title 38;

Second. The Secretary—in section 205(c)(5)—is directed to utilize that amount of the funds available to carry out his responsibilities under section 205 of the reported bill as is needed for him to carry out fully and effectively his responsibilities for assigning the AVER's, for providing the special emphasis in addition to job listing, and for his other duties under chapter 41 of title 38; and

Third. Each State is required—in section 206(b)(8)—to set forth in its prime sponsorship plan submitted to the Secretary arrangements for assisting the

Secretary in enforcing these Federal contractor and subcontractor listing and special emphasis requirements under section 2012(a) of title 38.

In addition, Mr. President, amendments were made in the provisions with respect to local—employment and training councils under section 203(2)—regional—area planning councils under section 206(b)(3)—and national—National Employment Opportunities Council under section 404(a)—manpower planning councils to require that veterans organizations be represented on these councils.

Mr. President, the men who fought this last war have returned home to no jobs, inequitable GI bill benefits, underfunded and understaffed VA hospitals, runaway prices, and generally limited and begrudging assistance from the Veterans' Administration.

What is the Administration's justification for the cutbacks, the impoundments, the opposition to every significant legislative proposal which could aid returning veterans? Inflation.

But it is an inflation caused, in large part, by the war that the veteran has just returned from fighting—only to find that the inflated economy has not led to full employment and that fewer jobs are available than when he left. And the few dollars he has do not stretch nearly so far as when he left for Indochina.

Mr. President, of all the Nixon administration double-speak, this skimping on veterans' programs is perhaps the most disgraceful of all.

TITLE III—COMMUNITY ACTION AGENCIES

Mr. President, I was pleased to join with Senator HATHAWAY in offering an amendment under title III of the bill—community services for the economically disadvantaged—the title in the bill which attempts to insure that programs of the 900 existing community action agencies scheduled to be phased out by the administration will be provided a continuing authorization and funding source. The funds for community action are still more dollars which the administration advises should come out of the seemingly bottomless revenue sharing "horn of plenty."

Unfortunately, as so many communities have learned, there is a lot more noise coming from the horn than there is plenty.

In an effort to insure that communities would be provided with continued funding for Neighborhood Youth Corps, Operation Mainstream, and concentrated employment programs previously funded under the Economic Opportunity Act, title III of S. 1559 provides for up to 17.5 percent of the funds appropriated under the act to be used for those activities now carried out by Community Action Agencies.

Senator HATHAWAY and I joined in offering an amendment, which was accepted in subcommittee, to provide that local prime sponsors would be required to give due consideration to existing Community Action Agencies, who had been carrying on the programs previously. The committee report language in this regard is most important: It states:

In order to provide local communities with continued funding for these activities, the Committee bill provides that 17.5 percent of the funds appropriated under this act shall be used for those activities now carried on by community action agenices. Local prime sponsors would have the option of continuing to fund existing community action agencies to carry out these activities, but they would not be required to do so. The legislation does require that they give due consideration to existing community action agencies, *and the Committee would expect that where community action agencies are found to be doing an effective job they would be continued.* [Emphasis added.]

I am somewhat encouraged, Mr. President, by the new responsiveness at the Office of Economic Opportunity—particularly with regard to the recently uncovered law-and-order policies. I am hopeful that the fiscal year 1974 Labor-HEW appropriations bill will contain, at the least, the OEO levels reflected in the House bill now under consideration by the Senate Appropriations Committee—and I plan to submit testimony to the Senate Appropriations Committee to urge that course later this week.

This added alternative in S. 1559 is, however, a necessary last resort.

LABOR MARKET INFORMATION

I am pleased to note the inclusion in S. 1559 of section 409—labor market information. The language in this provision was originally introduced in legislation I introduced in S. 3311 in the 92d Congress, which I have reintroduced this year as S. 793, the Public Service Employment Act of 1973. In order to assure the implementation of this most important provision, I offered an amendment in subcommittee to S. 1559 to require the Secretary to set aside an appropriate amount of funds to begin the difficult and detailed task outlined in section 409 of the reported bill and expanded upon in excellent fashion in the committee report.

Mr. President, I ask unanimous consent that the appropriate excerpts be set forth in the RECORD at this point.

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

SECTION 409—LABOR MARKET INFORMATION

* * * * *

The section requires that information be gathered by survey on unemployment, underemployment and job vacancies, by states, labor market areas, rural areas, cities and poverty neighborhoods.

At the present time, unemployment data is gathered by survey for the nation as a whole (a 50,000 household monthly sample) and published once a month. Unemployment data for states and labor market areas are estimated by a complex formula based on the number of insured unemployed recorded at Employment Services offices. Many cities and rural areas have reported that in determining their eligibility for Emergency Employment Act funds (especially funds under Section 6 of the EEA for areas with over 6 percent unemployment) the Employment Service "building block" method is not sufficiently accurate.

The Committee recognizes that attempting to blanket the nation with survey data that would be statistically reliable for every neighborhood would be prohibitively expensive. However, it does believe that a middle ground between ideal data and the present situation can be found.

Section 409(b) defines "underemployment". The concept is based on the efforts of Secretary of Labor W. Willard Wirtz in the late 1960's to establish an Index of Subemployment. His work led to a preliminary publication of such an index by the Department of Labor in 1967 and to a special Census Employment Survey conducted as part of the 1970 Decennial Census. The results of that survey were analyzed by the Committee staff along the lines proposed by Wirtz for the poverty areas of some 51 cities (see table on "Subemployment Index").

The concept of "subemployment" recognizes that traditional unemployment figures are inadequate to fully explain and measure the failure of job markets. They leave out not only those "discouraged" workers who want jobs but have ceased to look for work and are therefore not considered part of the labor force, but also those who want full time employment but are only working part-time, and, most importantly, those who are holding jobs that pay too little for a decent standard of living.

The Committee believes that more accurate measurement and a wider understanding of the extent of underemployment and the degree to which it is concentrated in specific areas and neighborhoods is essential if we are to solve our continuing employment and manpower problems.

The lack of adequate vacancy data is the missing half in our labor market statistics. We know how many are seeking jobs. We do not know—with the exception of national figures for a few industries—how many jobs are vacant and how they match the qualifications and location of the unemployed. If we are to train individuals in our manpower programs for available jobs more reliable means of determinating job availability must be developed. And the lack of solid information has led some to look at the want ad sections of metropolitan newspapers, observe that there are many jobs listed, and conclude that the problem is exaggerated by official unemployment statistics.

The Committee is aware that detailed area unemployment statistics, underemployment measures and adequate job vacancy data cannot be developed overnight for the nation, and states, cities and poverty areas.

The Committee also recognizes that the integrity of official government data is a priceless national asset. To develop new kinds of reliable data that command the necessary respect to professional statistics will take time. However, in the judgment of the Committee, a substantial beginning needs to be made now.

Thus the Committee accepted an amendment by Senator Cranston to require the Secretary to set aside an appropriate amount of funds to make such a beginning and to inform the Committee of the amount and the basis for his determination of its appropriateness. At that time the Committee expects that the Secretary will lay out a reasonable timetable for fulfilling the objectives of this section.

SUBEMPLOYMENT INDEX

The figures below are derived from the Census Employment Survey (CES) conducted as part of the 1970 Census of Population and Housing. Detailed survey information was taken in 60 poverty areas of 51 cities. The results of the surveys have been published by the Census Bureau in the Series PHC (3), Vols. 1–68.

The CES follows directly on the work of Labor Secretary Willard Wirtz. In seeking adequate understanding and funding for manpower programs, Wirtz needed an easily understood scale to express the relationship between the job market and poverty in the ghettos. The conventional unemployment rate was inadequate. It ignored discouraged workers entirely and lumped all jobs—in-

cluding those paying below poverty wages—together. Beginning with a survey of ten slum areas in eight cities in November of 1966, Wirtz developed a "sub-employment" index that showed subemployment varying from 24.2 percent in Boston to 47.4 percent in San Antonio poverty areas. For the ten areas it averaged 33.9 percent. In 1967 the Bureau of Labor Statistics set up an Urban Employment Survey task force that carried on more detailed studies in six cities. Before he left office Wirtz managed to program the Urban Employment Survey questionnaire into the 1970 census. In June 1970 the Urban Employment Survey task force was broken up. And when the CES data became available it was decided to publish the volumes, but not to publish any analysis.

The following indices are based on the Wirtz criteria, but are more conservative in several respects. No estimate is made of "missing males" and people are counted as "discouraged workers" only if they have "looked but could not find" jobs.

Further, it should be noted that the areas included in the CES are much larger than the usual poverty areas—in some cases including more than half the population of the central city.

The subemployment indices include persons who are:

Unemployed;

Working part time, but seeking full-time work;

Discouraged workers (who have dropped out because they looked but could not find work);

Full-time workers paid less than $80 a week (enough, if work is available full-time, year around, to earn $4,000 a year, the official poverty level for a family of four) and those paid less than $3.50 an hour (enough, again assuming steady work, to earn $7,000 a year, the B.L.S. lower family budget).

In the spring of 1970, the Bureau of Labor Statistics reported that it costs $6960 to maintain a family of four at a lower level budget in an urban area.

Vol. No.	City	Percent of city in CES survey area	Survey area unemployment (percent)	Labor market (SMSA) rate for 1970	Subemployment index ($80 per week) (percent)	Subemployment index (percent) ($3.50 per hour)	BLS lower family budget, spring 1970
1	Nation as a whole			4.9	16.9	35.1	
	All cities surveyed	33.5	9.6	[1] 5.0	30.5	61.2	
	New York, N.Y.:						
2	All survey areas	31.2	8.1	4.4	22.1	59.4	7,183
4	Manhattan Borough		8.4		23.3	56.3	
5	Area I		8.1		24.5	63.5	
6	Area II		8.6		22.7	39.9	
7	Brooklyn Borough		7.6		19.3	59.5	
11	Bronx Borough		8.5		25.9	66.0	
12	Queens Borough		9.6		20.0	53.2	
13	Los Angeles, Calif	26.3	12.5	7.2	33.1	61.6	7,507
14	Area I		10.9		29.4	58.6	
15	Area II		13.1		34.6	62.9	
16	Chicago, Ill	27.2	10.6	3.6	27.7	62.4	7,273
17	Area I		11.0		28.2	67.0	
18	Area II				27.0	56.5	
19	Philadelphia, Pa	40.4	8.7	4.3	27.0	55.2	6,958
20	Area I		8.2		25.5	52.5	
21	Area II		9.2		28.5	58.2	
22	Detroit, Mich	35.3	14.0	7.0	34.7	57.5	6,931
23	San Francisco, Calif	35.4	12.5	6.7	27.0	54.8	7,686
24	Washington, D.C	51.9	4.8	3.2	21.6	59.8	7,242
25	Boston, Mass	56.7	8.5	3.9	22.0	52.2	7,351
26	Pittsburgh, Pa	41.6	9.8	5.2	29.4	59.6	6,701
27	St. Louis, Mo	50.2	10.5	4.6	34.2	62.0	6,987
28	Baltimore, Md	58.7	8.5	4.0	30.9	62.0	7,018
29	Cleveland, Ohio	43.0	8.9	4.7	28.8	58.8	7,080
30	Houston, Tex	39.8	5.9	4.0	31.8	61.7	6,481
31	Newark, N.J	58.6	10.7	4.3	30.0	63.5	
32	Dallas, Tex	25.7	9.0	3.8	37.3	69.3	6,683
33	Minneapolis, Minn	36.4	7.1	5.2	25.6	56.9	7,140
34	St. Paul, Minn	36.8	8.1	5.2	22.4	49.5	7,140
35	Milwaukee, Wis	25.6	11.8	4.6	22.5	57.7	7,079
36	Atlanta, Ga	40.5	8.2	3.7	38.2	68.6	6,424
37	Cincinnati, Ohio	36.0	8.4	4.3	32.2	61.6	6,611
38	Buffalo, N.Y	29.0	9.7	8.8	30.0	56.7	7,022
39	San Diego, Calif	9.0	15.9	6.4	39.9	65.0	7,166
40	Miami, Fla	57.2	10.3	5.1	38.2	68.1	
41	Kansas City, Mo	27.0	10.0	5.7	35.2	66.1	6,981
42	Denver, Colo	25.5	8.5	3.5	32.5	64.0	6,697
43	Indianapolis, Ind	22.5	9.0	4.8	32.3	64.8	7,101
44	New Orleans, La	59.4	12.5	6.2	41.1	65.2	
45	Oakland, Calif	37.8	17.6	5.4	35.0	59.0	7,686
46	Tampa, Fla	39.6	7.7	3.2	40.6	69.4	
47	Portland, Oreg	18.1	11.9	5.8	32.8	59.8	
48	Phoenix, Ariz	24.7	9.6	4.7	33.1	61.8	
49	Columbus, Ohio	18.7	8.3	3.3	28.5	63.9	
50	San Antonio, Tex	43.7	9.6	5.4	45.9	72.6	
51	Dayton, Ohio	25.1	12.9	4.6	36.0	59.6	6,712
52	Rochester, N.Y	26.2	11.3	5.3	30.3	62.5	
53	Louisville, Ky	37.3	11.6	4.3	39.2	66.0	
54	Memphis, Tenn	38.3	11.3	3.9	44.1	70.9	
55	Fort Worth, Tex	27.3	10.6	4.5	39.0	67.2	
56	Birmingham, Ala	51.2	10.1	4.8	41.0	65.9	
57	Toledo, Ohio	22.9	9.2	5.4	30.0	57.7	
58	Akron, Ohio	33.7	10.0	4.4	29.4	55.5	
59	Norfolk, Va	27.2	8.7	3.9	42.7	67.0	
60	Oklahoma City, Okla	16.2	8.1	3.8	34.8	61.2	
61	Jersey City, N.J	46.6	7.2	6.2	22.6	61.5	
62	Providence, R.I	53.4	7.0	6.0	21.9	57.7	
63	Omaha, Nebr	20.5	7.9	3.6	29.9	58.8	
64	Youngstown, Ohio	30.7	11.7	6.5	34.6	57.1	
65	Tulsa, Okla	15.1	10.0	4.9	37.5	64.2	
66	Charlotte, N.C	30.4	8.3	3.2	39.2	70.5	
67	Wichita, Kans	21.5	13.9	10.1	37.0	65.0	6,722
68	Bridgeport, Conn	39.3	13.7	8.2	29.9	66.7	

[1] Average.

WORK SHEET FOR CALCULATING SUBEMPLOYMENT INDEX FROM CENSUS EMPLOYMENT SURVEY (CES) VOLUMES

	Number
City U.S. summary, urban:	
Vol. No. PHC (3)	1
From page X: Population of area	13,247,000
	Percent
Black	49.5
White	47.9
Spanish	11.8
Other	2.6

	Percent
Unemployment rate	9.6
Subemployment rate	[1]30.5
Subemployment rate	[2]61.2
Percent of city population in sample	33.5

	Number		Percent
From table 1, page 13:			
Labor force	4,975	Unemployment rate	9.6
Unemployed	478		
From table 3, page 19:			
Part time employed			
For economic reasons	197		
From table 15, page 64: Discouraged workers (because of inability to find work):			
Main reason	32		
Secondary reason	158		
Total	190		
From table E, page 4:			
Earnings to $79 weekly	711	To $3.49 hr., 2,296	

From page X introduction: 13,247,000=33.5 percent population of sample area × 100=percent of city population in sample. 39,460,115, population of city.
Calculations:
(1) Labor force, 4,975; discouraged, 190; total labor force, 5,165.
(2) Unemployed, 473; part time, 197; discouraged, 190; earn to $79, 711; total (2) 1,576.
(3) Unemployed, 478; part time, 197; discouraged, 190; to $3.49, 2,296; total (3) 3,161.

TOT 2: TLF=subemployment rate, at $2.00 hr., 1,576: 5,165=30.51 percent.
TOT 3: TLF=subemployment rate, at $3.50 hr., 3,161: 5,165=61.2 percent.
[1] Under $80 per week, $4,000 per year.
[2] Under $3.50 per hour, $7,000 per year.

AMENDMENTS TO THE 1970 VETOED LEGISLATION RETAINED IN S. 1559

Mr. CRANSTON. Mr. President, several amendments which I had offered during the 91st Congress to S. 3867 were included in S. 1559 as introduced. Among these were provisions mandating a continued national emphasis program for Jobs for Progress—Operation SER; provisions relating to the designation of prime sponsors when there are two competing and eligible applicants, the prohibition against funding programs that have failed to complete appropriate reporting requirements with regard to enrollees in job training programs, and fair hearing requirements when eligible applicants' applications were rejected.

CONCLUSION

Mr. President, I have been deeply involved in the development of this legislation since the beginning of my service in the Senate. I believe that S. 1559, as reported, represents a concrete, constructive, and well-conceived piece of legislation. I urge my colleagues to join with me in voting for this landmark manpower reform legislation.

Mr. President, in closing I would like to express my appreciation for the excellent staff work performed by Dick Johnson and Bill Spring, the counsel and research director on the Employment, Poverty, and Migratory Labor Subcommittee; to Jon Steinberg and Pam Duffy of the Special Subcommittee on Human Resources; and to John Scales, the minority counsel to the Poverty Subcommittee. I would also like to extend my special thanks to Pam Duffy and Bill Spring for their assistance at the recent field hearings which I was privileged to chair during joint hearings of the Employment, Poverty, and Migratory Labor Subcommittee, and the Special Subcommittee on Human Resources, in San Francisco on June 15, and in Los Angeles on June 16.

Mr. NELSON. Mr. President, I want to express my appreciation to the staff of the committee, each of whom worked hard and long on the Job Training and Committtee Services Act of 1973. Special thanks are due to the staff members of the Subcommittee on Employment, Poverty, and Migratory Labor: Richard E. Johnson, majority counsel; William J. Spring, professional staff member; John Scales, minority counsel. as well as Roger King who has been Senator TAFT's assistant on this legislation.

The PRESIDING OFFICER (Mr. DOMENICI). The bill having been read the third time, the question is, Shall it pass? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON) is necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent to attend the funeral of a friend.

The Senator from Utah (Mr. BENNETT) is necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The Senator from Arizona (Mr. GOLDWATER) is detained on official business.

The result was announced—yeas 88, nays 5, not voting 7, as follows:

[No. 323 Leg.]

YEAS—88

Aiken	Gurney	Muskie
Baker	Hansen	Nelson
Bartlett	Hart	Nunn
Bayh	Hartke	Packwood
Beall	Haskell	Pastore
Bentsen	Hatfield	Pearson
Bible	Hathaway	Pell
Biden	Hollings	Percy
Brock	Hruska	Proxmire
Brooke	Huddleston	Randolph
Burdick	Hughes	Ribicoff
Byrd, Robert C.	Humphrey	Roth
Case	Inouye	Saxbe
Chiles	Jackson	Schweiker
Church	Javits	Scott, Pa.
Clark	Johnston	Sparkman
Cook	Kennedy	Stafford
Cranston	Long	Stevens
Curtis	Magnuson	Stevenson
Dole	Mansfield	Symington
Domenici	Mathias	Taft
Dominick	McClellan	Talmadge
Eagleton	McClure	Thurmond
Eastland	McGee	Tower
Ervin	McGovern	Tunney
Fannin	McIntyre	Weicker
Fong	Metcalf	Williams
Fulbright	Mondale	Young
Gravel	Montoya	
Griffin	Moss	

NAYS—5

Allen	Byrd,	Helms
Buckley	Harry F., Jr.	Scott, Va.

NOT VOTING—7

Abourezk	Cannon	Stennis
Bellmon	Cotton	
Bennett	Goldwater	

So the bill (S. 1559) was passed, as follows:

That this Act may be cited as the "Job Training and Community Services Act of 1973".

TITLE I—STATE AND LOCAL SPONSORSHIP OF PROGRAMS

STATEMENT OF PURPOSE

SEC. 101. It is the purpose of this Act to establish a flexible and decentralized system of State and local programs providing job training opportunities and community services for economically disadvantaged, unemployed, and underemployed persons, to make funds available to States and communities to meet locally determined needs consistent with the purposes of this Act, and to assure that training and other services lead to employment and enhanced self-sufficiency.

AUTHORIZATION

SEC. 102. (a) For the purpose of carrying out this Act, there are authorized to be appropriated such sums as may be necessary for the fiscal year ending June 30, 1974, and for each of the three succeeding fiscal years.

(b) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(c) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of subsection (a) shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

TRANSITIONAL PROVISIONS

SEC. 103. (a) To the extent necessary to provide for the orderly transition of supporting job training programs, and to provide continued financial assistance for such programs, prior to July 1, 1974, the Secretary is authorized to provide financial assistance in the same manner and on the same conditions as provided in the Manpower Development and Training Act of 1962, as in effect prior to June 30, 1973, title I of the Economic Opportunity Act of 1964, and the Emergency Employment Act of 1971, as in effect prior to June 30, 1973, from funds appropriated pursuant to this Act.

(b) The authority contained in this section shall not be construed to postpone or impede the prompt designation of prime sponsors and the implementation of other provisions of this Act, but the Secretary shall continue to provide financial assistance, by contract or otherwise, for carrying out national programs of demonstrated effectiveness through the fiscal year ending June 30, 1974.

PRIME SPONSORS

SEC. 104. (a) For the purpose of this Act—

(1) any State;

(2) any unit of general local government—

(A) which is a city having a population of one hundred thousand or more persons; or

(B) which is a county or comparable unit of general local government having a population of one hundred and fifty thousand or more persons (other than the number of persons therein included within the population of any city designated as a prime sponsor under clause (A) of this subparagraph);

(3) any consortium of adjoining units of general local government serving a labor market area or substantial portion thereof, including at least one unit of general local government described in clause (A) or (B) of subparagraph (2); or

(4) any unit of general local government or any consortium of such units, without regard to population, which is determined by the Secretary of Labor—

(A) (i) to serve a substantial portion of a functioning labor market area, or (ii) to be a rural area having a high level of unemployment; and

(B) to have demonstrated (i) that it has the capability for adequately carrying out programs under this Act, and (ii) that there is a special need for services within the area to be served, and (iii) that it will carry out such programs and services in such area as effectively as the State;

shall be eligible to be a prime sponsor of programs under this Act in accordance with the provisions of this section.

(b) (1) Where the area under the jurisdiction of a unit of general local government described in clause (B) of subparagraph (2) of subsection (a) includes any common geographical area with that covered by a unit of general local government described in clause (A) of subparagraph (2) of subsection (a), the Secretary shall designate to serve such common area the unit of general local government which demonstrates the capability for more effectively carrying out the purposes of this Act with respect to such area.

(2) Before designating a unit of general local government under paragraph (1) of this subsection, the Secretary shall—

(A) request the comments of the Governor of the State concerning the manner in which the proposed prime sponsorship arrangements for the area involved will relate to statewide planning arrangements;

(B) undertake reasonable steps, where appropriate and practicable in order to carry out more effectively the purposes of this Act, to seek an agreement among the units of general local government involved to enter into consortium arrangements as described in subparagraph (3) of subsection (a) of this section; and

(C) afford an opportunity to the units of general local government involved to submit comments with respect to proposed prime sponsorship arrangements to the Secretary.

(c) Any State or unit or consortium of units of general local government which is eligible to be a prime sponsor under subsection (a) shall be so designated by the Secretary if he determines that a satisfactory prime sponsorship plan has been submitted and that—

(1) the plan describes the prime sponsorship area to be served and evidences the capability for effectively carrying out programs under this Act throughout such area;

(2) the plan provides that the prime sponsor shall be responsible for submitting program statements and for the planning and development of programs in the prime sponsorship area;

(3) the plan was submitted to the Secretary by such date as the Secretary shall prescribe by regulation, in order to provide a reasonable period of time for review in accordance with the provisions of this section;

(4) a copy of such plan has been submitted for comment thereon to the Governor of the State and the Governor has been provided a reasonable period of time to review and submit comments on such plan;

(5) in the case of a plan submitted by a State, satisfactory arrangements are set forth for serving all geographical areas under its jurisdiction except for areas for which a local prime sponsor is designated under subparagraph (2), (3), or (4) of subsection (a) of this section; and

(6) the plan was made public prior to submission to the Secretary.

(d) A plan submitted in accordance with this section may be disapproved or a prior designation of a prime sponsor may be withdrawn only if the Secretary, in accordance with regulations which he shall prescribe, has provided—

(1) written notice of intention to disapprove such plan, including a statement of reasons therefor;

(2) a reasonable period of time to submit corrective amendments to such plan; and

(3) an opportunity for a public hearing upon which basis an appeal to the Secretary may be taken as of right.

TITLE II—JOB TRAINING PROGRAMS

PROGRAMS AUTHORIZED

SEC. 201. (a) Programs receiving financial assistance under this title shall include provision of training opportunities and related services needed to enable economically disadvantaged, unemployed, and underemployed individuals, and others in need of training or retraining, to secure and retain employment consistent with their full potential, including—

(1) programs to acquaint men and women with the availability of training and related services and to encourage the full utilization of such services;

(2) assessment of the individual's needs, potential, and interests, with referral to appropriate training and related services;

(3) counseling, education, orientation, and institutional and on-the-job training to prepare the individual for work or to qualify for more productive job opportunities;

(4) allowances for training, and for transportation, subsistence, or other expenses incurred while participating in job training programs;

(5) supportive services to enable individuals to take advantage of employment and training opportunities, including basic education, necessary health care services, child care, residential support assistance in securing bonds, or any other necessary assistance incident to employment, and any other service needed to participate in employment and training programs;

(6) development of information concerning the labor market and activities, such as job restructuring, to make such activities more responsive to objectives of employment and training programs; and

(7) such other activities as are consistent with the provisions and purposes of this title.

(b) Programs assisted under this title may include, but are not limited to—

(1) Mainstream programs providing financial assistance for the support of projects which involve work activities directed to the needs of those chronically unemployed and economically disadvantaged persons who have particularly poor employment prospects and are unable (because of age, physical condition, obsolete or inadequate skills, declining economic conditions, or otherwise) to secure appropriate employment or training and related services under other programs. Such projects, in addition to other services provided, shall enable such persons to participate in projects for the betterment or beautification of the community or area served by the program, including but not limited to activities which will contribute to the management, conservation, or development of natural resources, recreational areas, Federal, State, and local government parks, highways, and other lands; the rehabilitation of housing; the improvement of public facilities; and the improvement and expansion of health care, education, child care, antipoverty, and recreation services.

(2) New careers programs providing economically disadvantaged or unemployed persons with jobs leading to career opportunities, including new types of careers, in programs designed to improve the physical, social, economic, or cultural condition of the community or areas served in fields of public service, including but not limited to health care, education, welfare, recreation, child care, antipoverty, neighborhood redevelopment, and law enforcement, which provide maximum prospects for on-the-job training, promotion, and advancement and continued employment without Federal assistance.

(3) Neighborhood youth corps programs to provide (A) part-time employment, on-the-job training, and useful work experience for economically disadvantaged students who are in the ninth through twelfth grades of school (or of an age equivalent to that of students in such grades) and who are in need of earnings to permit them to resume or maintain attendance in school; (B) useful work and training (including sufficient basic education and institutional or on-the-job training) for unemployed, underemployed, or economically disadvantaged persons (aged sixteen and over) who are not in school designed to assist those persons to develop their maximum occupational potential and to obtain regular employment; and (C) job and related recreation opportunities for economically disadvantaged persons during the summer months.

(4) Opportunities industrialization centers designed to provide comprehensive employment services and job opportunities for low-income persons who are unemployed or underemployed. Such services shall include recruitment, counseling, remedial education, vocational training, job development, job placement, health care, child care, and other appropriate services and adequate provisions to assure that residents of the area to be served by such program are involved in the planning and operation of such center, and that business and labor in the area to be served by such programs are consulted in the development and operation thereof. Priority shall be given to programs serving residents of inner-city areas with substantial unemployment or underemployment.

(5) Jobs for progress and other programs designed to provide comprehensive employment opportunities and training and related services for economically disadvantaged persons who are unemployed or underemployed, including persons of limited English-speaking ability, migrants, and others through the establishments of skill centers. Such services shall include recruitment, counseling, remedial education, vocational training, job development, job placement, health care, child care, and other appropriate services and adequate provisions to assure that the residents of the area to be served by such programs are involved in the planning and operation of such centers and that business and labor in the area to be served by such programs are consulted in the development and operation thereof.

(6) Job opportunities in the business sector and other programs to encourage and to provide incentives to private employers, nonprofit organizations, and public employers to train or employ economically disadvantaged, unemployed, or underemployed persons, including arrangements by direct contract reimbursing employers for the costs of recruiting and training such employees to the extent that such costs exceed those customarily incurred by such employer in recruiting and training new hires, payment for on-the-job counseling and other supportive services, transportation, and payments for

other extra costs including supervisory training required by the program.

(7) Skill centers and other programs for the development of job opportunities through institutional training programs for economically disadvantaged, unemployed, or underemployed persons, providing recruitment, counseling, remediation, vocational training, job development, job placement, and other appropriate services.

(8) Special job development programs with public or private employers, including employment centers and mobile employment service units to provide recruitment, counseling, and placement services, conveniently located in urban and rural areas and particularly accessible to economically disadvantaged persons.

(9) Special manpower training programs and related educational and other services for offenders, including pretrial or other intervention programs, programs for offenders under sentence, prerelease job furloughs, bonding assistance, job development programs with public or private employers (including incentive payments), programs in residential and nonresidential centers and halfway houses, and programs to train professional and paraprofessional personnel to serve the training and employment needs of offenders and other activities to meet such needs.

(10) Programs and projects designed to meet the special needs of Indians for employment and training and related services.

(11) Programs and projects designed to meet the special needs of persons in migrant and seasonal farmworker families for employment and training and related services.

(12) Programs and projects designed to meet the special needs of persons of limited English-speaking ability for employment and training and related services.

(13) Employment and training programs, counseling and related supportive services for middle-aged and older workers, including on-the-job, institutional, residential, and other training designed to improve the skills and capabilities of such workers, particularly in areas of high or chronic unemployment among middle-aged and older persons.

(14) Programs and projects designed to offer job counseling, training, placement, and other vocational assistance to unemployed and underemployed engineers, scientists, and technicians.

(15) Public service employment programs providing transitional employment for unemployed and underemployed persons in jobs providing needed public services, with training and related supportive services designed to lead to public or private employment not supported under this Act.

(c) Sums made available for public service employment programs from appropriations to carry out this Act shall be used only for public service employment programs meeting the requirements set forth in the provisions of the Emergency Employment Act of 1971 to the extent that such requirements are consistent with the provisions of this Act.

ALLOCATION OF FUNDS

SEC. 202. (a) The amounts available for any fiscal year for carrying out this title shall be allocated in such a manner that of such amounts—

(1) not less than 75 per centum shall be apportioned among the States, distributed equally according to the proportions which the total numbers of unemployed persons and of adults who or whose families have a total annual income below the lower living standard budget in each such State bears to such total numbers, respectively, in all the States, but not less than $1,500,000 shall be apportioned to any State, except that not less than $150,000 each shall be apportioned to the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands; and

(2) the remainder shall be available to enable the Secretary to carry out his responsibilities under this title and title I.

(b)(1) The amount apportioned for use within each State under clause (1) of subsection (a) shall be apportioned geographically among areas served by prime sponsors and by program agents within each such State distributed equally according to the proportions which the total numbers of unemployed persons and of adults who or whose families have a total annual income below the lower living standard budget in each such area bears to such total numbers, respectively, in the State.

(2) In apportioning the remaining funds within the State's prime sponsorship area, the State shall make apportionments among the remainder of local planning areas on an equitable basis, taking into account the total numbers of unemployed persons and of adults who or whose families have a total annual income below the lower living standard budget in each such area.

(c) In the event that appropriations for the fiscal year ending June 30, 1974, and each of the two succeeding fiscal years are not sufficient to provide to each State, and to each local area within each such State, an amount of funds for each such fiscal year at least equal to that which was made available for use within such area for the fiscal year ending June 30, 1972, in carrying out programs under the Manpower Development and Training Act of 1962 and parts B and E of title I of the Economic Opportunity Act of 1964, then the Secretary shall make necessary adjustments, in making apportionments among States under subsection (a)(1) and among areas served or to be served by prime sponsors and by program agents under subsection (b)(1), to ensure that no State and no local area, during the fiscal year ending June 30, 1974, and each of two succeeding fiscal years, receives any smaller proportion of the sums appropriated than such State and area received for such programs during such fiscal year 1972.

(d) Of the amounts geographically apportioned to each area within a State pursuant to subsection (b)(1) and (c), an amount equal to 15 per centum of each such apportionment shall be available to the State to provide services and activities to individuals of the area to which such funds are apportioned.

(e) As soon as practicable after funds are appropriated to carry out this Act for any fiscal year, the Secretary shall publish in the Federal Register the apportionments made pursuant to subsections (a)(1), (b)(1), and (c) of this section. Apportionments under this section shall be based on the latest satisfactory data and estimates available. In determining the number of adults who or whose families have annual incomes below the lower living standard budget, the Secretary shall determine the number of families receiving annual incomes below the nearest income level for which satisfactory census data is available not less than the average lower living standard budget for a family of four in the United States for the year during which such census data was developed; and in making such determination for any State with respect to which the nearest such income level not less than the average lower living standard budget applicable to that State is a different level, the Secretary shall determine the number of families below the latter level in such State.

(f) The Secretary is authorized to make such reallocations under this title as he deems appropriate of the unobligated amount of any apportionment pursuant to subsections (a)(1), (b)(1), and (c) to the extent that the Secretary determines that it will not be required for the period for which such apportionment is available. Apportioned amounts may not be reallocated for any reason before the expiration of the ninth month of the fiscal year for which such funds were apportioned and thereafter may be reallocated only if the Secretary has provided thirty days' advance notice to the prime sponsor for such area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsors of any decision to reallocate funds and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State.

EMPLOYMENT AND TRAINING COUNCILS

SEC. 203. In order to be designated as a prime sponsor of programs under this title, each eligible prime sponsor under section 104 of this Act shall include in its prime sponsorship plan adequate provisions for establishing and maintaining an employment and training council which shall—

(1) provide that the chief executive officer or officers of the unit or units of government establishing such council shall appoint the members of the council, with equitable representation on such council to be afforded to each unit of government entering into a consortium under subparagraph (3) or (4) of section 104(a) or, where (pursuant to section 104(b)(1)) the Secretary designates a unit of government described in clause (B) of section 104(a)(2), to the unit not so designated;

(2) provide that the council shall include members who are representative of community action agencies; other community-based organizations; the public employment service; education and training agencies and institutions, including vocational educational agencies and community postsecondary educational and training institutions; social service programs, including child care, environmental quality, health care, recreation, vocational rehabilitation, and welfare agencies; correctional training programs; industrial development organizations; apprenticeship programs; veterans organizations; business; and labor; and not less than one-third of the membership of such council shall be representative of the significant segments of the population to be served;

(3) provide that one member of the council shall be designated as chairman who shall, with the approval of the council, appoint a staff director who shall supervise professional, technical, and clerical staff serving the council;

(4) provide that the council will be entitled to recommend program statements, basic goals, policies, and procedures, and will be responsible for annual and ongoing evaluation of employment and training programs conducted in the prime sponsorship area, and for establishing procedures for the certification (by either panels of representatives of labor and management established for that purpose or by the council, as required by the Secretary), that training and other services to be provided in such area under this title have a reasonable prospect of leading to appropriate employment opportunities;

(5) provide assurances that staff and other administrative expenses for the council will not exceed a reasonable per centum of the total cost of programs administered by each prime sponsor, as established by regulations which the Secretary shall prescribe;

(6) set forth the council's responsibility for conducting on a continuing basis surveys and analyses of needs for employment, training, and related services in the area served by the prime sponsor to be used in the development of plans under this title;

(7) set forth appropriate arrangements for involving community action agencies, other community-based organizations, educational agencies and institutions (including voca-

tional education and community colleges), and vocational rehabilitation agencies, in the development of program statements and in the implementation of programs assisted under this title; and

(8) set forth plans for the council to provide for objective evaluations of the effectiveness of programs for which financial assistance is provided under this title.

PROGRAM STATEMENTS

SEC. 204. (a) In order to receive financial assistance under this title for any fiscal year, a prime sponsor shall submit to the Secretary a program statement, which shall include—

(1) a statement of employment and training needs and priorities in the area, descriptions of the services for which financial assistance received under this title will be used, and performance goals;

(2) the identification of any agencies or organizations designated to carry out such services under the supervision of the prime sponsor;

(3) any arrangements made for services to be performed, on a reimbursable basis or otherwise, by the public employment service or any other public or private agency, institution, or organization;

(4) a description of the areas to be assisted by such programs, including data regarding potential eligible participants;

(5) provisions designed to assure that funds under this title will be made available so as to serve on an equitable basis the significant segments of the population to be served in the prime sponsorship area, including—

(A) provisions to assure that adequate bilingual and other programs and activities are included as part of job training, employment, and related services designed to meet the special needs of persons of limited English-speaking ability;

(B) provisions to assure that adequate programs and activities are provided to meet the special needs of middle-aged and older men and women;

(6) provisions to assure the utilization, to the extent feasible, of those services and facilities which are available, with or without reimbursement of the reasonable cost, from Federal, State, and local agencies, including but not limited to the State employment service, State vocational education, and vocational rehabilitation agencies, area skills centers, local educational agencies, postsecondary training and education institutions, and community action agencies, but nothing contained herein shall be construed to limit the utilization of services and facilities of private agencies, institutions, and organizations (such as private businesses, labor organizations, private employment agencies, and private educational and vocational institutions) which can, at comparable cost, provide substantially equivalent training or services or otherwise aid in reducing more quickly unemployment or current and prospective manpower shortages;

(7) provisions to assure that priority will be given to employment preparation programs which provide, in connection with job training opportunities supported with funds under this title, for the making of commitments by prospective public and private employers to employ persons who satisfactorily complete their prescribed periods of training in jobs for which such persons received such training;

(8) assurances that training and related services for which funds are provided under this Act are designed to the maximum extent practicable, consistent with each individual's fullest capability, to lead to employment opportunities, to the extent available in the area to be served, for which wages will be paid at a rate not less than the higher of (A) the minimum wage would be applicable under the Fair Labor Standards Act of 1938 if section 6(a)(1) of such Act applied to such person and if he were not exempt under section 13 thereof, or (B) the State or local minimum wage for the most nearly comparable covered employment;

(9) such other information, assurances, statements, and arrangements consistent with the provisions of this Act as the Secretary shall prescribe by regulation, including provisions designed to assist the Secretary in carrying out his special responsibilities under section 205.

(b) The Secretary shall provide financial assistance to each prime sponsor under this title to carry out the program statement submitted by each such prime sponsor upon determining that—

(1) the program statement is consistent with the provisions of this title;

(2) the program statement was made public prior to submission to the Secretary;

(3) the prime sponsor has demonstrated maximum efforts (A) to implement the provisions in the prior year's program statement described in clause (7) of subsection (a) of this section, (B) to ensure that employment commitments made pursuant thereto were fulfilled by prospective employers making such commitments, and (C) in the case of the failure of such fulfillment, to place the persons receiving such training in comparable employment or to employ such person;

(4) an opportunity was provided for each appropriate area planning council established in accordance with section 206(b)(3) of this Act to review and submit comments to the prime sponsor with respect to its proposed program statement prior to submission to the Secretary;

(5) an opportunity was provided to the Governor of the State to submit comments with respect to the program statement to the prime sponsor and to the Secretary;

(6) an opportunity was provided to officials of the appropriate units of general local government in the area to be served to submit comments with respect to the program statement to the prime sponsor and to the Secretary;

(7) an opportunity was provided to the appropriate State or local agency or agencies having responsibility for vocational education, vocational rehabilitation, and the public employment service, and to community action agencies and other community-based organizations in the area to be served, to submit comments with respect to the program statement to the prime sponsor and to the Secretary.

SPECIAL RESPONSIBILITIES OF THE SECRETARY

SEC. 205. (a) Out of the funds made available to the Secretary pursuant to section 202(a)(2) for carrying out his responsibilities under this title, the Secretary shall establish procedures to assure that—

(1) not less than that portion of the funds appropriated for carrying out this title as is equivalent to that proportion which the total number of Indians bears to the total number of low-income persons in the Nation shall be made available to Indian tribes on Federal and State reservations, and to organizations (as determined by the Secretary) serving non-reservation Indians, for programs and projects under this title designed to meet the needs of Indians for employment and training and related services;

(2) not less than that portion of funds appropriated for this title as is equivalent to that proportion which the total number of persons in migrant and seasonal farmworker families bears to the total number of low-income persons in the Nation shall be available for programs and projects under this title designed to meet the special needs of persons in migrant and seasonal farmworker families for employment and training and related services.

(b) Out of the remaining funds available to the Secretary pursuant to section 202(a)(2) for carrying out his responsibilities under this title, the Secretary is, without limitation, authorized to—

(1) provide additional financial assistance to prime sponsors and public or private nonprofit agencies in order to continue ongoing programs and activities of demonstrated effectiveness;

(2) carry out, through contract or otherwise, a comprehensive program of research and experimental, model, demonstration, and pilot programs to conduct innovative efforts and otherwise improve understanding and methods of meeting employment and training needs;

(3) provide for an ongoing program of technical assistance and of monitoring and evaluating the effectiveness of programs and projects assisted under this title in carrying out the purposes and provisions of this title;

(4) develop a comprehensive system of labor market information on a National, State, local, or other appropriate basis, which shall be made publicly available in a timely fashion;

(5) establish and carry out a nationwide computerized job bank and matching program (utilizing the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of title 38, United States Code) on a regional, State, and local basis, using electronic data processing and telecommunications systems to the maximum extent possible for the purpose of identifying sources of available persons and job vacancies, providing an expeditious means of matching the qualifications of unemployed, underemployed, and economically disadvantaged persons with employer requirements and job opportunities, and referring and placing such persons in jobs;

(6) carry out a Job Corps program in accordance with the requirements set forth in the provisions of part A of title I of the Economic Opportunity Act of 1964, as amended, to assist economically disadvantaged persons under twenty-two years of age who need and can benefit from an intensive program of training and related services, operated in a group setting, to become more responsible, employable, and productive citizens, through the establishment of residential and nonresidential centers in which enrollees participate in intensive programs of education, vocational training, work experience, counseling, and other activities;

(7) provide special services for middle-aged and older men and women including recruitment, placement, and counseling for such persons who are unemployed as a result of the closing of a plant or factory or a permanent large-scale reduction in the work force of a locality, and provide grants to or contracts with nonprofit volunteer agencies to assist such agencies in securing part-time or temporary employment for middle-aged and older persons;

(8) provide a system of support for special programs for offenders conducted under section 201(b)(9) and provide supplementary assistance to encourage the establishment of special model programs under section 206(a)(5); and

(9) carry out a special program to demonstrate the efficacy of providing certificates or vouchers to economically disadvantaged, unemployed, and underemployed persons entitling private employers who provide employment, training, and services to each person volunteering to participate in such program to payment in amounts equal to the face value of the certificate for specified periods of time during which each such person may not be fully productive.

(c) In addition to financial assistance

made available by prime sponsors to carry out programs pursuant to program statements submitted under section 204, the Secretary in carrying out his special responsibilities under subsections (a) and (b) of this section shall—

(1) give due consideration to job training programs serving individuals from population groups having special needs for such programs, including programs for middle-aged and older persons and bilingual programs for persons of limited English-speaking ability, and special services for low-income individuals who do not reside in low-income areas;

(2) assure the continuation of a system of efforts by the National Alliance of Businessmen and the private sector generally in the provision of job opportunities for economically disadvantaged, unemployed, and underemployed persons, with particular emphasis on development of jobs and training for economically disadvantaged persons and veterans, as well as in the provision of summer and year-round jobs for economically disadvantaged youth, employment for ex-offenders, and employment of public assistance recipients, while encouraging the use of resources available to the private sector for the training of such persons;

(3) assure the continuation of a system of opportunities industrialization centers, jobs for progress, and other programs designed to provide comprehensive employment services and job opportunities for low-income persons who are unemployed or underemployed, including those with limited English-speaking ability, assuring that the residents of the areas served are involved in the planning and operation of such centers and that business and labor are consulted in their development and operation;

(4) provide support, in conjunction with the Secretary of Health, Education, and Welfare, and the Attorney General, for programs providing manpower training and related services for offenders, including research programs, the dissemination of information, bonding assistance, the conduct of model, demonstration, and pilot programs and where necessary the provision of supplementary financial assistance as authorized under paragraph (1) of subsection (b) of this section;

(5) utilize resources available under this section to carry out fully and effectively his responsibilities for the assignment of assistant veterans employment representatives under section 2003 of title 38, United States Code, and his other responsibilities under chapter 41 of such title and for the listing of all suitable employment openings with local offices of the State employment service by Federal contractors and subcontractors and providing for the special emphasis as required by section 2012(a) of such title; and

(6) give special consideration to job training programs serving individuals who are unemployed as a result of a closing of a facility or the substantial reduction of activities at a facility of the United States Government located in a labor market area in which the rate of unemployment for that labor market area has increased substantially due to the unemployment of such individuals.

COMPREHENSIVE STATE PLANNING ROLE

SEC. 206. (a) Funds available to each State under 202(d)(1) shall be used for—

(1) the provision of services throughout the State by State agencies responsible for employment and training and related services;

(2) providing additional financial assistance as incentives (A) for the designation of prime sponsors involving consortium arrangements among units of general local government, especially where areawide arrangements are made to serve a labor market area or substantial portion thereof, and (B) for special programs and services designed to meet the needs of rural areas outside major labor market areas;

(3) developing and publishing information regarding economic, industrial, and labor market conditions, including but not limited to job opportunities and skill requirements, labor supply in various skills, occupational outlook and employment trends in various occupations, and economic and business development and location trends;

(4) providing, without reimbursement and upon request, to any prime sponsor serving an area without the State, such information and technical assistance as may be appropriate to assist any such prime sponsor in developing and implementing its programs under this title; and

(5) carrying out special model manpower training programs and related services for offenders and providing assistance to special programs for offenders conducted under section 201(b)(9) of this Act.

(b) Each State submitting a plan for designation as a prime sponsor of programs under this Act shall—

(1) provide for planning areas which together shall cover all of the State;

(2) provide that each planning area shall serve a geographical area covered by counties serving a total population of not more than five hundred thousand persons (other than the number of persons in such area included within the population served by any local prime sponsor designated under subparagraph (2), (3), or (4) of section 104(a) of this Act);

(3) provide, with respect to each planning area, for establishing and maintaining an area plannng council consisting of members appointed or reappointed annually composed of (A)(i) one representative appointed by the governing body of each county in the area, and one representative appointed by the chief executive of each city which has a population of seventy-five thousand or more persons, and (ii) additional representatives appointed by each city or county having a population of seventy-five thousand or more persons (which is not served by a local prime sponsor designated under subparagraph (2), (3), or (4) of section 104(a) of this Act) so that each such city or county shall have a total number of such additional representatives proportionate to the relative numbers obtained when the number of persons in the population of each such city or county is divided by seventy-five thousand (excluding from the population of any such county, for purposes of this subclause (ii), the number of persons within the population of any county included within any city having a population of seventy-five thousand or more persons), and (B) such additional persons as the members appointed pursuant to clause (A) of this subparagraph shall elect in order to assure that the membership of the council shall include persons representing the general public, including community action agencies, and other groups representing the economically disadvantaged and other significant segments of the population to be served, educational and training agencies and institutions, the public employment service, social service agencies, veterans organizations, business, and labor;

(4) assure that each area planning council shall prepare and submit to the State those portions of the program statement which affect those parts of the planning area which are not served by local prime sponsors designated under subparagraph (2), (3), or (4) of section 104(a) of this Act, and shall have an opportunity to comment upon any revisions made in such portions of the program statement before the program statement is submitted by the State to the Secretary;

(5) provide for the area planning council to review and submit comments to local prime sponsors within the area with respect to their proposed program statements;

(6) set forth arrangements for delegating to any unit of general local government having a population of seventy-five thousand or more persons (excluding, in the case of counties, the number of persons within the jurisdiction of any such unit of general local government which is a city having a population of seventy-five thousand or more persons) the functions of program agent with administrative responsibilities for developing, funding, overseeing, and monitoring programs operated within the area of such jurisdiction, consistent with the program statement, but the provisions of this subparagraph shall not apply with respect to any such unit which does not desire or does not have the capability (as determined in accordance with regulations which the Secretary shall prescribe) for exercising such responsibilities;

(7) provide assurances that the establishment of planning areas and the operation of planning area councils will be coordinated, where appropriate, with other planning agencies in the State, including comprehensive health planning councils and economic development districts; and

(8) set forth arrangements for assisting the Secretary in enforcing the requirement for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment service and provide special emphasis, as required in section 2012 (a) of title 38, United States Code.

COORDINATION

SEC. 207. (a) The Secretary of Labor shall not issue rules, regulations, standards of, performance, or guidelines with respect to assistance for services of a health, education, or welfare character under this title unless he shall have first obtained the concurrence of the Secretary of Health, Education, and Welfare. Such services include but are not limited to basic or general education; educational programs conducted in correctional institutions or for ex-offenders; institutional training; health care, child care, and other supportive services; and new careers and job restructuring in the health, education, and welfare professions.

(b) With respect to programs for offenders, the Secretary shall enter into appropriate agreements with—

(1) the Attorney General to assure the combining of resources and maximum coordination and joint planning between such programs and programs assisted pursuant to parts C and E of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Delinquency Prevention and Control Act of 1968, as amended, and other related provisions of Federal law; and

(2) the Director of the ACTION agency under which volunteers otherwise authorized to be recruited by the Director are made available as otherwise authorized to serve in such programs.

SPECIAL CONDITIONS

SEC. 208. The Secretary shall not provide financial assistance for any program under this title unless he determines, in accordance with such regulations as he shall prescribe, that—

(1) conditions of employment or training will be appropriate and reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant;

(2) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on any project are established and will be maintained;

(3) appropriate workmen's compensation protection will be provided to all participants;

(4) the program will not result in the displacement of employed workers or impair existing contracts for services or results in the substitution of Federal for other funds in connection with work that would otherwise be performed;

(5) persons shall not be referred for training in an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities available in that occupation;

(6) funds will be used to supplement, to the extent practicable, the level of funds that would otherwise be made available from non-Federal sources for the purpose of planning and administration of programs within the scope of this title and not to supplant such other funds; and

(7) prime sponsors, program agents, and other recipients of financial assistance under this title will make such reports, in such form and containing such information as the Secretary may from time to time require, and will keep such records and afford such access thereto as the Secretary may find necessary to assure that funds are being expended in accordance with the provisions of this title.

ALLOWANCES AND COMPENSATION

SEC. 209. (a) The Secretary shall, where appropriate, provide for the payment of weekly allowances to individuals receiving services under this title. Such allowances shall be at a rate prescribed by the Secretary which, when adjusted to take into account amounts received by the trainee in the form of public assistance or unemployment compensation payments, shall not be less than the minimum wage for a workweek of forty hours under section 6(a)(1) of the Fair Labor Standards Act of 1938 or, if higher, under the applicable State minimum wage law, or, where the trainee is being trained for particular employment, at a rate equal to 80 per centum of the weekly wage for such employment, whichever is greater. In prescribing allowances, the Secretary may allow additional sums for special circumstances, such as exceptional expenses incurred by trainees, including but not periods during which they are failing to participate in such allowances by an amount reflecting the fair value of meals, lodging, or other necessities furnished to the trainee. The Secretary shall take such action as may be necessary to insure that such persons receive no allowances with respect to periods during which they are failing to participate in such programs, training, or instruction as prescribed herein without good cause. The Secretary may, in accordance with such regulations as he shall prescribe, make appropriate adjustments in allowances which would otherwise be payable under this Act, including but not limited to adjustments which take into account the amount of time per week spent by the individual participating in such programs and upward adjustments to reflect the special economic circumstances which exist in the area in which the program is to be carried on. Allowances shall not be paid for any course of training having a duration in excess of one hundred and four weeks.

(b) For purposes of subchapter I of chapter 81 of title 5, United States Code, any person receiving services under this title shall, under such circumstances and subject to such conditions and limitations as the Secretary shall by regulation prescribe, be considered an employee of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply, except that in computing compensation benefits for disability or death, the monthly pay of such a person shall be deemed to be his allowance for a month, if he is receiving one. Regulations prescribed by the Secretary under this subsection may include but are not limited to adjustments in the amount of compensation payable under this subsection to take into account entitlements to workmen's compensation under other applicable laws or arrangements.

TITLE III—COMMUNITY SERVICES FOR THE ECONOMICALLY DISADVANTAGED

FUNDS AVAILABLE

SEC. 301. Of the sums appropriated to carry out this Act for each fiscal year, an amount equal to 17.5 per centum thereof shall be made available by the Secretary to prime sponsors designated under section 104 of this Act for programs providing financial assistance in accordance with this title.

ELIGIBLE ACTIVITIES

SEC. 302. Each prime sponsor shall use funds made available to it under this title for the planning, conduct, administration, and evaluation of community services programs designed to assist economically disadvantaged persons to achieve self-sufficiency by providing financial assistance for programs and activities carried out by public or private nonprofit agencies or organizations, with due consideration for community action agencies. Such programs and activities may involve, without limitation, activities and services and supporting facilities designed to assist participants including the elderly poor—

(1) to secure and retain meaningful employment;

(2) to attain an adequate education;

(3) to make better use of available income;

(4) to provide and maintain adequate housing and a suitable living environment;

(5) to undertake voluntary family planning, consistent with personal and family goals, religious, and moral convictions;

(6) to obtain services for the prevention of narcotics addiction, alcoholism, and the rehabilitation of narcotic addicts and alcoholics;

(7) to obtain emergency assistance, through loans or grants, to meet immediate and urgent individual and family needs, including the need for health care services, nutritious food, housing, and employment-related assistance;

(8) to remove obstacles and solve personal and family problems which block the achievement of self-sufficiency;

(9) to achieve greater participation in the affairs of the community; and

(10) to make more frequent and effective use of other programs related to the purposes of this title.

ALLOCATION OF FUNDS

SEC. 303. (a) Of the sums available for purposes of this title, the Secretary shall allot not more than 2 per centum among Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, according to their respective needs. The remaining sums available for this title shall be allotted among the States, in accordance with the latest available data, so that equal proportions are distributed on the basis of (1) the relative number of public assistance recipients in each State as compared to all the States, (2) the relative number of unemployed persons in each State as compared to all the States, and (3) the relative number of persons who or whose families have a total annual income below the poverty line in each State as compared to all the States. The sum available to each State shall be allocated among areas within each such State on an equitable basis, based upon the factors set forth in the preceding sentence. The Secretary shall make necessary adjustments in allocations determined in accordance with this subsection in order to assure that no area served by a community action agency during the fiscal year ending June 30, 1972, shall receive any lesser amount of funds for use within that area in any fiscal year than an amount equivalent to the proportion of the sums available for this title that such area received during such fiscal year 1972.

(b) Any portion of an allotment under subsection (a) which the Secretary determines will not be needed for any fiscal year shall be reallotted by the Secretary to other areas which the Secretary determines can effectively use such funds. Such funds may be reallotted only if the Secretary has provided thirty days advance notice to the prime sponsor for such area of the proposed reallocation, during which period of time the prime sponsor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the State and affected prime sponsors of any decision to reallocate funds and shall publish any such decision in the Federal Register. Priority shall be given in reallocating such funds to other areas within the same State.

TITLE IV—GENERAL PROVISIONS

FAILURE TO ADMINISTER ACTIVITIES AND PROGRAMS IN ACCORDANCE WITH NATIONAL PURPOSES

SEC. 401. (a) Whenever the Secretary determines, after notice and opportunity for a public hearing, that any prime sponsor designated so serve under this Act is—

(1) maintaining a pattern or practice of discrimination in violation of section 403(d) of this Act or otherwise failing to serve equitably the significant segments of economically disadvantaged, unemployed, or underemployed persons in the area it serves;

(2) incurring unreasonable administrative costs in the conduct of activities and programs, as determined pursuant to regulation;

(3) failing to give due consideration to continued funding of programs of demonstrated effectiveness, including those previously conducted under the Economic Opportunity Act of 1964 or the Manpower Development and Training Act of 1962, or failing to give special consideration to the programs referred to in section 205(c);

(4) failing to assure that training and other services have a reasonable prospect for leading to appropriate employment opportunities or enhancing self-sufficiency; or

(5) otherwise materially failing to carry out the purposes and provisions of this Act;

the Secretary shall revoke the prime sponsor's designation for the area, in whole or in part, and to the extent necessary and appropriate shall not make any further payments to such prime sponsor under this Act, and he shall notify such sponsor to return to him all or part of the unexpended sums paid under this Act during that fiscal year. The Secretary is authorized and directed to provide for continuing programs by making payments directly to public and private nonprofit agencies and organizations conducting activities which he determines are not in violation of the requirements of this section. To the extent necessary to assure the delivery of services in the area served by any prime sponsor subject to the provisions of this section, the Secretary is authorized (if no other eligible prime sponsor is designated under section 104 of this Act to serve such area) to make grants to and enter into contracts with public and private nonprofit agencies and organizations in the same manner and to the same extent as if the Secretary were the prime sponsor for that area.

(b) The Secretary shall, prior to making any payments under this Act for any fiscal year, enter into an agreement with any prime sponsor receiving payments under this Act which contains provisions adequate to assure that the provisions of this section are carried out effectively.

DEFINITIONS

SEC. 402. As used in this Act, the term—

(1) "Secretary" means the Secretary of Labor;

(2) "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands;

(3) "city" means an incorporated municipality having general governmental powers;

(4) "county" means a political subdivision of a State having general governmental powers;

(5) "Indian" includes any individual who (A) is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (B) is an Eskimo or Aleut or other Alaska Native;

(6) "lower living standard budget" means that income level (adjusted for regional and metropolitan, urban and rural differences and family size) determined annually by the Bureau of Labor Statistics of the Department of Labor and referred to by such Department as the "lower living standard budget".

(7) "health care" includes, but is not limited to, preventive and clinical medical treatment, voluntary family planning services, nutrition services and psychiatric, psychological, and prosthetic services;

(8) "veteran" means a person defined as a "disabled veteran" or "veteran of the Vietnam era" in section 201 (1) and (2) of title 38, United States Code;

(9) "offender' means any individual who is charged with or has been convicted of any criminal offense, including youthful offenders and juvenile delinquents;

(10) "youthful offender" means any person who has not attained eighteen years of age and who has violated a law of a State or an ordinance of a locality not punishable by death or life imprisonment and any person who has not attained twenty-five years of age and has not been previously convicted of a felony and who has violated a law of a State or an ordinance of a locality not punishable by death or life imprisonment.

SPECIAL LIMITATIONS AND CONDITIONS

SEC. 403. (a) The Secretary may prescribe such rules, regulations, guidelines, and other published interpretations or orders consistent with the provisions of this Act as he deems necessary. Rules, regulations, guidelines, and other published interpretations or orders issued by the Department of Labor, or any official thereof, for the purpose of carrying out this Act shall contain, with respect to each material provision of such rules, regulations, guidelines, interpretations, or orders, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based. All such rules, regulations, guidelines, and other interpretations and orders under this Act shall be published in the Federal Register at least thirty days prior to their effective date and copies thereof shall be transmitted to the appropriate committees of the Congress at such time.

(b) No authority conferred by this Act shall be used to enter into arrangements for, or otherwise establish, any training programs in the lower wage industries in jobs where prior skill or training is typically not a prerequisite to hiring and where labor turnover is high, or to assist in relocating establishments from one area to another Such limitation on relocation shall not prohibit assistance to a business entity in the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Labor finds that assistance will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless he has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(c) The Secretary shall not provide financial assistance for any program under this Act unless he determines, in accordance with regulations which he shall prescribe, that periodic reports will be submitted to him containing data designed to enable the Secretary and the Congress to measure the relative and, where programs can be compared appropriately, comparative effectiveness of the programs authorized under this Act. Such data shall include information on—

(1) enrollee characteristic, including age, sex, race, health, education level, and previous wage and employment experience;

(2) duration in training and employment situations, including information on the duration of employment of program participants for at least a year following the termination of participation in federally assisted programs and comparable information on other employees or trainees of participating employers; and

(3) total dollar cost per trainee, including breakdown between salary or stipend, training and supportive services, and administrative costs.

The Secretary shall compile such information on a State, regional, and national basis.

(d) The Secretary shall not provide financial assistance for any program under this Act unless the grant, contract, or agreement with respect thereto specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any program participant or any applicant for participation in such program because of race, creed, color, national origin, sex, political affiliation, or beliefs.

(e) The Secretary shall not provide financial assistance for any program under this Act which involves political activities; and neither the program, the funds provided therefor, nor personnel employed in the administration thereof, shall be, in any way or to any extent, engaged in the conduct of political activities in contravention of chapter 15 of title 5, United States Code.

(f) The Secretary shall not provide financial assistance for any program under this Act unless he determines that participants in the program will not be employed on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship.

(g) All laborers and mechanics employed by contractors or subcontractors in any construction, alteration, or repair, including painting and decorating of projects, buildings, and works which are federally assisted under this Act, shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a-5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 1, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

(h) With respect to public service employment programs assisted under section 201 (b) (15) of this Act, the Secretary shall establish appropriate procedures to ensure that all persons newly employed under any such program from funds made available from funds appropriated for fiscal years beginning after June 30, 1973, other than necessary technical, supervisory, and administrative personnel, will be selected from among unemployed and underemployed persons who are from economically disadvantaged backgrounds or have been unemployed for not less than fifteen weeks immediately prior to employment under such program.

(i) With respect to programs for offenders under this Act, the Secretary shall establish appropriate procedures to ensure that the following basic criteria are met—

(1) participants are provided with such manpower training and related assistance, and where appropriate supportive services (including basic education, drug addiction or dependency rehabilitation, health care and other services) and certification of completion of such training sufficient to enable them to secure and retain meaningful employment;

(2) programs, whenever feasible, provide for—

(A) participation of representatives of industry, and labor, employment personnel from the private sector of the economy, educational and vocational educational personnel, and qualified correctional personnel, in the development and conduct of programs to be assisted;

(B) maximum utilization of work experience, work-release, and cooperative training and the use of training equipment comparable to that currently used in the job for which training is furnished;

(C) assurances that prior arrangements have been made with appropriate parole, probationary, or judicial authority for release of participating offenders upon satisfactory completion of training;

(D) assurances that arrangements have been made or will be made with public or private employers for subsequent employment opportunities for the major portion of offenders participating in such program, upon satisfactory completion of training;

(E) assurances that, where appropriate, the agency of or organization conducting the program will provide (itself or by contract or other arrangement) for additional manpower training and supportive services for participants for a period of no less than twelve months following release from charges or a correctional institution but in no case shall such additional training exceed twenty-four months following such release.

(j) With respect to programs for persons of limited English-speaking ability under this Act, the Secretary shall establish appropriate procedures to ensure that—

(1) participants are provided with such manpower training and related assistance and supportive services which will increase the employment and training opportunities for unemployed and underemployed persons of limited English-speaking ability.

(2) programs and activities shall include, but shall not be limited to—

(A) planning for and developing training courses to teach skills and occupations that do not require a high proficiency in English, particularly courses which would use materials in languages other than English;

(B) developing and implementing programs designed to increase the technical English vocabulary necessary for the performance of specific occupations likely to provide employment opportunities for persons of limited English-speaking ability;

(C) developing programs designed to increase the number and improve the quality of bilingual training instructors and bilingual placement personnel;

(D) establishing, maintaining, and operating programs (including the acquisition of necessary teaching materials and equipment) designed to increase employment opportunities and advancement opportunities for persons of limited English-speaking ability, including programs which, whenever feasible, provide for—

(i) teaching occupational skills in the primary language of any such persons for occupations that do not require a high proficiency in English;

(ii) teaching specific technical English vocabulary necessary in the performance of certain skills in occupations which are in de-

mand and which such persons can be reasonably expected to perform;

(iii) developing programs, in cooperation with both existing and potential employers, designed to increase the English-speaking ability of such persons in order to enhance their opportunities for promotion;

(iv) assisting any such person to further develop and to capitalize on the bilingual ability of such person for jobs that require such skills;

(v) encouraging persons with limited English-speaking ability to seek employment, and encouraging employers to hire such persons;

(vi) disseminating to persons with limited English-speaking ability information in their primary language regarding the availability of jobs, regarding the availability of job training in their primary language, and regarding the availability of placement assistance by persons capable of conversing in the primary language of such persons; and

(vii) alternative scheduling of program or project activities designed to meet the needs of those individuals who might be unable to attend such training activities either during normal working hours or on a full-time basis.

NATIONAL EMPLOYMENT OPPORTUNITIES COUNCIL

SEC. 404. (a) The President shall appoint a National Employment Opportunities Council which shall consist of at least thirteen but not more than seventeen members and shall be composed of persons representative of labor, management, agriculture, public and private education, vocational education, vocational rehabilitation, employment and training programs, veterans organizations, women's organizations, and economic opportunity programs. From the members appointed to such Council, the President shall designate a chairman. Members shall be appointed for terms of three years except that (1) in the case of initial members, one-third of the members shall be appointed for terms of one year each and one-third of the members shall be appointed for terms of two years each, and (2) appointments to fill the unexpired portion of any term shall be for such portion only. Such Council shall meet in open session and shall hold not less than two meetings during each calendar year.

(b) The National Employment Opportunities Council shall—

(1) identify the employment goals and needs of the Nation and assess the extent to which vocational education, institutional training, vocational rehabilitation, employment and training, economic opportunity, and other programs under this and related Acts represent a consistent, integrated, and coordinated approach to meeting such needs and achieving such goals;

(2) review the administration and operation of the programs referred to in clause (1) and advise the Secretary of Labor and the Secretary of Health, Education, and Welfare and other appropriate officials as to the carrying out of their duties under this Act and related Acts;

(3) conduct independent evaluations of programs carried out under this and related Acts and publish and distribute the results thereof; and

(4) make recommendations (including recommendations for changes in legislation) for the improvement of the administration and operation of such programs including the programs authorized under this and related Acts.

(c) The National Employment Opportunities Council shall make an annual report, and such other reports as it deems appropriate on its findings, recommendations, and activities to the Congress and to the President. The President is requested to transmit to the Congress as a part of his report under section 405 of this Act such comments and recommendations as he may have with respect to such reports and activities of the National Employment Opportunities Council.

(d) The National Employment Opportunities Council may accept and employ or dispose of gifts or bequests, either for carrying out specific programs or for its general activities or for such responsibilities as it may be assigned in furtherance of subsection (b) of this section.

(e) Appointed members of the National Employment Opportunities Council shall be paid compensation at a rate of up to the per diem equivalent of the rate for GS–18 when engaged in the work of the National Employment Opportunities Council, including traveltime, and shall be allowed travel expenses and per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently and receiving compensation on a per diem, when actually employed, basis.

(f) The National Employment Opportunities Council is authorized, without regard to the civil service laws, to engage such technical assistance as may be required to carry out its functions; to obtain the services of such full-time professional, technical, and clerical personnel as may be required in the performance of its duties, and to contract for such assistance as may be necessary.

REPORTS

SEC. 405. (a) The Secretary of Labor shall make such reports and recommendations to the President as he deems appropriate pertaining to employment and occupational requirements, resources, use, and training, and his recommendations for the succeeding fiscal year, and the President shall transmit to the Congress within sixty days after the beginning of each regular session a report pertaining to manpower requirements, resources, utilization, and training.

(b) The Secretary of Labor and the Secretary of Health, Education, and Welfare shall report to the Congress on the extent to which community colleges, area vocational and technical schools and other vocational educational agencies and institutions, and vocational rehabilitation agencies are being utilized to carry out training programs supported in whole or in part from provisions of this and related Acts, the extent to which administrative steps have been taken and are being taken to encourage the use of such facilities and institutions and agencies in the carrying out of the provisions of this Act and any further legislation that may be required to assure effective coordination and utilization of such facilities and agencies to the end that all federally supported employment and training, vocational education, and vocational rehabilitation programs can more effectively accomplish their objectives of providing employment and training opportunities to all persons needing occupational training.

(c) The Secretary shall transmit to the Congress at the earliest appropriate date, but not later than March 1, of each calendar year a report setting forth a description of summer work experience programs to begin in June of such year, including the number of opportunities in public and private agencies or organizations that will be provided to disadvantaged students in ninth through twelfth grades (and to youth of equivalent ages), in each of the several States and local areas within States, and a statement as to the total number of such persons who would be eligible for such programs, together with his recommendations, if any, for supplemental appropriations for such programs.

(d) The Secretary, through the Bureau of Labor Statistics, shall annually compile and maintain information on the incidence of unemployment among offenders and shall publish the results of the information obtained pursuant to this subsection in the report required under subsection (a) of this section.

(e) The Chairman of the United States Civil Service Commission, in consultation with the Secretary, shall report to the President and to the Congress no later than six months after the effective date of this Act on the extent to which and manner in which employment opportunities for offenders may be increased in the Federal service, with special reference to the criteria used in determining the suitability of offenders for Federal employment, including such recommendations for additional legislation as they deem advisable.

ADMINISTRATIVE PROVISIONS

SEC. 406. (a) The Secretary may make such grants, contracts, or agreements, establish such procedures (subject to such policies, rules, and regulations as he may prescribe in accordance with section 403 of this Act), and make such payments, in installments and in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this Act, as he may deem necessary to carry out the provisions of this Act, including (without regard to the provisions of section 4774(d) of title 10, United States Code) expenditures for construction, repairs and capital improvements, and including necessary adjustments in payments on account of overpayments or underpayments. The Secretary may also withhold funds otherwise payable under this Act in order to recover any amounts expended in the current or immediately prior fiscal year in violation of any provision of this Act or any term or condition of assistance under this Act.

(b) The Secretary is authorized to exercise all powers necessary for the implementation of this Act, including the power (1) to rent or renovate real property without regard to any other law or regulation governing rental or renovation of such property, provided he first advises the Administrator of General Services Administration of his intent to do so and the reasons therefor, (2) to purchase real property for training centers, (3) to accept and use gifts and voluntary services for the benefit of the program, (4) to enter into contracts or agreements, (5) to make such payments in advance or by way of reimbursement as he may deem to be necessary or appropriate to carry out the provisions of the Act, and (6) to expend, without regard to the provisions of any other law or regulation, funds made available for purposes of this Act for printing and binding.

COOPERATION AMONG AGENCIES

SEC. 407. (a) Each department, agency, or establishment of the United States is authorized and directed to cooperate with the Secretary and, to the extent permitted by law, to provide such services and facilities as he may request for his assistance in the performance of his functions under this Act.

(b) The Secretary shall carry out his responsibilities under this Act through the utilization, to the extent appropriate, of all available resources for skill development available in industry, labor, public and private educational and training institutions, vocational rehabilitation agencies, and other State, Federal, and local agencies, and other appropriate public and private organizations and facilities, with their consent.

INTERSTATE AGREEMENTS

SEC. 408. In the event that compliance with provisions of this Act would be enhanced by cooperative agreements between States, the consent of Congress is hereby given to such States to enter into such compacts and agreements to facilitate such compliance, subject to the approval of the Secretary.

LABOR MARKET INFORMATION

SEC. 409. (a) In addition to the monthly national unemployment statistics, the Secretary shall gather by survey and publish on a regular basis data on unemployment, underemployment, and job vacancies by States, labor market areas, rural areas, cities, and poverty neighborhoods.

(b) For purposes of this section, underemployment shall include persons who have part-time but desire full-time work, discouraged workers not in the labor force, and persons earning less than the Federal minimum wage. Separate data shall be collected and compiled showing the total number of persons earning wages at levels lower than that sufficient to provide an annual income at the level of the lower living standard budget, as determined annually by the Bureau of Labor Statistics of the Department of Labor.

(c) Vacancy data shall include information on (1) how many unfilled jobs are available in the economy, by industry and occupation, (2) what are the capability requirements of such jobs, (3) salaries, wages, and other benefits of such jobs, (4) where jobs are located, and (5) how many and what kind of jobs remain unfilled for sixty days and for ninety days.

(d) The Secretary shall set aside, out of sums available under section 202(a)(2) of this Act, an amount which he determines is necessary and appropriate to enable him to carry out the provisions of this section, and shall no later than thirty days after such sums are made available notify the appropriate committees of the Congress of the amount so set aside and the basis for his determination of need and appropriateness.

Mr. JAVITS. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. NELSON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION—NOMINATION OF VINCENT R. BARABBA, OF CALIFORNIA, TO BE DIRECTOR OF THE CENSUS

The PRESIDING OFFICER (Mr. HELMS). Under the previous order, the Senate will now proceed to go into executive session to consider the nomination of Mr. Vincent R. Barabba, of California, to be Director of the Census.

On this matter there is a time limitation of one hour, to be equally divided between the Senator from Wisconsin (Mr. PROXMIRE) and the Senator from Wyoming (Mr. MCGEE), with time on any debatable motion or appeal to be limited to 10 minutes, divided between the majority and minority leaders or their designees.

The clerk will report the nomination.

BUREAU OF THE CENSUS

The assistant legislative clerk read the nomination of Vincent R. Barabba, of California, to be Director of the Census.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McGEE. 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. McGEE. Mr. President, may I ask, what is the pending business?

The PRESIDING OFFICER. The pending business is on the nomination of Mr. Vincent R. Barabba, of California, to be Director of the Census.

Mr. McGEE. Mr. President, while we have enough Senators in the Chamber, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. McGEE. Mr. President, I shall not take very many minutes in the presentation of the committee's action on the President's nominee to be Director of the Bureau of the Census. Mr. Barabba was interrogated by the committee in a session on the 20th of June and we found him to be acceptable as a nominee for the post.

In view of the fact that there were some dissenting views, the distinguished Senator from Wisconsin (Mr. PROXMIRE) who will be heard later on the question, testified fully before the committee on it, and a member of the committee, the distinguished junior Senator from Utah (Mr. Moss), likewise has been heard on the question.

So let me come to the point of the nomination and the issue. It is this: That there is nothing in Mr. Barabba's character, integrity, or record that would cast a shadow over his nomination.

The protest, as I understand it, from the hearings, derived from the fact that he is not a member of the professional American Statistical Association.

Now that can be a meritorious recommendation, but I think we have to be careful that we do not let the American Statistical Association decide that its members become the Director of the Bureau of the Census any more than we should let the lawyers decide the members of the Supreme Court. This is a prerogative of the Senate of the United States.

I respect professional societies and all their integrity and expertise; but may I say, as a member of several professional societies—the American Association of University Professors, to start with, and the American Historical Association—that that does not equip any of them to be an administrator in the academic world. Some of my colleagues in academe are brilliant administrators; some of them are the world's worst and ought never to be permitted outside the stacks in the library.

All we do is consider the recommendations of the professional societies and try to assess the caliber of the man. Nobody testified—not even the statisticians themselves—that this man was derelict or that he was in other ways incapable of filling the office. They simply thought he lacked the professional status.

I think we ought to go about this matter in perspective. Since 1941—mark that date—there have been six Directors of the Bureau of the Census. Under F. D. R., Harry Truman, Dwight Eisenhower, Jack Kennedy, L. B. J., and now Richard Nixon, two of the six had professional credentials; the others did not.

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

Mr. McGEE. I will yield on the Senator's time.

Mr. PROXMIRE. I will cover it later.

Mr. McGEE. The reason I say that is that others have asked for time to speak in favor of the nominee, and I have to protect them.

But to continue my point. The committee received no testimony to suggest any dereliction, any incapability, as an administrator over a very important office.

If we want to change the laws, if we want to change the requirements, we ought to spell them out by statute and not pass judgment ex post facto on a man who has been nominated for this kind of office. If we want to do that, let us get with it; and I suggest to those who object on those grounds that we get with it and change the requirements and the stipulations for that particular responsibility.

So I say that the committee's judgment—the majority of the committee—was that the nomination of Mr. Barabba to be Director of the Bureau of the Census should be approved.

Mr. Barabba, 38, was nominated by President Nixon to be Director of the Census on April 13, 1973. On May 1, he was appointed Special Assistant to the Assistant Secretary of Commerce for Economic Affairs and designated to serve as Acting Director of the Bureau of the Census pending confirmation.

Hearings were held on Mr. Barabba's nomination June 20 and the committee subsequently reported favorably on the nominee.

Mr. Barabba's business has been market research. He was chairman of the board of Decision Making Information, Inc., and before that president of Datamatics, Inc. He has done political polling, primarily for members of the Republican Party, but there has been no testimony presented to the committee which would implicate Mr. Barabba in any political activities of onerous character. Indeed, his confirmation has been supported by the chairman of the Democratic Party of southern California, Mr. Barabba's home area.

The majority of the committee, in reporting favorably on Mr. Barabba's nomination, has acted in the belief that a man should not be penalized for being involved in political activity and that professional standing in one specific discipline is not an overpowering consideration in the selection of an administrator to run a bureau employing a broad spectrum of specialists. In fact, of the last six Directors of the Census—since 1941—only two had professional statistics backgrounds.

The committee and certainly its chairman have given great consideration to the concern which emanates largely from the statistical profession, and from university campuses in particular, that the integrity of Federal statistics be safeguarded. But no testimony was offered the committee to impugn the integrity or character of the nominee. Nor did the

majority of the members of the committee feel that a new man, entering upon these responsibilities for the first time, could be held accountable for whatever deeds or policies were undertaken by his predecessors or his predecessors' superiors.

The position of Director of the Bureau of the Census is an important post in our Federal structure, since the Bureau develops data on which countless decisions, both in the public and the private sectors, are based. The importance of the post is indeed pointed up by the fact that the Senate is today devoting its attention to the nomination of a Director to head this Bureau. It is anomalous perhaps that his "boss" in the Department of Commerce is not subject to the same searching inquiry. The Committee on Post Office and Civil Service has looked into this nomination. Mr. Barabba perhaps is not the man that would have been chosen had other Senators held the power of nomination. But he cannot be held accountable for a strange table of organization. Whatever our feelings are concerning the administrator of SESA or the organization of the Commerce Department's statistical machinery, Barabba is not responsible for them. Changes in those realms are up to us and our colleagues in the House of Representatives.

Even the American Statistical Association, whose president has been most vocal in protesting the nominee's lack of professional qualifications, did not object to the confirmation of Vincent Barabba, personally, nor did anyone else.

If truth be told, the committee, being aware of the controversy surrounding this nominee, virtually solicited testimony from a number of organizations and individuals associated with the issue. But only Dr. Clifford Hildreth appeared, and he spoke as an individual and not as president of the American Statistical Association, which he is. The ASA in itself has not taken a position on Barabba's nomination.

The feeling of some obviously is that the heads of statistical agencies should be of high professional status and be in the career service. Those are the words taken directly from the report of the Joint Committee on Integrity of Federal Statistics formed by the American Statistics Association and the Federal Statistics Conference. But the law does not read thus.

The committee has examined the financial aspects of Mr. Barabba's nomination, and is satisfied that he has disassociated himself from any possible conflicts of interests. The majority has satisfied itself that there is nothing in his record to indicate that Mr. Barabba will be incapable of carrying out the duties of this office with integrity and efficiency. I am, therefore, unhesitant in recommending this nomination to my colleagues in the Senate.

The PRESIDING OFFICER. Who yields time?

Mr. McGEE. I yield to the ranking minority member of the committee, the Senator from Hawaii (Mr. FONG).

Mr. FONG. Mr. President, I rise to strongly support confirmation of Mr. Vincent P. Barabba to be Director of the Bureau of the Census.

Mr. Barabba was nominated to be Director of the Bureau of the Census on April 13, 1973. His nomination has been pending for over 3 months while the Senate Committee on Post Office and Civil Service investigated his qualifications.

A hearing on the nomination was held before the committee on June 20 at which time those in support of and those opposing the nomination were heard. It was the consensus of the majority of the committee members—six for and one against—that Mr. Barabba was qualified to be Director of the Census, and the nomination was favorably reported to the Senate by the committee on June 29.

During the hearing, I listened very closely to Mr. Barabba's testimony and to the others who testified on his nomination. I was impressed with the enthusiasm, knowledge, and plans for the future of the Bureau of the Census as expressed by Mr. Barabba.

So far as his personal honesty and professional integrity were concerned, no witness who appeared or who submitted a statement in opposition to Mr. Barabba questioned those characteristics of the nominee. To the contrary, they attested to his outstanding character. I was likewise impressed with his professional experience and perserverance for professional excellence.

He worked his way through college, obtaining a bachelor's degree, and then a masters in business administration, with a major in marketing at the University of California, Los Angeles. He obtained his master's degree by working as a teaching assistant and then as a research assistant and finally as an instructor in marketing.

His expertise in the field of marketing was recognized professionally by his peers to the extent that he was invited to present reports on marketing and research at the John Fitzgerald Kennedy School of Government, University of Kansas; the National Association of Manufacturers; the Harvard Business School; the Walter Perry Johnson Institute of Law and Politics, University of California; the U.S. Chamber of Commerce; and the California State Chamber.

He began his professional career as president of Datamatics, Inc., which was later merged with Wirthlin Research to form Decision Making Information, Inc., a California marketing and research firm. Prior to Mr. Barabba's nomination as Census Bureau Director, he was chairman of the Board of Decision Making, Inc.

As a member of the American Marketing Association. he served as adviser to that association's census advisory committee. He served as consultant to the Census Bureau's Private Industry Task Force of the Southern California Regional Information Study. He has also served as consultant to the American Medical Association's committee on electronic data processing in medicine, and advised to the Southern California Center for Education in Public Affairs, Inc.

He has had a distinguished professional career in the field of marketing, marketing research, and data collection. He has had vast experience in the field of computers, computer systems programming, demography, statistical methodology, and analysis. In his professional career, he has worked virtually daily with Census Bureau data and is thoroughly familiar with Census Bureau data and the many possibilities of using such information. He has directly highly sophisticated computer operations and techniques, including pioneering efforts in software planning and programing, utilizing both in 1960 and 1970 census data.

The firms with which he has been associated have done more than 500 different surveys and similar work in 35 States. In the last 7 years, he has traveled more than a million miles, doing statistical work of one kind or another, and has worked with professional statisticians in all parts of the country.

In forming Decision Making Information, Inc., in February 1969, the intent and purpose of the company was to perform the most professional demographic analysis and survey research possible. The success of the company is evident from the fact that it went from annual revenues of about $200,000 in 1969—when it was first formed—to some $2 million in 1972. It also grew from a firm of 10 employees to 122 employees in 1972.

One of the great strengths Mr. Barabba will bring to the Bureau of the Census is his knowledge of user needs. His professional work has always been to provide essential statistical data to his clients. This parallels the purpose of the Census Bureau very closely, which is to provide our society with reliable census information on which all of us can make more reasonable and knowledgeable decisions.

I am convinced he would be a great asset to our Federal Government's statistical gathering services. The Census Bureau is undergoing the strains of a period of great transformation. It must gear up for unprecedented demands to furnish our people with more and more statistical assistance and information. I believe Mr. Barabba can fill this great need of the Census Bureau.

The opponents of his nomination base their objections on the fact that he is not a professional statistician. The committee gave great consideration to this point and concluded that it was not critical to Mr. Barabba's nomination.

In considering this point, the committee went into the qualifications of past Bureau Directors, particularly those who enjoyed reputations of being outstanding Directors.

Of the past six Directors of the Census, only two were professional statisticians. In fact, Mr. Richard M. Scammon, who served as Director, Bureau of the Census, from 1961 to 1965, and who enjoys the reputation of being one of the most effective Directors in the history of the Census Bureau, had no previous Census Bureau or professional statistical experience. He was appointed to be Census Bureau Director in 1961.

I ask unanimous consent to have printed in the RECORD at this point a biographical sketch of Mr. Scammon as

furnished to the Committee on Post Office and Civil Service by the American Statistical Association.

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

FORMER DIRECTORS OF BUREAU OF THE CENSUS—RICHARD M. SCAMMON (1961–65)

BIOGRAPHICAL SKETCH

Education

University of Minnesota, A.B.—1935.
University of Michigan, M.A.—1938.
London School of Economics.

Experience

1961–65—Bureau of the Census, Director.
1955–61—Director of the Elections Research Center, Washington.
1948–55—Chief, Division Research for Western Europe, Department of State.
1946–48—Chief, Political Activities Branch, Civil Administration Division, Office of Military Government for Germany (United States).
1945–46—Political Officer, Land Wuerttemberg-Baden.
1941–46—Army service in the United States and Western Europe.
1939–41—Research Secretary, NBC Round Table radio broadcasts, University of Chicago.

Honors and professional affiliations

Chairman of United States delegation to observe elections in USSR, 1958.
American Immigration and Citizenship Conference, Vice President.
American Arbitration Association, Board of Directors.
Lecturer at: Howard University, Johns Hopkins University, George Washington University, York University.

Publications

Editor, *America at the Polls*, 1965.
Co-author, *This U.S.A.*, 1965.
Editor, *America Votes*, Volumes 1–9, 1956–1972.

Source

Furnished by Mr. Scammon; *Who's Who.*

Mr. FONG. Also, I ask unanimous consent that similar biographical sketches of the other Census Bureau Directors be printed in the RECORD.

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

FORMER DIRECTORS OF BUREAU OF THE CENSUS

BIOGRAPHICAL SKETCH, ROBERT W. BURGESS (1953–61)

Education

Brown University, A.B.—1908.
Cornell University, Ph. D.—1914.

Experience

1953–61—Bureau of the Census, Director.
1924–52—Western Electric Company: Senior Statistician, Chief Statistician, Chief Economist.
1918–19—United States Army (includes a period on the statistics branch of the General Staff).
1916–17 and 1920–25—Brown University, Teacher of Mathematics.
1912–16—Cornell University, Teacher of Mathematics.
1911–12—Purdue University, Teacher of Mathematics.

Honors and professional affiliations

Rhodes Scholar, 1908–1911.
BLS Business Research Advisory Council founding member, Chairman, 1952.
Conference of Business Economists.
Economic Research Round Table, Chairman.
American Statistical Association, Fellow.

Publications

Introduction to the Mathematics of Statistics, 1927.
Many articles in professional journals.

Source

The American Statistician, October, 1969.

FORMER DIRECTORS OF BUREAU OF THE CENSUS—A. ROSS ECKER (1965–69)

BIOGRAPHICAL SKETCH

Education

Hamilton College, A.B.—1922.
Harvard University, A.M.—1928.
Harvard University, Ph. D.—1934.

Experience

1965–69—Bureau of the Census, Director.
1949–65—Bureau of the Census, Deputy Director.
1939–49—Bureau of the Census.
1935–39—Work Projects Administration, Washington, D.C., Assistant Director of Research.
1931–35—Harvard Business School, Assistant Librarian and Instructor in Public Utility Economics.
1924–31—Harvard Economic Society, Statistician and Director of Statistical Laboratory.

Honors and professional affiliations

Department of Commerce Exceptional Service (Gold Medal) Award, 1961.
National Civil Service League Award, 1962.
Honorary Fellow Royal Statistical Society.
International Statistical Institute, Member.
Inter-American Statistical Institute, Member.
National Economists Club, Member.
National Bureau of Economic Research, Conference on Research in Income and Wealth, Member.
Other Scientific Organizations, Member.
United States Delegate or Representative at Conferences of International Organizations: International Statistical Institute; International Labor Office; Conference on Improvement of National Statistics.

Publications

"The Continuous Population and Labour Force Survey in the United States." *Family Living Studies*, XIII, a symposium published by the International Labour Office, Geneva, 1961
"Extent and Character of Errors in the 1950 Censuses of Population and Housing." *American Statistician*, Vol. 7, No. 5, December 1953.
"Measuring the Accuracy of Enumerative Surveys." *International Statistical Institute Bulletin*, Vol. XXXIII, Pt. IV, page 7, (jointly with Leon Pritzker) December 1951.
"Response Variance and Biases in Censuses and Surveys." *International Statistical Institute Bulletin*, Vol. XXXVI, Pt. 2, (jointly with William N. Hurwitz).
"The Revised Census Series of Current Employment Estimates." *Journal of the American Statistical Association*, June 1945, Vol. 40, pages 187–196.

Source

American Statistical Association files.

FORMER DIRECTORS OF BUREAU OF THE CENSUS—GEORGE HAY BROWN (1969–72)

BIOGRAPHICAL SKETCH

Education

Oberlin College, A.B.—1929.
Harvard University, M.B.A.—1931.
University of Chicago, Ph. D. (Economics)—1945.

Experience

1969–72—Bureau of the Census, Director.
1954–69—Ford Motor Company, Dearborn, Michigan, Manager/Director, Marketing Research Office.
1937–54—University of Chicago, Instructor/Professor (since 1947) of Marketing.
1950–54—Director of Business Problems Bureau.
1948–50—Director of Development for the Biological, Physical and Social Science Divisions of the School of Social Service and the School of Business.
Marketing Consultant to: Armour and Company; The Chicago Tribune; General Mills, Inc.; Toni Division, Gillette, Inc.; Motorola; and others.
1931–36—Mallinckrodt Chemical Works, Saint Louis, Missouri, Divisional Sales Manager.

Honors and professional affiliations

American Statistical Association.
American Marketing Association, Past President.
American Psychological Association, Affiliate by Invitation, Consumer Division.
Beta Gamma Sigma.
Cosmos Club, Member.
National Press Club, Member.
National Marketing Advisory Committee, Executive Committee, United States Department of Commere.
Marketing Science Institute, Trustee.
Advertising Research Foundation, Executive Committee.
Foundation for Research on Human Behavior, Trustee.
Better Business Bureau Research and Education Foundation, Research Committee.

Publications

"The International Economic Position of New Zealand." *Journal of Business*, 1946.
Readings in Marketing and Price Policy (with Jenck and Peterson). Editor: Marketing Series, Henry Holt and Company, 1951.
Contributions to various economic journals 1950–55.

Source

Commerce Department official Biography and *Who's Who.*

Mr. FONG. Mr. President, judging by the qualifications of past Census Bureau Directors, I believe Mr. Barabba is as well qualified to be appointed Director as any of the previous Directors and may be better qualified than most.

His success in running a company involved in gathering and interpreting statistics speaks very highly of his administrative abilities.

His expertise in the field of computers and the use of computers in statistical gathering and interpretation likewise is recognized by his professional peers.

His character and honesty has never been questioned by the opponents of his nomination and has been attested to by his supporters.

His enthusiasm and dedication to his work is unbounded.

He has received support from Republicans and Democrats alike including Mr. Charles Mannatt, past chairman of the Democratic Party of California and presently chairman of the Democratic Party of Southern California.

I believe Mr. Barabba has the personal characteristics, the professionalism, the knowledge, and the ability to become a great Census Bureau Director and I urge the Senate to confirm his nomination.

Mr. PROXMIRE. Mr. President, I yield myself such time as I may require.

The PRESIDING OFFICER. The Senator may proceed.

Mr. PROXMIRE. Mr. President, I oppose the nomination of Mr. Vincent R. Barabba to be Director of the Census. I

do that for a number of reasons. There have been few nominations in my 16 years in the Senate that I have opposed with greater conviction than I presently oppose this nomination.

CRISIS OF CREDIBILITY

We have a crisis of credibility in the Federal statistics programs. In these circumstances those who are appointed to head major statistical agencies should have outstanding professional qualifications if they are to be confirmed by the Senate.

Mr. Barabba does not qualify as a professional and he does not meet the standards established by the American Statistical Association and the Federal Statistical Users Conference for appointment to head major statistical agencies including the Bureau of the Census.

Because of their overriding concern with what was happening to the Federal statistical programs, those two groups issued an "Integrity Report" early this year, before the nomination of Mr. Barabba, establishing the minimum qualifications to head Federal statistical agencies.

RECOMMENDATIONS OF AMERICAN STATISTICAL ASSOCIATION AND FEDERAL STATISTICAL USERS CONFERENCE ON QUALIFICATIONS OF CANDIDATES

Here are the recommendations:

The leadership of the Government's statistical programs should be of demonstrated professional competence and free of political influence.

The committee recommends that specific qualities be identified for screening potential appointees to head Federal statistical agencies. Our specific suggestions are that as a minimum the candidates should meet most of the following characteristics and be selected without regard for political affiliation:

First. Membership in a professional statistical association such as—American Statistical Association, Biometric Society, Institute of Mathematical Statistics, and the Econometric Society—and membership in one other professional society—American Economic Association, Population Association of America, National Association of Business Economists, American Sociological Association, Industrial Relations Association, and so forth—for at least 5 recent years.

Second. Ability to make new contributions to knowledge in the field of statistics, or subject matter areas of the agency involved, as evidenced by publication of articles in professional journals, or awards by Federal statistical agencies.

Third. National recognition in the field of statistics as evidence by honors, such as a fellow of ASA, member of ISI, high office in professional society or major publication.

Fourth. Demonstrated professional achievement such as evidenced by successful operation of major statistical projects, by promotions to successively higher position in the Federal statistical organization or working in a responsible statistical position in private industry, education, nonprofit, or labor.

CANDIDATE FAILS TO MEET ASA-FSUC STANDARDS

Compare, Mr. Barabba's record with those standards. Mr. Barabba does not meet the first standard that the candidate should have been a member in a professional statistical association for at least 5 years.

He has made no new contributions to knowledge in the fields of statistics or at the Census Bureau as demonstrated, for example, by writing in a professional publication. Certainly the so-called presentations mentioned in the résumé he presented to the Committee would not qualify as new contributions to knowledge.

The statistical organizations have not given him national recognition in the professional field. In fact, they are raising the gravest doubts about his appointment.

Whether he meets the recommended requirement that he show demonstrated professional achievement by successful operation of major statistical projects, by promotions to successively higher positions in the Federal statistical organization, or working in a responsible statisical position in private industry, education, nonprofit organization or labor, is very doubtful.

Mr. Barabba may well be qualified to be appointed to any number of posts in the Federal Government. But he does not have the quaifications to head the Census Bureau and, especially, he does not possess the qualifications needed now.

EXECUTIVE COMMITTEE OF THE AMERICAN ECONOMIC ASSOCIATION OPPOSES THE BARABBA NOMINATION

Not only does Mr. Barabba not meet the standards proposed by the ASA and the FSUC but, in an unusual action, the executive committee of the American Economic Association has issued a statement opposing Mr. Barabba's appointment.

In it they state that Mr. Barabba does not appear "to have the high professional qualifications required for the demanding tasks of overseeing the gathering and reporting of the Federal statistics on which analysis and forecasting for the U.S. economy are necessarily based."

It also urges the Senate Post Office and Civil Service Committee "to submit his qualifications to the most searching scrutiny and to reject his nomination unless evidence of relevant professional qualifications not apparent to us is found in that process."

The statement was unanimous. It was signed by 15 of the top economists in the United States; namely, Irma Adelman, Kenneth J. Arrow, George H. Borts, James S. Duesenberry, Robert Eisner, Rendigs Fels, John Kenneth Galbraith, Robert Heilbroner, Walter W. Heller, Lawrence R. Klein, John R. Meyer, Guy Henderson Orcutt, Joseph A. Pechman, Mark Perlman, and James Tobin.

This statement by the AEA along with those of the ASA and FSUC are among the most severe indictments of the qualifications of a candidate that I can remember in my 16 years in the Senate. I ask unanimous consent that the statement of the AEA's executive committee and the covering letter to me be printed at this point in the RECORD.

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

AMERICAN ECONOMIC ASSOCIATION,
Nashville, Tenn., July 6, 1973.

Sen. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: At the request of Walter Heller, President-elect of the American Economic Association, I am enclosing herewith a copy of a statement on the federal statistical services and the nomination of Vincent Barabba as Director of the Census. The statement has been approved by a mail vote of the Executive Committee of the Association.

Approved: Irma Adelman, Kenneth J. Arrow,* George H. Borts, James S. Duesenberry, Robert Eisner, Rendigs Fels, John Kenneth Galbraith,** Robert Hielbroner, Walter W. Heller, Lawrence R. Klein, John R. Meyer, Guy Henderson Orcutt, Joseph A. Pechman, Mark Perlman, James Tobin.*

Disapproved: None.

*Suggested minor changes in statement.

**Approved in principle orally before statement was written.

Sincerely yours,

RENDIGS FELS,
Secretary-Treasurer.

STATEMENT OF THE EXECUTIVE COMMITTEE OF THE AMERICAN ECONOMIC ASSOCIATION ON INTEGRITY IN THE FEDERAL STATISTICAL SERVICES

We are deeply concerned over the issue of intrusion of political influence into the process of reporting and collecting Federal statistics. Symptoms of such intrusion are the increasing use of political rather than professional staff to release and interpret Federal economic statistics, the forced resignations of highly qualified statistician-economists like Dr. Geoffrey Moore as Commissioner of Labor Statistics and Dr. George Hay Brown as Director of the Bureau of the Census, and the appointments of Mr. Vincent Barabba as Acting Director of Census and Mr. Edward D. Failor as Administrator of the Social and Economic Statistics Administration.

Our immediate concern is that neither Mr. Barabba nor Mr. Failor appears to have the high professional qualifications required for the demanding tasks of overseeing the gathering and reporting of the Federal statistics on which analysis and forecasting for the U.S. economy are necessarily based. Their service to Mr. Nixon in the 1972 political campaign may well qualify them for some appropriate recognition, but we question the wisdom of political appointments to such exacting professional positions. Such appointments will reinforce doubts about the integrity of Federal statistics and threaten the quality of Federal data hitherto viewed as among the best, perhaps the best, in the world.

Since Mr. Barabba's appointment is subject to Senate confirmation, we urge the Senate Post Office and Civil Service Committee to submit his qualifications to the most searching scrutiny and to reject his nomination unless evidence of relevant professional qualifications not apparent to us is found in that process.

Our broader and longer-range concern is over the quality and integrity of the Federal statistical services as a whole. In this connection, we fully endorse the four recommendations of the select committee of the American Statistical Association and the Federal Statistics Users' Conference, as follows:

1. Heads of statistical agencies should be nonpolitical professionals of high stature and reputations and be in the career service.

2. These heads of agencies should have direct control of their own activities partic-

ularly with respect to hiring and firing, budget and planning, and publication.

3. Data should be released on a fixed, free stated time schedule by the agency which produced the data.

4. Advisory committees to statistical agencies should be selected without regard for political affiliation with a number of specific appointments from professional statistical organizations.

Mr. PROXMIRE. Mr. President, I prepared a speech against the confirmation of the nomination of Mr. Barabba, but it was not until 2:30 p.m. today that I was presented by the chairman of the committee with this rough draft material from the hearings. I have glanced through the material, and I must say that my case is infinitely stronger because of the material that I did not see until this afternoon.

Here is a man who is opposed by other associations. I learned earlier that the American Economic Association unanimously opposes this nomination.

NONCONTROVERSIAL—EVERYONE AGAINST

As I said, 2:30 p.m. today the chairman gave me this information for the first time. In the few minutes I have had to look at it, I was astonished at the unanimity and universality of the opposition to this nominee. I can say this without fear of contradiction. This is not a controversial appointment. There is no controversy here. The agencies unanimously overwhelmingly oppose it. None of the professionals favor it.

As I said, when I appeared against the Barabba appointment I said I was sure he was a man of integrity and decency. I was astonished that with the exception of Senator HANSEN and some of the members of the Post Office and Civil Service Committee, there seemed to be no support for Mr. Barabba.

Imagine if you will, Mr. President, that not one single organization using the statistics for which Mr. Barabba would be responsible as Census Director, has expressed support for the Barabba nomination.

A large number of the most prominent organizations using Federal statistics and relying critically on the quality and reliability of the statistics which the Census Bureau under Mr. Barabba's direction will produce, oppose his nomination.

At the time I appeared against the Barabba nomination, I was unable to cite any specific opposition to Mr. Barabba as head of the Census Bureau.

On the basis of material that has just been provided to me, I now find the case against Mr. Barabba is overwhelming.

AMERICAN STATISTICAL ASSOCIATION OPPOSED

Take the American Statistical Association. This is the organization consisting of professional statisticians, in American business, in the professions, the great universities and in government who rely on the Census Bureau for the raw material with which they must work.

In extensive correspondence between Clifford Hildreth, president of the American Statistical Association and Chairman McGEE and between Mr. Hildreth and Secretary of Commerce Dent the opposition of this critical organization and to Mr. Barabba is made emphatic and clear. Mr. Hildreth makes such comments as these:

With the exception of Mr. Barabba's brief service on a Census Advisory Committee, I find no evidence that (he) has had statistical training, experience or contact with the statistical profession. Such appointments are in direct conflict with the judgments of responsible statisticians including a large number who have rendered outstanding service to the Bureau and other government agencies.

Mr. Hildreth also wrote about the Barabba appointment as follows:

The central idea in the recent ASA-FSUC report on integrity was that at the very least political appointments to statistical agencies raised reasonable public doubts about the integrity of the statistical gathering and dissemination process. This alone greatly reduces the value of Federal statistics. Events of the past several years and the expressions of concern that have come from many sources amply confirm this contention. If political appointments are allowed to continue actual political manipulation of data is a possibility. Manipulation of time and manner of releasing data gathered are already widely believed to have been politically motivated.

He is saying that unemployment data, the data on the cost of living, the data on the gross national product and the income of this country may be distorted, may be doctored. There is that kind of fear in this country. We have to realize when we are discussing this in the atmosphere of Watergate that it is real.

Then, he says:

I cannot see how appointees who have not had training and experience in statistics or social sciences can administer statistical programs in these areas better than capable administrators who have had relevant training and experience. A head who can understand the technical problems faced by his staff and who can directly share in the evaluation of proposed improvements would appear to be in a much better position to strengthen the statistical analytical functions of the Social and Economic Statistics Administration.

EXECUTIVE COMMITTEE OF AMERICAN ECONOMIC ASSOCIATION OPPOSED

Since I appeared before the committee, the executive committee of the American Economic Association has issued a statement unanimously opposing the appointment of Mr. Barabba.

AMERICAN ASSOCIATION OF PUBLIC OPINION RESERCH RAISES DOUBTS

A few minutes ago, I discovered for the first time in going through the material from the hearing that the American Association of Public Opinion Research meeting in Ashville, N.C., on May 20 of this year adopted the folowinlg resolution unanimously:

The integrity and accuracy of Census data are vital to our political and economic systems and to the practice of public opinion research. It is essential that the Bureau of the Census remain free of political influence and that it continue to attract professional personnel of the highest caliber. It's director must be an individual who can command the respect and confidence of its staff and of users of the Census data.

We strongly urge the Senate to keep these criteria in mind and to consider with exceptional care the credentials of any nominee for this office.

Now, Mr. President any fair-minded, objective, reasonable person would recognize that the Association of Public Opinion Research is telling us in the clearest, most emphatic way that a man of Barabba's background is simply not qualified.

AMERICAN SOCIOLOGICAL ASSOCIATION OPPOSED

Mr. President, I have also just discovered that on June 3, 1973, the Council of the American Sociological Association representing more than 14,000 members was informed of the challenge to the nomination of Vincent Barabba, as Director of the Bureau of the Census. By unanimous resolution the association was instructed to convey to Dr. Clifford Hildreth, president of the American Statistical Association their: "total support in Hildreth's efforts to convince the administration and the Senate of the United States that this type of appointment to this key post constitutes a grave threat to the integrity of day-to-day collection and dissemination by the Bureau of the Census."

Mr. President, this is a sociological organization that needs this data, that relies on it, has to have it, and they go to the extraordinary length of passing a resolution, and doing it unanimously, opposing this particular nomination. It has 14,000 members.

BIOMETRIC SOCIETY SPEAKS OUT

Mr. President on June 4 Dr. Hildreth was informed that the regional advisory board of the Biometric Society had discussed at some length this Census Bureau appointment and voted unanimously to go on record as being against such appointment and affirmed their support to the resolution passed by the American Statistical Association.

AMERICAN PSYCHOLOGICAL ASSOCIATION OPPOSITION

On June 15 the executive officer of the American Psychological Association wrote to Dr. Hildreth expressing its concern that political consideration might influence the appointment of individuals to head the Census Bureau and joining the American Statistical Association in its hope that appointments to head the agency would be of individuals of demonstrated statistical competence and administrative skill and not on the basis of political consideration.

INSTITUTE OF MATHEMATICAL STATISTICS DISTRESSED

Mr. President I have also just learned that on June 15 the Council of the Institute of Mathematical Statistics expressed the society's distress concerning the grave implication of the appointment of Vincent Barabba to head the Bureau of the Census.

NO PROFESSIONAL GROUP SUPPORTS HIM

So there you have it, Mr. President. Here is a nominee opposed by every association that would use the output of the Census Bureau, that has gone on record at all on this nomination. Whatever group has expressed an opinion has given an emphatic "no."

And who is for this nominee, is there a single group that uses Federal statistics—an organization that uses the output of the Census Bureau in any way that favors Vincent Barabba for this appointment? Is there just one? Just one?

Mr. President there is not only not a single solitary group that says this is a

good appointment. The supporters of this nominee could not even find one single economist or statistician or mathematician or other professional who would support him for this nomination. Not one.

The verdict is unanimous. Barabba may be a nice fellow like millions of other Americans, but he clearly does not have the professional qualifications to do this job.

Where are the supporters of Vincent Barabba? Well, we have the chairman of the Democratic Party in California. We have a Senator from his State, which, obviously, is a courtesy. We have other politicians in the Senate and out, in the administration and elsewhere. But the people who use these data, who rely on them, whose life and whose work depend on the data, unanimously oppose the nomination.

It is a funny thing, we would be outraged—I am sure I would be as a Redskin football fan—if Charlie Ferris were named as coach of the Washington Redskins. He is a nice fellow, but we would be outraged if he were named to coach the Washington Redskins, or if HUBERT HUMPHREY were named as coach of the Washington Redskins.

Mr. HUMPHREY. Oh, that is going too far.

Mr. PROXMIRE. These are men of intelligence and ability, who I am sure would do well in many endeavors, and we all love them, but they could not coach a professional football team. Coaching a professional football team takes complex training. It takes ability to understand football. It takes great experience. Yet we put in as head of the Census Bureau, this complicated organization, with many statisticians, a man who is a nice guy, who does not have an enemy in the world, we are told. There are millions of people like that. We could walk out on the street and tap on the shoulder many people like that. Yet they go ahead and make him head of the Census Bureau. They make a person with no qualifications in this field the head of a very important Government agency.

SENATE SHOULD EXERCISE THE POWER OF ADVISE AND CONSENT

The fact is Mr. President that the Senate Post Office and Civil Service Committee did not uncover any relevant professional qualifications which would qualify Mr. Barabba to hold this job, as the AEA Committee asked them to do. This nomination comes before us with the support of the committee in spite of the fact that the man is not qualified for the job.

Senators often say that the President should have the right to appoint the individuals he wants to run his administration and that in general we should approve them. I agree with that except for two circumstances.

First, the President must appoint "qualified" men and women.

Second, the person must not have some conflict of interest or absence of integrity or moral lapse which clearly disqualified him.

Now Mr. Barabba to my knowledge is an honest and moral man who has no conflicts of interest or disqualifications of that kind, of which I am aware.

But, he is simply not qualified for this job. And for the Senate to approve him in these circumstances is a failure of the Senate to exercise its right and power to advise and consent.

What good is that power if we fail to exercise it when unqualified men are sent to us for highly skilled jobs?

Many people believe that the Congress of the United States in the past few years has given up far too much of its power to the executive branch. Certainly with respect to warmaking power and the power of the purse strings, many of the criticisms are justified.

In the case of the power to advise and consent, unless we perform our job and actually test candidates by reasonable standards, that power will atrophy. And that, indeed is what has happened in too many cases where we approve men for high office who are unqualified.

Mr. President, I do want to touch on one other matter before I am through, because, as I have said, we are in an entirely different situation today than we were a couple of years ago.

ISSUE OF STATISTICAL CREDIBILITY

Let me briefly address the issue of the statistical credibility gap in the Government and state why the reliability and credibility of the Government statistics are under question. This is important because it is the framework in which Mr. Barabba's nomination comes before us.

A series of recent events has threatened the public confidence in the government's figures. About 2 years ago, on orders of the White House, the Bureau of Labor Statistics stopped holding their monthly press conferences by their professional staff. This occurred when the professional staff expert characterized a small decline in the unemployment figures as "marginally significant" while the Secretary of Labor referred to it as "highly significant."

PRESS CONFERENCES ENDED

The monthly professional press conferences were then abruptly halted. Key BLS professionals, including the man who referred to the figures honestly as "marginally significant." were reorganized out of their jobs. In effect, they were fired. Then overly optimistic interpretations of the monthly figures by political figures from the White House itself were substituted for the public analysis by the professionals. One month, in fact, when the unemployed figures went up, the political spokesman claimed they had improved. He did this on grounds that unemployment had gone up less than had been expected. Thus an increase in unemployment became good news and the equivalent of a significant decline.

I am going to emphasize this, because Senators can understand why the professionals are so concerned about this. Usually no nomination before the Senate gets this unusual response. We do not get people writing in vigorously supporting or opposing, one way or the other. In this instance, we get a uniform response from the professionals who would use these data.

UNPRECEDENTED ACTION—BLS COMMISSIONER FIRED

Ultimately Dr. Geoffrey Moore, the head of the BLS and both a loyal administration supporter and an honest professional, was fired from his job. This was the first time in the nearly 90 year history of the Bureau of Labor Statistics that a Commissioner had been removed before the completion of his term of office. Mr. Ewan Clague, for example, served five Presidents of both parties and until the Nixon administration the Commissioner has always been considered a nonpolitical official.

Meanwhile some statistical series which were unpalatable to the administration were interrupted and their names changed. The "poverty" figures, for example, were suspended and the name changed to "low income."

CONSTERNATION OVER BARABBA APPOINTMENT

I can tell you that in the context of the events of the past 2 years these two appointments have caused great consternation and have created a credibility gap among those who depend on Federal statistics and their interpretation.

No one claims that the statistics themselves have been corrupted. But the interpretation of the statistics, the punishment meted out to the professionals, the firing of Geoffrey Moore, and the Barabba appointment have raised the most serious questions as to whether the figures, yet alone their interpretation, will remain objective, unbiased, and honest.

PREVIOUS HEADS MET ASA STANDARDS

Let me answer one of the charges made by the Senator from Wyoming (Mr. MCGEE). He said that the last six heads of this agency were men who did not have the kind of qualifications, with the exception of two, which are being demanded now by the American Statistical Association. The fact is that that point was met head-on by Mr. Hildreth. Mr. Hildreth went through each of the previous heads, and he pointed out that each was better qualified than Mr. Barabba. He admitted that only two were members of the American Statistical Association, but he pointed out that the others were men who met the other three criteria and met them in some cases with great distinction. So it is not a fact that we are asking for an extraordinary standard in the case of Mr. Barabba. We are asking for the same kind of standards which were met since 1942, but we have a different ball game now. We have a far more complex statistical situation, because the development of statistics has progressed apace, and we have more concern in the integrity, honesty, and reliability of the statistics we use.

DANGERS OF FABRICATED FIGURES

If we allow nonprofessional and unqualified men to head two or more key statistical agencies, we are opening the door to potentially great abuse. Consider this scenario.

Without resort to burglary, bugging, breaking and entering, or other criminal acts, the statistics on unemployment, prices, and other matters vitally affecting the economy and political and public

opinion, could be "cooked" or "doctored" on the eve of a close election.

Incredible? Fantastic? Equity Funding fabricated hundreds of millions of dollars of phoney insurance policies through computer manipulation. Men at the highest levels of Government are now deeply involved in criminal acts committed for the purpose of winning an election.

But jiggering the basic Federal statistics could be done without resorting to crime. While it is a crime for citizens to give false information to the Government, it does not yet appear to be a crime for the Government to give false information to its citizens. An election could be influenced or rigged without resorting to criminal acts merely by manipulating the crucial figures. The temptations are even greater than resorting to crimes. That is why on July 11 I introduced S. 2139 to make it a crime to issue false statistical reports.

These statistics could be doctored without breaking the law or going to jail. All we have to have is a person who is politically motivated and does not have the kind of professional standards that would make him more concerned with his obligation to the profession and to the integrity of his statistics, and we have a situation in which the course of the election could be changed.

PROFESSIONALS WILL RESIST COOKING THE FIGURES

Men of high professional qualifications are far more likely to resist "cooking" the key figures than those with no professional background. The former have their professional pride and the esteem of their peers to offset the pressures from political superiors.

But what happens if the political figures are put in the professional jobs? What if their basic experience is that of regional director of a Presidential campaign, as an official of CREEP—Committee to Reelect the President—writing partisan speeches, or as a political lobbyist for narrow economic interest, as in the case with Edward D. Failor? Or what if it includes experience only marginally involved in professional statistical activities, political polling, and membership in professional organizations only on the eve of appointments to statistical advisory committees, as is the case with Mr. Barabba?

NEED MEN OF FORTITUDE BASED ON PROFESSIONAL KNOWLEDGE

Will men of this kind have the fortitude to stand up to the preelection pressures to politicize the figures when their careers have been built by trying to win elections? Will they hold fast or will they go along with the pressures as "team players"?

We need someone who has devoted his life to the honest and revealing reporting of statistical information, who takes deep and incorruptible pride in this, and who would place his loyalty to truth and to the reporting of the truth before he would place his loyalty to the President of the United States if asked to act improperly.

It would be bad enough to have a professional at SESA and a nonprofessional at the Census Bureau, or to have a nonprofessional at SESA and a professional at the Census Bureau. But to have nonprofessionals at both in the present atmosphere is merely to invite a loss of public confidence and a widening of the credibility gap which already exists.

CENSUS BUREAU FIGURES QUESTIONED

There is one further point which should be made. During the taking of the 1970 census there was an admitted undercount of about 5 million Americans, some 3.5 million whites and 1.8 million blacks.

The undercount and the places where the undercounting took place can have a profound effect on both our economic and our political democracy.

Congressional districts are based on the census figures. According to Dr. Robert Hill of the National Urban League, the undercount of black's could account for as many as five congressional seats. That is the political aspect of the census undercount. This appeared in the New York Times just this morning.

Revenue sharing is also involved because it is based in large part on population. And it appears that the major part of the black undercount was in the central cities, or so it is claimed by the spokesmen for the Urban League. This means that tens and even hundreds of millions of dollars in revenue sharing funds will not go to the central cities but which will be distributed elsewhere unless provisions are made for the undercount.

Now that will be the job of the Director of the Bureau of the Census. It is a job calling for the highest sense of right and wrong, the highest professional qualifications, and the complete absence of political bias.

Yet, in these circumstances, the President has proposed a man for this job whose only major qualification is that he was a political pollster for the President.

I ask unanimous consent that an article from today's New York Times entitled "Census Bureau Criticized for 1970 Count On Black's," be printed at this point in the RECORD.

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

CENSUS BUREAU CRITICIZED FOR 1970 COUNT ON BLACKS

(By C. Gerald Fraser)

WASHINGTON, July 23.—Statistics took center stage at the National Urban League convention today and all were a matter of dispute.

Dr. Robert B. Hill, the league's director of research, said that most of the almost 2 million black persons missed by 1970 census takers were in New York City. He said that the undercounting meant in terms of political representation that the 2 million blacks lost the equivalent of five Congressmen.

James T. Lynn, Secretary of Housing and Urban Development, said that if Congress passed the Better Communities Act, the Administration would distribute $2.3-billion into local communities, exceeding the appropriations for the Federal programs they would replace.

Eddie N. Williams, president of the Joint Center for Political Studies, a black think tank, argued that with revenue sharing, "you see a hurt put on the cities, where we [black people] are, and a bonanza for the suburbs, where we ain't."

Mr. Wiliams contended that Seattle, Pittsburgh, Baltimore and St. Louis all under revenue sharing, would lose Federal funds in the next five years, while their surrounding counties would gain.

The league's annual conference moved into its first full day at the Washington Hilton Hotel. The group's senior vice president, Wendell G. Freeland, said that 2,724 persons had registered. At that rate this would be the largest meeting in the group's 63-year history, he said.

In presenting his report, Dr. Hill said he was offering for the first time details of the 1970 census undercount for black and white Americans in 50 states and 36 selected cities.

The league undertook its research, he said, after "the Census Bureau maintained that it was unable to pinpoint, city by city and state by state, the actual extent" of the 8 per cent undercount of the black population. The undercount involved 1.8-million blacks and 3.5-million whites.

Because the census figures are used as a basis for determining Congressional representation and allocation of billions of dollars of Federal funds, the league sees them as crucial, he said.

Dr. Hill said his principal findings were that the states with the largest number of persons missed were California (525,068), New York (493,774), and Illinois (303,137).

States with the largest blacks missed were New York (186,352), California (171,515) and Illinois (114,575).

Cities with the largest number of all persons missed were New York (260,931), Chicago (131,337) and Los Angeles (94,514), he continued.

Cities with the largest number of blacks unaccounted for were New York (143,048) Chicago (87,935) and he said, about 50,000 each in Detroit, Los Angeles and Philadelphia.

Dr. Hill estimated that the bureau's "deficient procedures" cost New York State about $15.1-million in revenue-sharing funds, California $14.9-million and Illinois $7.5-million.

SENATE MUST INSIST ON HIGHLY QUALIFIED NOMINEES

Mr. PROXMIRE. The time has come to insist upon highly qualified and highly trained men for these posts. Political appointees with marginal backgrounds are not enough.

The head of the Bureau of the Census should not be a political appointee and the Senate should not advise and consent to his nomination.

The Senate should reject the nominee as unqualified for the position. I think it is imperative that the Senate reject the nomination of Mr. Barabba. While he is a decent and very fine man who, I am sure, would grace many jobs, he does not have the professional qualifications to fill this position.

I ask unanimous consent that the correspondence between Mr. Hildreth and the chairman of the committee and between Mr. Hildreth and Secretary of Commerce Dent, as well as the statement of a number of organizations concerning Mr. Barabba's nomination be printed at this point in the RECORD.

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

AMERICAN STATISTICAL ASSOCIATION,
Washington, D.C., June 25, 1973.

HON. GALE W. MCGEE,
The U.S. Senate,
Washington, D.C.

MY DEAR SENATOR MCGEE: I shall reply as well as I can to your questions that were handed me at the end of last Wednesday's

hearing on the nomination of Vincent P. Barabba as Director of the Census.

"It is my understanding that of the past six Directors of the Bureau, only two have been professional statisticians. Is that correct to the best of your knowledge?"

This question would be more pertinent if we asked how many of the past six Directors had substantial training and/or experience in statistics and social science. I am not aware that anyone contends that the Director should necessarily be a professional statistician. The qualifications formulated by the ASA–FSUC Committee are intended to insure substantial statistics-social science background in a form that can be assessed by profesional people and, to some extent, by the general public.

My reply to your question as it was given to me is yes, only Mr. Burgess and Mr. Eckler were professional statisticians in the sense that statistics was their chief field. If you let me broaden the criteria to include social scientists with substantial backgrounds in statistics as intended by ASA–FSUC, then I would say that three of the past six (Burgess, Eckler, Brown) satisfied our criteria extremely well at the time of their appointments; two others (Scammon, Capt) satisfied the criteria pretty well; and one was questionable. Capt (1941–1950) seems an interesting case. Friends of mine who knew him indicate that he was a very effective Director though he had not much formal training. He did, however, rise through successively higher government posts in the seven years prior to becoming Director in 1941 and demonstrated competence for the position in this way. He served two years as Assistant to the Director and, in this capacity, had the main responsibility for organizing the 1940 enumerators.

For whatever interest it may be, I have enclosed biographical sketches of the past four Directors whose terms cover the past twenty years. The sketches include the positions and other professional experiences of each man up to the time he was named Director; honors and publications appearing after assuming the Directorship are excluded. Thus, except for the line showing the period as Director, each sketch shows what would have appeared at the time of appointment.

"Is it more important for the administrator at the top of an agency to have these professional qualifications, would you say, or for the operating levels—the various divisions—to be headed by professionals in the field?"

In an agency as thoroughly concerned with statistics as the Bureau of the Census, I believe it is vital that the administrator and the operating chiefs have appropriate professional qualifications. With specific reference to Census, I believe the Director should have substantial backgrounds in statistics and social science regardless of his primary specialty. Professional requirements for Division Chiefs vary, of course, with the task of the division, but most should have substantial statistics training and/or experience.

One reason for this view is the belief that the technically trained personnel are entitled to have at least one of their number with direct access to an Assistant Secretary and, if necessary, the Secretary. Under the present organization of the Department of Commerce, this requires that both the Director of the Census and the Administrator of the Social and Economic Statistics Administration be professionally qualified individuals. Additional reasons for believing that top administrators should have statistical and social science qualifications are given on pages two and three of my prepared testimony.

Let me emphasize that, beyond minimal initial training, the necessary subject-matter qualifications need not be acquired in an academic setting. Our best estimate regarding distribution of (nonstudent) ASA membership is that 37 percent are in academic pursuits, 35 percent are government employees, and 28 percent are working in business and industry. All of these areas include many who are working in positions that enable them to grow and to demonstrate the qualities that are needed in top administrative posts of Federal statistics agencies.

"What is your understanding about the operating division heads today—do they meet what the American Statistical Association considers to be appropriate professional qualifications?"

Of the eight or nine Division Chiefs or Associate Directors who were well known and very highly respected in the statistics profession, four have announced resignations or early retirements in the past year * * *

FORMER DIRECTORS OF BUREAU OF THE CENSUS
ROBERT W. BURGESS (1953–1961)

BIOGRAPHICAL SKETCH

Education

Brown University, A.B.—1908
Cornell University, Ph. D.—1914

Experience

1953–1961—Bureau of the Census, Director
1924–1952—Western Electric Company: Senior Statistician, Chief Statistician, Chief Economist.
1918–1919—United States Army (including a period on the statistics branch of the General Staff)
1916–1917 and 1920–1925—Brown University, Teacher of Mathematics
1912–1916—Cornell University, Teacher of Mathematics
1911–1912—Purdue University, Teacher of Mathematics

Honors and Professional Affiliations

Rhodes Scholar, 1908–1911
BLS Business Research Advisory Council founding member, Chairman 1952
Conference of Business Economists, Economic Research Round Table, Chairman
American Statistical Association, Fellow

Publications

Introduction to the Mathematics of Statistics, 1927
Many articles in professional journals

Source

The American Statistician, October, 1969

FORMER DIRECTORS OF BUREAU OF THE CENSUS—RICHARD M. SCAMMON (1961–1965)

BIOGRAPHICAL SKETCH

Education

University of Minnesota, A.B.—1935.
University of Michigan, M.A.—1938.
London School of Economics.

Experience

1961–1965—Bureau of the Census, Director.
1955–1961—Director of the Elections Research Center, Washington.
1948–1955—Chief, Division Research for Western Europe, Department of State.
1946–1948—Chief, Political Activities Branch, Civil Administration Division, Office of Military Government for Germany (United States).
1945–1946—Political Officer, Land Wuerttemberg-Baden.
1941–1946—Army service in the United States and in Western Europe.
1939–1941—Research Secretary, NBC Round Table radio broadcasts, University of Chicago.

Honors and Professional Affiliations

Chairman of United States delegation to observe elections in USSR, 1958.
American Immigration and Citizenship Conference, Vice President American Arbitration Association, Board of Directors.
Lecturer at: Howard University; Johns Hopkins University; George Washington University; and, York University.

Publications

Editor, *America at the Polls*, 1965.
Co-author, *This U. S. A.*, 1965.
Editor, *America Votes*, Volume 1–9, 1956–1972.

Source

Furnished by Mr. Scammon; *Who's Who*.

FORMER DIRECTORS OF BUREAU OF THE CENSUS—A. ROSS ECKLER (1965–1969)

Biographical Sketch

Education

Hamilton College, A.B.—1922.
Harvard University, A.M.—1928.
Harvard University, Ph.D.—1934.

Experience

1965–1969—Bureau of the Census, Director.
1949–1965—Bureau of the Census, Deputy Director.
1939–1949—Bureau of the Census.
1935–1939—Work Projects Administration, Washington, D.C., Assistant Director of Research.
1931–1935—Harvard Business School, Assistant Librarian and Instructor, in Public Utility Economics.
1924–1931—Harvard Economic Society, Statistician and Director of Statistical Laboratory.

Honors and Professional Affiliations

Department of Commerce Exceptional Service (Gold Medal) Award, 1961.
National Civil Service League Award, 1962.
Honorary Fellow Royal Statistical Society.
International Statistical Institute, Member.
Inter-American Statistical Institute, Member.
National Economists Club, Member.
National Bureau of Economic Research, Conference on Research in Income and Wealth, Member.
Other Scientific Organizations, Member.
United States Delegate or Representative at Conferences of International Organizations: International Statistical Institute; International Labor Office; Conference on Improvement of National Statistics.

Publications

"The Continuous Population and Labor Force Survey in the United States." *Family Living Studies*, XIII, a symposium published by the International Labour Office, Geneva, 1961.
"Extent and Character of Errors in the 1950 Censuses of Population and Housing." *American Statistician*, Vol. 7, No. 5, December 1953.
"Measuring the Accuracy of Enumerative Surveys." *International Statistical Institute Bulletin, Vol.* XXXIII, Pt. IV, page 7, (jointly with Leon Pritzker) December 1951.
"Response Variance and Biases in Censuses and Surveys." *International Statistical Institute Bulletin*, Vol. XXXVI, Pt. 2, (jointly with William N. Hurwitz).
"The Revised Census Series of Current Employment Estimates." *Journal of the American Statistical Association*, June 1945, Vol. 40, pages 197–196.

Source

American Statistical Association files.

FORMER DIRECTORS OF BUREAU OF THE CENSUS—GEORGE HAY BROWN (1969–72)

BIOGRAPHICAL SKETCH

Education:

Oberlin College, A.B.—1929; Harvard University, M.B.A.—1931; University of Chicago, Ph. D. (Economics)—1945.

Experience:

1969–1972—Bureau of the Census, Director.
1954–1969—Ford Motor Company, Dearborn, Michigan; Manager/Director, Marketing Research Office.
1937–1954—University of Chicago, Instructor/Professor (since 1947) of Marketing.

1950–1954—Director of Business Problems Bureau.

1948–1950—Director of Development for the Biological, Physical and Social Science Divisions of the School of Social Service and the School of Business.

Marketing Consultant to:
Armour and Company,
The Chicago Tribune,
General Mills, Inc.,
Toni Division, Gillette, Inc.,
Motorola, and others.

1931–1936—Mallinckrodt Chemical Works, Saint Louis, Missouri, Divisional Sales Manager.

Honors and Professional Affiliations:

American Statistical Association.
American Marketing Association, Past President.
American Psychological Association, Affiliate by Invitation, Consumer Division.
Beta Gamma Sigma.
Cosmos Club, Member.
National Press Club, Member.
National Marketing Advisory Committee, Executive Committee, United States Department of Commerce.
Marketing Science Institute, Trustee.
Advertising Research Foundation, Executive Committee.
Foundation for Research on Human Behavior, Trustee.
Better Business Bureau Research and Education Foundation, Research Committee.

Publications

"The International Economic Position of New Zealand." *Journal of Business*, 1946.
Readings in Marketing and Price Policy (with Jenck and Peterson). Editor: Marketing Series, Henry Holt and Company, 1951.
Contributions to various economic journals, 1950–1955.

Source

Commerce Department official Biography and *Who's Who*.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 15, 1973.

Mr. CLIFFORD HILDRETH,
President, American Statistical Association, Washington, D.C.

DEAR MR. HILDRETH: This will acknowledge with thanks the special report on The Integrity of Federal Statistics prepared by the Federal Statistics Users' Conference and the American Statistical Association.

You have my assurance that the report will receive full consideration by this office and by other personnel associated with the Commerce Department's statistical programs.

The continuing and valued interest of the FSUC and the ASA in these matters is appreciated.

Sincerely,

FREDERICK B. DENT,
Secretary of Commerce.

AMERICAN STATISTICAL ASSOCIATION,
Washington, D.C., April 30, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.

MY DEAR MR. SECRETARY: During the two and one-half weeks that have elapsed since the announcement of Mr. Failor's appointment as Administrator of the Social and Economic Statistics Administration and Mr. Barabba's nomination as Director of the Census, I have made numerous inquiries of my associates in the statistics profession to try to learn something of the statistics backgrounds of the men selected. With the exception of Mr. Barabba's brief service on a Census Advisory Committee. I find no evidence that either the appointee or the nominee has had statistical training, experience, or contact with the statistical profession.

Such appointments are in direct conflict with the judgments of responsible statisticians including a large number who have rendered outstanding services to the Bureau of the Census and/or other government agencies. These judgments were restated in a recent report of a joint committee of the American Statistical Association and the Federal Statistics Users Conference about which I wrote you in February. Your kind asknowledgment in March contained your assurance "that the report will receive full consideration by this office and by other personnel associated with the Commerce Department's statistical programs". I am unable to reconcile this assurance with the recent announcement.

The designations of Mr. Failor and Mr. Barabba for these vital posts underscore our Committee's recommendation (page three) that heads of statistical agencies should be in the career services. Census, SESA, and BLS were particularly cited.

I deeply hope the criteria stated by our Committee will be recognized in filling current and future vacancies. ASA will continue to cooperate in any way possible to maintain and improve all Federal statistical programs. However, it is our firm conviction that our efforts and those of statisticians in government cannot be highly effective unless the programs are headed by good administrators of demonstrated statistical competence.

Sincerely yours,

CLIFFORD HILDRETH,
President.

THE SECRETARY OF COMMERCE,
Washington, D.C., May 11, 1973.

Dr. CLIFFORD HILDRETH,
President, American Statistical Association, Washington, D.C.

DEAR DR. HILDRETH: Thank you for your letter of April 30 expressing your concern about the filling of executive positions in the Department of Commerce.

Mr. Edward D. Failor is the Administrator of the Social and Economic Statistics Administration and Mr. Vincent P. Barabba has been nominated as Director of the Bureau of the Census. It is my expectation that both of these gentlemen will sustain and strengthen the present high quality and integrity of the statistical and analytical functions of the Social and Economic Statistics Administration.

Every key professional and managerial position in this agency up through the Director of the Bureau of Economic Analysis, the Deputy Director of the Bureau of the Census, and the Assistant Administrator of SESA is filled by a long-term career employee with acknowledged technical qualifications, credentials, and expertise. It is my judgment that the abilities of Messrs. Failor and Barabba will complement these recognized technical resources with administrative and managerial skills enabling the constituent Bureaus of SESA to improve and enlarge their roles in their respective fields.

As you know, the Bureau of the Census and the Bureau of Economic Analysis have undergone considerable growth during the past few years. At this time, they have reached levels of activities and staffing which require more intensive administrative management than heretofore required. Messrs. Failor and Barabba were selected to fill that management role.

I appreciate your continuing interest in our activities and shall be happy to receive your views concerning them in the future.

Sincerely,

FREDERICK B. DENT,
Secretary of Commerce.

AMERICAN STATISTICAL ASSOCIATION,
Washingtoin, D.C., May 25, 1973.

Hon. FREDERICK B. DENT,
The Secretary of Commerce,
Washington, D.C.

MY DEAR MR. SECRETARY: Your letter of May 11 is appreciated, but I must disagree sharply with its implications. The central idea in the recent ASA-FSUC report in integrity was that, at the very least, political appointments to statistical agencies raise reasonable public doubts about the integrity of the statistics gathering and dissemination process. This alone greatly reduces the value of Federal statistics. Events of the past several years and the expressions of concern that have come from many sources amply confirm this contention.

If political appointments are allowed to continue, actual political manipulation of data is a possibility. Manipulations of time and manner of releasing data, and kinds of data gathered, are already widely believed to have been politically motivated. Satisfactory alternative explanations have not been offered.

Even if, which I gravely doubt, the question of integrity could somehow be resolved, the question of effectiveness of Federal statistical programs would remain a crucial matter. I agree that good administration is vital in SESA and Census, but I cannot see how appointees who have not had training or experience in statistics or social sciences can administer statistical programs in these areas better than capable administrators who have had relevant training and experience. A head who can understand the technical problems faced by his staff and who can directly share in the evaluation of proposed improvements would appear to be in a much better position to "strengthen . . . the statistical and analytical functions of the Social and Economic Statistics Administration".

Sincerely yours,

CLIFFORD HILDRETH,
President.

THE SECRETARY OF COMMERCE,
Washington, D.C., June 16, 1973.

Dr. CLIFFORD HILDRETH,
President,
American Statistical Association,
Washington, D.C.

DEAR DR. HILDRETH: Thank you for your letter of May 25 conveying your views on the recent appointment of Mr. Edward D. Failor as Administrator of the Social and Economic Statistics Administration and the nomination of Mr. Vincent P. Barabba as Director of the Bureau of the Census.

I understand and respect the concern which you express, and I appreciate your continued vigilance in this area. Messrs. Failor and Barabba were selected within the framework of an historical political process which vests in the President both the power and the authority to appoint individuals of his own choosing, in some cases with the consent of the Senate, to various positions in Government. That process has been operating under every President from Washington to Nixon.

One might engage in endless debate on the qualifications of various individuals to hold and execute public office. It is fair to say that very few individuals would enjoy universal endorsement from all segments of the population and all special-interest groups. While the political process may have placed these men in a position to be recognized by the President, once they assume office, each takes an oath to uphold the Constitution and to carry out the duties of his respective office. Mr. Failor has already taken such an oath, and Mr. Barabba, with the consent of the Senate, will take a similar oath. On assuming office, they are charged with a public trust to administer their respective organizations in an effective and efficient manner, observing professional and technical honor, integrity, and competence. During the administration of their duties, they will be subject to the scrutiny of the Executive and Legislative Branches, of the press, of special-interest groups, such as the one you represent, and of the public in general. They are at all times responsible to answer for their actions both to the Executive and Legislative Branches.

I know both men to be of high personal character, and I firmly believe that they will execute the public trust vested in them in exemplary fashion. While I respect your right, as a member of a special-interest group, to freely voice your opinion at any time during the appointive process, I believe that it is unfair to prejudge these men before they have had an opportunity to carry out the functions of their respective offices and establish records which may be held up to public scrutiny.

As to other points raised in your letter, you infer that somehow the outputs of the Bureau of Economic Analysis and the Bureau of the Census have been subject to political manipulation. The lack of support for this charge is demonstrated not only by your own ASA–FSUC study but also by a recent exhaustive investigation by the House Committee on Post Office and Civil Service. The ASA–FSUC report clearly indicates that part of your primary finding is that ". . . there is no evidence that statistical results have been altered to support a particular point of view. . . ." The House Committee on Post Office and Civil Service reported that after interviewing 65 individuals interested in Federal statistics: "The 65 persons interviewed were practically unanimous in the opinion that the gathering, assembling, and reporting of the statistical data was free of politics. This was based on the high regard for the ability, integrity, and professionalism of the technicians concerned. No criticism was expressed concerning the reliability and validity of the statistical data." The Committee concluded: "The Subcommittee's staff found no supportive evidence of conspiratory politicization of Federal statistics."

Your second inference appears to link the appointments of Messers. Failor and Barabba with a hazard to the integrity of the statistical and analytical programs which are or will be under their jurisdictions. I find this implication especially disturbing, because I am not aware of a shred of evidence to support any question about the honesty and integrity of these two gentlemen.

To allay your misgivings, I invite you to come to Washington, at your convenience, for on-site discussions with Messrs. Failor and Barabba as well as with your choice of career staff members of SESA.

I am confident that as the future reveals itself, the Bureau of the Census and the Bureau of Economic Analysis will enhance their excellent reputation to the gratification of the ASA and kindred professional groups.

Sincerely,

FREDERICK B. DENT,
Secretary of Commerce.

AMERICAN STATISTICAL ASSOCIATION,
Washington, D.C., June 19, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.

MY DEAR MR. SECRETARY: In response to your letter of June 16, I have to say that the only objections I have expressed regarding Messrs. Failor and Barabba are that they seem to lack the qualifications that leading statisticians, social scientists, and other users of Federal statistics believe are needed in these key positions.

In rereading my letter of May 25, I do not find any claims that outputs of BEA or Census have been subject to political manipulation. I did say that time and manner of releasing data and kinds of data gathered are widely believed to have been politically motivated. This is intended to refer not specifically to Census but to such events as cancellation of BLS press conferences, references to economic indicators in policy speeches before release by the statistical agency, and discontinuance of the Urban Employment Survey.

I appreciate your invitation to visit SESA and will seek an early opportunity.

Sincerely yours,

CLIFFORD HILDRETH,
President.

MAINTAINING THE PROFESSIONAL INTEGRITY OF FEDERAL STATISTICS

A REPORT OF THE AMERICAN STATISTICAL ASSOCIATION—FEDERAL STATISTICS USERS' CONFERENCE COMMITTEE ON THE INTEGRITY OF FEDERAL STATISTICS

Introduction and Summary

Origin of Committee

In late 1971, the Federal Statistics Users' Conference Board of Trustees appointed a Subcommittee to obtain further details and information concerning the personnel reassignments and reorganization of Federal statistical agencies. In early 1972, the President of the American Statistical Association was authorized by the ASA Board of Directors to appoint representatives of that Association to a joint ASA–FSUC Committee on the Integrity of Federal Statistics to draw up a statement reaffirming the need for a Federal statistical system of unquestioned integrity and to develop recommendations concerning procedures designed to protect the integrity of the Federal statistical system.

Growing Concern

During the past two years the integrity of the Federal statistical system has come into question. There is growing concern that the Federal statistical system may become politicized to the extent that political expediency may override the canons of professionalism and objectivity which have long characterized major statistical agencies of the U.S. Government.

Accurate and reliable Federal Statistics are absolutely essential if the ongoing policy and planning needs of private and governmental users alike are to be satisfied.[1] The critical role of the Federal statistical system—including all major statistical organizations which are involved in the collection, compilation, analysis, and distribution of a wide range of indicators of the health and well-being of the U.S. socioeconomic system—has been underscored during the current struggle to reduce the rate of inflation and to reduce the level of unemployment in the American economy. The Federal statistical system generates a large number of annual, quarterly, monthly, and even weekly statistical indices which relate to these problem areas which have center stage among current domestic issues.

Wide public concern about the extension of political control over professional statistical agencies was highlighted at the time of the Bureau of Labor Statistics' cancellation of press conferences concerning unemployment and employment data (March 19, 1971). These concerns were heightened as a result of several major developments concerning the Federal statistical agencies. These other developments included:

(1) Reassignment of personnel and reorganization of the Bureau of Labor Statistics,[2] especially those persons previously associated with the press conferences which had been discontinued.

(2) A number of specific personnel shifts and several premature retirements of top level statistical personnel in important statistical agencies, including the U.S. Bureau of the Census.

(3) A reorganization of statistical agencies within the Commerce Department which resulted in a merger of analytical and policy agencies, reducing significantly the authority and power of the major operating statistical agency.

(4) Temporary discontinuance by the Bureau of Labor Statistics of the Urban Employment Survey which, since 1969, had been providing labor force and other information about residents in poverty areas in major metropolitan centers.[3]

These specific events were inevitably accompanied by charges and countercharges concerning the intent and desirability of the actions. For example, two congressional committees investigated these developments.[4] Hearings were published by the Joint Economic Committee. The Subcommittee on Census and Statistics of the House Committee on Post Office and Civil Service issued a report on October 5, 1972, entitled "Investigation of Possible Politicization of the Federal Statistical Programs".

Other professional associations have also expressed concern about this matter. For example, the Industrial Relations Research Association (IRRA) which has a particular interest in labor force statistics formed a committee chaired by Professor Killingsworth, Michigan State University, to explore the specific charges which related to the Bureau of Labor Statistics. Concerns have also been expressed formally and informally by the members of the American Sociological Association, the Population Association of America, American Economic Association, The Econometric Society, and the National Bureau of Economic Research's Conference on Research in Income and Wealth.

Approach Taken

In view of the wide-ranging interest in problems relating to the integrity of the Federal statistical system, the ASA–FSUC Committee elected to review the record generated by the Congressional hearings and investigations, the official statements of responsible appointed officials, and to discuss informally with selected government and nongovernment officials the appropriate policy and administrative actions to be taken at this time to assure that public confidence in Federal statistics will not be undermined.

In view of the importance of this issue, the Committee chose to conduct its deliberations in a quiet, nonpolitical context with the hope of providing general guidelines concerning effective policy in this area, purposely scheduling its report for release following the National election. This report summarizes the activities and conclusions reached by this Committee.

The Committee decided not to focus on specific charges or allegations since other reports have covered this ground and, importantly, since it is clearly difficult to prove misuse of political power in such specific instances. Rather, the Committee notes that, because of the number of actions which have given rise to public concern, it is essential,

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[1] Appendix A includes a discussion of the needs for reliable statistics which are evident in government, labor, industry, and universities.

[2] A statement by the Secretary of Labor concerning the role of the Bureau of Labor Statistics and emphasizing that "the Bureau maintain, in the highest degree, scientific independence and integrity" appears in *The Statistical Reporter*, Dec. 1972, pp. 91–92.

[3] According to the Statistical Policy Division of OMB, during the period when the Current Population Survey was being revised on the basis of the 1970 Population Census, the Urban Employment Survey was discontinued because the cost of continuing the Survey seemed excessive relative to the value of the Survey. This discontinuance was recommended by a technical committee composed of representatives from the various statistical agencies.

[4] The public concern regarding these developments is further evidenced in a series of news commentaries, letters to the editors, and editorials. A selected list of such articles is available from the Committee Chairman.

at this time, to focus on both the importance of Federal statistics for policy analysis and on identifying and recommending policy for maintaining the integrity of the Federal statistical system in the future. While most developments in and of themselves appear to have had a seemingly plausible and acceptable rationale, their frequency of occurrence and conjuncture in a realtively short time period (with all the disturbing implications falling on the same side) have naturally raised suspicion and concern among a broad and diversified body of users and professional statisticians. These events continued to occur during the period of the Committee's deliberations.

Working Premise

Beginning with the basic judgement that the essential function of the Federal statistical system is to provide the best possible measures of social, biological, physical, and economic factors which are essential as the foundation for analysis, policy formulation, and for the effective administration and evaluation of public and private programs, the Committee believes that the system must include several basic ingredients:

(1) The statistics themselves must be accurate, consistent, and timely.

(2) The public must have confidence in the statistics which are generated and in the professional ability of the people who produce them.

(3) Statistical programs must be continually revised and improved to reflect new characteristics of the subjects being measured and embrace new subjects as national priorities change. These revisions must be undertaken on the basis of sound statistical principles to assure that the refinements continually result in more reliable and more sensitive statistical indicators.

(4) Technical measures of reliability and sensitivity should be available to define the uncertainties and limitations associated with specific series. This requires equal attention to be given to the gathering of basic stratistical data and to the compilation, adjustment, and presentation of the resulting analytical measures and statistical reports.

These characteristics are discussed in the body of this report.

Considerable attention has been given by the statistical profession to procedures for improving the quality and character of specific statistical series. Recently, a broad review of the production and use of statistics in the Federal Government was completed by the President's Commission on Federal Statistics.[5] The Commission emphasized the need for developing a broad view in government of the scope of statistical activities including specific attention to coordinating statistical activities, eliminating obsolete programs, building public confidence in data gathering, and improving the comparability of statistical series.

In contrast, little attention has been given to steps that have been taken, or additional steps that need to be taken, to develop public confidence in the Federal statistical system, or to identify policy measures which will ensure wide professional respect for a diverse, multifaceted statistical system. Nevertheless, this Committee believes that there are certain principles which should be emphasized at this time to provide an opportunity for maintaining and building public confidence in the integrity of the Federal statistical system. These recommendations have been developed to parallel the four conditions which are outlined in the body of this report as the basis for building a credible statistical system.

Recommendations of the Committee

Based upon the findings which are stated at the end of this report, the ASA-FSUC Committee on the Integrity of Federal Statistics believes that there is sufficient concern so that specific steps should be taken to allay fears concerning the politicization of the Federal statistical system and to assure the maintenance of high-level, professional statistical work. In light of the importance of such concerns, the Committee urges immediate and careful consideration of the following recommendations. The recommendations are grouped in relation to the conditions outlined above; the order of listing does not imply any priority.

Accurate, Consistent, and Timely Statistics. In order to assure that the Federal statistical system is capable of providing the best measures of social and economic factors which are essential as the foundation for analysis, policy formulation, and for the administration and evaluation of public and private programs, it is essential that the statistics themselves, as collected and developed, be accurate, consistent, and timely. As a policy recommendation for achieving this objective the Committee recommends:

(1) The Statistical Policy Division of the Office of Management and Budget should be encouraged in their efforts to broaden their directive (Circular No. A–91, "Prompt Compilation and Release of Statistical Information"[6]) to apply to all possible statistical series as a means of better assuring the timely flow of statistics.

(2) The Statistical Policy Division should continue to be led by recognized professional statisticans who have experience in both the Federal statistical system and have established recognition as professional statisticians in their own right. The Division should report to the top level of the Office of Management and Budget.

(3) The Office of Management and Budget should encourage establishment through a recognized professional agency—such as the National Academy of Sciences, the American Statistical Association, etc.—of an ombudsman position whose role is focused on receiving professional and lay criticisms of the Federal statistical system.

The ombudsman role can be particularly significant in evaluating the conceptual base of specific statistical programs. The conceptual base used for defining a statistical series can be influential in relation to political interpretation of the resulting data. Consequently, a high-level professional with resources to call upon specialists, operating as an ombudsman for the professional community could be an important contributor to assuring an independent point of view with regard to critical statistical series.

Public Confidence in the Federal Statistical System. A key factor in assuring public confidence in the Federal statistical system is the professional statistician's evaluation of the quality of the effort by such agencies. Hence, the Committee makes the following recommendations concerning the organization and professionalization of Federal statistical work.

(1) Heads of statistical agencies should be in the career service, a practice which has been and is now observed in all areas except for the Director of the Bureau of the Census, Administration of the Social and Economic Statistics Administration (SESA), and the Commissioner of Labor Statistics.

The leadership of the government's statistical programs should be of demonstrated professional competence and free of political influence.

The Committee recommends that specific qualities be identified for screening potential appointees to head Federal statistical agencies. Our specific suggestions are that as a minimum the candidates should meet most of the following characteristics and be selected without regard for political affiliation:

(a) Membership in a professional statistical association such as American Statistical Association, Biometric Society, Institute of Mathematical Statistics, and the Econometric Society—and membership in one other professional society (American Economic Association, Population Association of America, National Association of Business Economists, American Sociological Association, Industrial Relations Association, etc.) for at least five recent years.

(b) Ability to make new contributions to knowledge in the field of statistics, or subject matter areas of the agency involved, as evidenced by publication of articles in professional journals, or awards by Federal statistical agencies.

(c) National recognition in the field of statistics as evidenced by honors, such as a Fellow of ASA, member of ISI, high office in professional society or major publication.

(d) Demonstrated professional achievement such as evidenced by successful operation of major statistical projects, by promotions to successively higher position in a Federal statistical organization or working in a responsible statistical position in private industry, education, nonprofit, or labor.

(2) The heads of major statistical agencies should have direct control of such functions as appointments of personnel, budget priority setting, program planning, and publications.

A removal of these functions from the statistical bureau creates an unfortunate reduction in the effectiveness of the professional statisticians, weakening the Federal statistical system.

(3) In the release of the data, care should be taken to stress the professional statistical production agency—not the department with overall policy responsibility. Initial release should be made by the production agency, except in cases where one agency performs contract services for another. This is particularly true where two individual agencies are created for separate production and analysis.

Specifically, the production agency should be responsible for technical adjustments to the data such as seasonal adjustments and determination of comparability with previous time series. This may mean a major upgrading of the dedication and competence of the statistics-producing sections of agencies which are basically regulatory or administrative.

(4) Because of the importance of technical advisory committees, guidelines should be established to guarantee the selection and rotation of memberships on such committees without regard for political affiliation and with a number of specific appointments from appropriate professional organizations.

In particular, the Federal Advisory Committee Act (92d Congress, HR4383) should be followed. Consistent with the intent of this Act, the present Committee recommends that the membership of advisory committees to statistical agencies include a number of appointments to be made by[7] recognized professional organizations such as the American Statistical Association, Industrial Relations Research Association, Federal Statistics Users' Conference, American Economic Association, the National Association of Business Economists, the American Sociological Association, etc. (This is consistent with the requirement that the membership of advisory committees be fairly balanced in terms of the points of view represented with specific attention to the professional point of view.) Further, it is recommended by this Committee that the meeting dates for key statistical agency advisory committees be published through professional society publications in addition to announcement in the Federal Register. This will create the opportunity for

[5] *The President's Commission on Federal Statistics.* Volumes I and II, 1971.

[6] Revision of A–91, dated Apr. 26, 1972.

[7] An alternative would be sumbit a slate of nominees when the agency requires final authority.

widespread professional input and recognition.

Statistical Programs Must be Revised and improved. A sound Federal statistical system requires adequate budget support and development. The Committee applauds the record of the past four years during which the statistical budget has increased from $195 million to $313 million. Professional control of the nature and priorities of improvements is especially important. Given the need to improve the quality and character of specific statistical series, the Committee urges continued consideration of the potential benefits in reliability and effectiveness which can be achieved by appropriate increases in existing levels of support for Federal statistical production and analysis.

Current economic policy is emphasizing the growing pressures on the Federal budget and the consequent requirements for reductions in expenditures. This committee feels strongly that the benefit of a strong statistical system clearly outweighs the costs which are currently associated with the Federal statistical system.

Technical Measures of Reliability and Sensitivity. Adequate measures of reliability and sensitivity should be developed for all principal statistical series where feasible. Since the interpretation of statistics is primarily undertaken by non-statisticians, it is essential that there be adequate access to technical advice concerning the nature and limitation of individual statistical series. To facilitate this development, the Committee makes the following recommendations.

(1) The policy of including the name of a senior professional statistician who is responsible for and familiar with the data described in the news release should be extended to all major statistical releases so that the designated professional statistician can be contacted to explain the limitation of the data presented.

Media representatives and others should be encouraged to call this individual for access to professional information concerning the nature and limitations of these series under discussion. Press conferences may be warranted if the demands for explanation become burdensome.

(2) More provision should be made for professional, periodic evaluation of important statistical series, such as that provided in the earlier President's Committee to Appraise Employment and Unemployment Statistics, to provide for regular evaluation of important statistical series.

A good example of such initiative is the recent progress by the Statistical Policy Division of the Office of Management and Budget to create an advisory committee on the national accounts and the establishment of at least two other similar committees which are being planned for Fiscal 1974. Such study commissions, if adequately funded, can provide a wide range of professional judgment and will assure deeper understanding by the professional community with respect to limitations and alternatives to existing statistical programs.

Background and Review

The Need for Public Confidence in Federal Statistics

The public and private decisions which must be made daily in the conduct of the nation's business, commerce, and social welfare programs require increasingly sophisticated analysis. This is possible only if the data base is available and reliable. The formulation of economic, political, and other types of policy will be haphazard and subject to more than the normal margin of error if the statistics which support policy decisions are not sufficiently accurate. While it is true that timely and accurate statistics will not ensure wise solutions to our problems, they are definitely essential to the process of identifying the appropriate direction.

Reliable statistics increase many times our chances for success, especially as they provide the basis for development of better theory and explanation of the workings of socio-economic processes. This is especially important, at present, now that policymakers are relying so heavily on the use of this data system in their effort to solve pressing social and economic problems. It is not an exaggeration to say that the future direction of national policy could be at stake.

Nothing could undermine the politician and implementation of his policy recommendations as much as an accumulated and intense public distrust in the statistical basis for the decisions which the policymaker must inevitably make, or in the figures by which the results of these decisions are measured. Unless definite action is taken to maintain public confidence in Federal statistics and in the system responsible for their production, there will be growing tendencies to distrust leadership.

The statistical community, both generators and users, has long been concerned with the integrity of the U.S. statistical system. For example, the President's Committee to Appraise Employment and Unemployment Statistics commented more than 10 years ago:

"The need to publish the information in a nonpolitical context cannot be overemphasized. By and large this has been the case—the collection and reporting of the basic data have always been in the hands of technical experts. Nevertheless, a sharper line should be drawn between the release of the statistics and their accompanying explanation and analysis, on the one hand, and the more general type of policy-oriented comment which is a function of the official responsible for policy making, on the other." [8]

As noted later in this report, recent directives regarding the regular scheduling of releases regarding important economic indicators and the delay of at least an hour for the issuance of policy interpretations have been in line with the 1962 statement. It remains true that, as that report indicated more than a decade ago, the importance of a credible statistical system *cannot be overemphasized.*

Federal statistics play a vital role in effective decision making by government, business, labor, and universities, as outlined in Appendix A.

The President's Commission to Appraise Employment and Unemployment is only one example in the long history of commissions which have focused on Federal statistical activities. A chronological review of 12 major commissions on statistics, beginning with a House select committee in 1844, is contained in the report by Paul Feldman [9] which was prepared for the President's Commission on Federal Statistics and reported in 1971.

The Importance of High Technical Standards in the Federal Statistical System. Since both public and private decision-makers rely heavily upon the products of the Federal statistical system, it is essential that continuing efforts be undertaken to maintain high technical standards in relation to specific statistical programs. A lack of confidence in Federal statistics can result if unduly large errors are evident in published data.

This Committee has not attempted to identify specific weaknesses in present statistical programs, although it is evident that selected programs have been the subject of controversy and technical concern. For example, when the Census Bureau publishes data for extremely small areas, it makes data available for intensive scrutiny by local experts who are able to identify errors that would have been otherwise undetected. Some errors of this sort were found after both the 1960 and 1970 Census. It is regrettable that resources are not available for making corrections in the reported small area data which are increasingly being used as the basis for public and private policy planning. Or, to cite another example, the recent revision of the Survey of Consumer Expenditures (and the transfer of field responsibility from the Bureau of Labor Statistics to the Census Bureau) has generated considerable discussion concerning the amount of testing given to the new approach, the relative costs involved, and the expected reliability and usefulness of the final results.

Both of these examples illustrate the importance of using highly professional procedures in the development of statistical systems and in the revision of collection or analytical techniques. Problems in the implementation of new approaches are inevitable. However, a high level of professionalism is critical to assure a minimum of such difficulties and to generate confidence that the difficulties will be handled in a sound and professional manner. In short, statistics have long been taken for granted like the air we breathe. Recently, environmentalists have focused attention on the need to protect the quality of the air we breathe. Likewise, administrators are beginning to recognize the necessity for maintaining the quality of statistics as the basis for sound governmental decision-making.

Requisities of an Adequate Statistical System

The preceding sections have outlined the importance of a sound statistical system which enjoys widespread public confidence. In this section we will turn to the requirements for developing and maintaining a credible and adequate statistical system. As indicated earlier, there are four essential ingredients to achieving this objective. These are briefly discussed below.

Accurate, Consistent, and Timely Statistics. In order for the public to have confidence in the statistical system, it is essential that every effort be made to produce statistics which are accurate, consistent, and timely. It is difficult to meet all three of these criteria with equal emphasis. For example, in an effort to be timely it is often necessary to develop preliminary statistical indicators which are then subject to significant revision when more information becomes available. Likewise, significant problems occur when attempting to develop consistency in statistics produced by agencies with differing purposes, diverse administrative responsibilities, and uneven statistical capabilities.

Nevertheless, while these difficulties must be recognized, it is essential that every effort be made to assure that all governmental statistical agencies strive to meet the highest standards of (1) conceptual development, (2) statistical sampling, (3) internal consistency, and (4) historical continuity.

Public Confidence in Federal Statistics. It is relatively easy to convene professional statisticians to evaluate sample design, historical records of reliability or consistency, or to estimate significance in ranges of errors as tests of the criteria identified in the previous section. In contrast, it is somewhat more difficult to determine specifically those ingredients which will assure public confidence in the statistical system. However, assuming that the basic statistics are accurate, it is essential that the public understand and appreciate this accuracy or the value and usefulness of accurate statistics will be seriously undermined.

The first step in developing public confidence is undoubtedly the development of peer group confidence in the statistics. In other words, if the professional statisticians,

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[8] *Measuring Employment and Unemployment,* President's Committee to Appraise Employment and Unemployment Statistics, September, 1962, p. 20.

[9] Feldman, Paul, *The President's Commission on Federal Statistics,* 1971, Volume II, Chapter 10, pp. 477–495.

biologists, physical and social scientists, etc., who utilize the data have confidence in the statistical system and in the accuracy of the data, it is more likely that the general public will accept this professional judgment as the basis for placing their confidence in the resulting statistics.

Peer group confidence begins with the appointment and advancement of highly professional persons to key policy and program roles in Federal statistical agencies. The professional ability of all agency staff members involved in the collection, compilation, and analysis of Federal statistics is crucial to the development and maintenance of strong peer group confidence in the Federal statistical system.

In a second area, it should be noted that public confidence in the Federal statistical system is strongly influenced by the actions of the press. Most members of the working press cannot be expected to make professional interpretations of the variety of statistical series which are produced by the Federal statistical system. Therefore, it is essential that the press have available to it clear reports concerning important characteristics of specific statistical series and access to expert counsel in the interpretation of those reports.

The third factor related to the public confidence in the Federal statistical system is associated with political use and interpretation of the data. As noted at the outset, a major concern of this Committee has been the exploration of approaches to reducing political influence on the statistical system. Public confidence is influenced both by overt political pressure and by the appearance of political pressures. It is the Committee's position that every effort must be made to reduce both political pressure and the appearance of political pressure if peer group confidence is to be enhanced and if the general public's confidence in the Federal statistical system is to be maintained.

To illustrate the dangers of political pressure on statistical decisions, consider the technical problem associated with assigning the cost of air pollution and emission control equipment on automobiles as a component of the Consumer Price Index. There was considerable debate whether to classify this equipment as a quality improvement—consequently, not influencing the Consumer Price Index—or as a cost increase which would be reflected in the Consumer Price Index.

A statistical decision on cost versus quality in automobile pricing has to be made annually and in 1972 it had to be made during an election campaign. If political considerations were to enter this statistical issue, it would be beneficial to labor to include the emission control equipment as a cost increase, thereby adding a "cost-of-living" increase to the wages of millions of workers and, perhaps, politically reflecting adversely on the success of controls in holding down inflation.

Alternatively, political advocates who are concerned with demonstrating the success of anti-inflationary policies would urge classification of this equipment as a quality improvement, as would those interested in demonstrating the increased productivity of labor and the greater output of the economy.

A technical committee of professional statisticians was convened to resolve this statistical issue, and there is no evidence that political pressure was exercised. However, the nature of this type of decision illustrates the importance of producing technical statistical decisions which are above suspicion and maintaining them in an arena which is independent from political pressure. The cumulative effect of a series of political decisions concerning such technical details would be to destroy the effectiveness of the statistical measures as well as to undermine public confidence in the data themselves. This illustration reinforces the importance of professional judgment and decision-making as essential elements in a quality statistical system.

In summary, while it is difficult to identify specifically actions that will assure public confidence in the Federal statistical system, it is important to focus on (1) building peer group confidence in the statistical community by emphasizing professionalism in statistical agencies, (2) improving the understanding of the working press by providing easy access to expert counsel, and (3) minimizing even the appearance of political pressure or influence on the statistical system by eliminating situations and events which arouse these concerns.

Revision and Improvement of Statistical Programs. It is not sufficient to maintain the status quo even if the available statistics are accurate, timely, and consistent. The characteristics of the subjects being measured are subject to continual change. Further, as national priorities change, new subjects must be considered as the focus for Federal statistics.

It is essential that the statistical system include provision for developing revisions and improvements which will encompass sound statistical principles. As indicated earlier in the brief example concerning the Consumer Expenditure Survey, revisions and refinements will inevitably create certain difficulties. It is essential that the decisions to institute such refinements and revisions be based on a firm expectation that more reliable and more sensitive statistical indicators will result, and that revision or discontinuance of a series should not be initiated simply because the available results had proved embarrassing or unresponsive to specific administrative policies.

Each year a number of improvements in the Federal statistical system are recommended and, frequently, adopted. This continual upgrading of the system must be encouraged and, where possible, accelerated. In relation to many other Federal activities, the cost of the Federal statistical system is small. However, with the current demands for budget stringencies, all areas are subject to pressure for future reduction. In view of the importance of statistical programs as the basis for overall policy formulation, caution should be exercised when pruning existing budgets or rejecting new programs which may be essential in the development of public policy.

A professional statistical system requires both well-qualified leadership and adequate budget support. It is recognized that there is a need for central planning to insure proper balance among all areas of demand for improved Federal statistical series. The Statistical Policy Division in the Office of Management and Budget should be encouraged to continue development of statistical policy which emphasizes these points. An outstanding beginning has been made as evidenced by the growth in support of statistical programs from $194.6 million in Fiscal 1970 to $312.6 million which has been requested for Fiscal 1974, an increase of 61 percent. During this period, programs for economic statistics increased from $126.3 million to $174.8 million, an increase of 38 percent, and programs for social and demographic statistics increased from $68.3 million to $137.8 million, a growth of 102 percent.

Adequate Technical Measures of Reliability and Sensitivity. The actual utilization of statistics in decision-making can be significantly influenced by the method of presentation and documentation as reflected in statistical reports. In order to minimize the problems of misuse of statistical series, it is essential that the available reports provide specific technical measures of the reliability and sensitivity of the data at hand. While many users of statistical series do not require full technical documentation of statistical procedures used in compilation, adjustment, and analysis of the data, it is essential for those who have a need or concern about these subjects that the basic reports include either indications of these technical factors or provide reference to source documents where these procedures are defined in detail.

The availability of this information is particularly important in distinguishing between preliminary, revised, and final estimates for key statistical components. If the available report does not clearly call attention to the character of the data being reported, there is a danger that broad media dissemination of the statistical measures will fail to reflect the limitations of the data themselves. Over time, the failure to distinguish between preliminary and final estimates tends to reduce public confidence in the statistical system by generating the appearance that frequent revisions were unanticipated when, in fact, they may be part of the basic procedures used.

The four characteristics of an adequate statistical system which have been discussed above serve as the framework for the following specific findings of the Committee and the recommendations which were presented earlier.

Findings of the Committee

The causes for concern which led to the formation of this Committee have been intensified during the past year. The primary finding of this Committee on the Integrity of Federal Statistics is that while there is no evidence that statistical results have been altered to support a particular point of view, there are tendencies—through reduced span of authority of professional leadership, appointment of noncareer personnel, and current and proposed reorganizations—to reduce or inhibit the independence of Federal statistical personnel. Therefore, it is particularly unfortunate that a continuing sequence of events has created broad concern regarding the professional integrity of the overall system, especially as a consequence of premature retirements of key professional staff members who, in other respects, would be expected to offer more years of exceptional service.

While the Committee has not elected to pursue specific allegations, it is clear that the organizational structure—especially through current and pending reorganizations—provides increasing opportunities to exert political influence on the development and interpretation of statistical programs. Specifically:

(1) Agency appointments of noncareer personnel, especially those with strong political affiliations rather than statistical credentials, can have an inhibiting influence on the quality, independence, and objectivity of statistical work. A further implication of such developments, in the longer term, will be a reduction in morale and a reduced incentive of both young and mature professionals to associate themselves with agencies which have overt political overtones. This will result in a deterioration of the professional role of Federal statistical agencies.

(2) The reorganization of statistical agencies undertaken in 1971 as the result of a directive from the Office of Management and Budget was intended to reduce the number of separate statistical agencies, to centralize production functions, and to separate the production of statistics from their use in the formulation of policy. These goals would have widespread professional support. However, the application of the directive in the Commerce Department led to the creation of a complicated overlay for the Census Bureau and the former Office of Business Economics, considerably downgrading the role and independence of the operating agencies. In the new organization, the opportunities for influence by noncareer officials for the selection of new programs, for the reduction of old programs, and for other program changes have been substantially increased.

(3) Since, for about two years, target dates for the release of principal economic indicators have now been published in advance, the discretionary authority over the timing of these releases has been eliminated. The OMB directive (Circular No. A-91, "Prompt Compilation and Release of Statistical Information"), designed to assure that deadlines are established for the preparation and release of statistical series, has not yet been implemented on an across-the-board basis. Until the efforts now being made to this end in the Statistical Policy Division are put into effect, it is still possible to withhold some reports from preparation or to delay others for political purposes.

The Committee believes that specific steps should be taken to allay the growing fears concerning politicization of the Federal statistical system and to ensure and maintain a high level of credible, professional, statistical work. In the light of the importance of such concerns, the Committee urges that the recommendations listed earlier be promptly implemented and that such actions be properly publicized.

ASA–FSUC COMMITTEE ON THE INTEGRITY OF FEDERAL STATISTICS

Joseph W. Duncan, Chairman Battelle Memorial Institute.

Daniel H. Brill (ASA), Commercial Credit Company.

Bernard Clyman (FSCU), The Equitable Life Assurance Society of the United States; Queens College, City University of New York.

A. Ross Eckler (ASA), Retired (Formerly, Director, U.S. Bureau of the Census).

Thomas A. Hannigan, Jr. (FSUC), International Brotherhood of Electrical Workers.

Robert E. Lewis (FSUC), First National City Bank, New York.

Robert S. Schultz, III (ASA), New York State Council of Economic Advisers.

DeVer Sholes (ASA), Chicago Association of Commerce & Industry.

APPENDIX A

ILLUSTRATIVE USES OF STATISTICS IN GOVERNMENT, BUSINESS, LABOR, AND UNIVERSITIES

These brief highlights concerning the role of statistics in governmental, industrial, labor, and universities' decision-making show the importance of selected key statistical series. It should be noted, of course, that there are many specialized statistical series which are not mentioned below which have particularly significant roles in areas where they are applied. There is no intent in this report to evaluate the importance of any specific series.

The Role of Statistics in Government. The importance of the Federal statistical system for policy-making and administration at the Federal, state, and local governmental levels is well-known. Almost every statistical program has its origin with legislative action which in turn requires data collection in support of program planning, administration, or evaluation. For example, the Decennial Census is mandated by a Constitutional requirement to establish the number of representatives from geographical areas throughout the nation.

The importance of maintaining public confidence in the output of our statistical system can be illustrated by selecting a few examples of the multitude of applications of statistical data in the legislative and executive branches of government. In many cases, the very organization of government itself is dependent upon statistical information. In addition to the apportionment requirement noted earlier, the size of staffs of elected representatives depend directly upon information regarding the number of people in a state or in a Congressional district. At the state and local levels, there are hundreds of provisions in various states where the population level established by the latest Decennial Census is used as a basis for allocating funds, creating boards, granting licenses, establishing jurisdiction of local officials, and setting salary levels.

Official statistical measurements are central to the development of legislative programs by the Congress. The record of legislative hearings is typically filled with statistical exhibits and there are literally innumerable references to specific items of data. Whether legislative policy is being determined, a new program is being established, or the results of existing programs are being reviewed, the legislative uses of governmental statistics are both numerous and extensive.

The range of data involved is impressive. For example, the development of social programs such as those relating to Social Security, welfare, and aid to specific classes of the population depends administratively on data concerning employment, income, hours of work, dependency, and many related subjects. As another example, policy-makers concerned with the problems of our environment and the use of natural resources require data on existing resource availability and utilization as the basis for defining available alternatives and appropriate policies. In this area the available data base must be used to provide estimates of the growth in future uses of these resources, to prepare estimates of time required for resource depletion and to provide a basis for deciding upon quotas and the allocation of supplies among competitive claimants.

In the regulatory area, the role of data as the basis for policy determination is especially evident. Regulation in the fields of transportation, power, and communications—to cite three board areas—are based to a great extent upon statistical information concerning the number and size of businesses involved, their capacity, capital investment, and degree of penetration in the total market. If the public were to lose confidence in the basic data which are used by regulatory agencies, the very nature of regulation itself would be subject to distrust and controversy.

To many observers of Federal policy-making, the continuing intervention of the administrative agencies of the Federal government in the national economy is perhaps the most evident policy interaction. The national income and wealth accounts play a major role in establishing legislation and policy concerning prices, wages, monetary trends, economic stabilization, and related topics. These data are typically the basis for research and policy planning in the executive branch of government and are continually used to evaluate results achieved by administrative programs. Data concerning cost of living, unemployment levels, and capacity utilization, provide the underpinning for national economic policy including such vital areas as budget formulation and fiscal administration, as well as the administration of specific programs.

The allocation of Federal and state funds depends directly upon a number of statistical measures—including the size of the population as a whole or selected classes of the population such as public assistance recipients. Data concerning income levels, miles of highway, numbers of pupils, and other measures are provided for in a network of legislation enacted by the Congress and by state legislators. Decisions at a variety of governmental levels relating to urban renewal, public housing, recreational facilities, drainage and water supply, and health and educational facilities of all kinds must be made in the light of full information regarding the population and its characteristics.

These examples indicate that it would indeed be difficult to overestimate the value of sound statistical information in the governmental structure of the United States a structure which has long been accustomed to making decisions on the basis of facts. The ultimate test of programs depends upon objective evaluation of the results achieved. For this purpose, reliable and continuing social and economic statistics of unquestioned validity are essential. In addition, there should be provided a body of administrative statistics for each major program, properly planned and clearly presented so that agency officials, the Congress, and the general public can judge the results that have been obtained and can call for improvements when necessary.

The Role of Statistics in Business. In addition to the internally generated statistics unique to individual businesses, most corporations rely upon Federal data for many of their critical decisions in areas such as business planning, market research, financial administration, purchasing, and personnel administration.

Corporation long-range planning frequently begins with analysis of national income accounts and related data such as industry production levels as the basis for establishing the broad market context for individual corporate operations. In fact, many large corporations employ full-time economists whose primary function is analyzing national economic developments and determining their impact upon the individual corporation.

Businessmen look to statistics to tell them how the economy in general is faring as a guide in making long-range investment decisions or setting sales quotas for the year ahead. They want to get advance warning on cyclical turning points and the amplitude and duration of expansions and contractions. But frequently their needs are more precise. They want to know how each of their product lines is faring relative to industry as a whole. They want to gauge the growth of individual markets as a guide to inventory policy, plant and equipment expenditures, and new product development. They want to assess Federal budget deficits, monetary policy and interest rate trends as they may affect the financing of their firms' growth and investment. They rely on figures on prices, labor markets, wages, and supplies of materials as guides to their current operations.

Market research departments in industry extensively utilize Federal data concerning population characteristics and industry characteristics to determine basic market trends and opportunities.

Financial departments in major corporations carefully evaluate basic monetary trends as measured by the Federal Reserve System to determine current and future financial developments which will influence the cost and availability of capital to the corporation.

Purchasing officers rely upon Federally produced statistics, such as commodity price data of the Departments of Agriculture and Labor and figures on shipments and inventories from the Department of Commerce to determine availability and cost of basic materials for manufacturing the firm's products.

Personnel departments rely upon local and national wage and income surveys to determine appropriate salary and fringe benefit schedules.

Hence, it is evident that in nearly all facets of business and industry, basic decisions which are essential to effective operation of the corporation are made on the basis of Federal data.

Additionally, the Federal statistical system is vital to the concerns of business in many respects beyond their internal use of data for operations and planning. The quality of the statistical base used in establishing regulatory policy, administrative programs such as the New Economic Policy—Phases II and III, and the formulation of legislative guidelines

(in vital areas such as pollution standards, product quality, and import-export regulations) is crucial to business leaders and decision-makers.

The Role of Statistics in Labor Negotiations. Federal statistics directly affect the entire scope of industrial relations, including collective bargaining and contract administration. Collective bargaining is a key element in the American free enterprise system, and it could not be successfully carried on without reliable Federal statistics acceptable to all interested parties—labor, management, and the general public alike. Both parties at the bargaining table need objective insight and understanding into each other's positions. Also, they direct much of their efforts toward convincing the general public of the equity of their own positions as reflected in objective official statistics. In this often supercharged atmosphere, negotiations would quickly deteriorate into chaos if no reliable and acceptable statistics were available as the focus of discussions. The same would be true of the day-to-day operations of contract administration.

Statistics of key importance for collective bargaining and contract administration include wages by industry, region and state, and trends and industry data relating to fringe benefits such as paid holidays, vacations, health insurance, and pension benefits. Cost-of-living provisions based on the Consumer Price Index affect the income of four million workers and pensions of two million retirees. Business and labor groups use the Consumer Price Index to develop retirement and health insurance programs, the government, to formulate social and economic policies, and individuals, to check on their real earnings. The Pay Board adopted consumer price indexes along with productivity indexes as the two major criteria governing acceptable noninflationary wage increases.

Labor market conditions and the amount of unemployment are matters of primary interest to union and management negotiators as indicators of the economic situation in given areas or localities. Statistics measuring the frequency and severity of work injuries by industry are of great importance to labor and management since they serve as the basis for specific insurance provisions and new laws designed to protect workers from death and disabling injury. Any lack of confidence in their accuracy or reliability by either of the parties concerned would jeopardize this accepted approach to the settlement of conflicting positions.

The interest of labor in good statistics is not limited to their usefulness in labor negotiations, however. Statistical information is vital in the formulation of much legislation which either expands or restricts the basic rights of labor and management. Many far-reaching economic decisions made by government leaders such as establishing the Construction Industry Stabilizing Council plus the imposition of wage and price controls are based upon Federal statistics.

The Role of Statistics in Universities. Universities continually conduct research designed to assist business, labor organizations, and government agencies in making sound decisions of the kind illustrated above. In addition, universities use Federal statistics to test basic theories on which such decisions are based and to search for more useful theories in a diverse range of topics including all areas of social, biological, physical and economic systems. Much of the basic research is cooperative among government, business, and universities. Clearly, we cannot develop true understanding of basic social and economic processes unless our historical records are comprehensive and accurate.

Of equal importance, the entire education process depends upon the evaluation and interpretation of basic data. If the student and/or teacher lacks confidence in the information base, it is difficult for the educational endeavors to proceed.

Other Roles. There are many important uses for statistics which have not been mentioned in the above sections.* The intent here is simply to illustrate the importance of statistics in a wide range of sectors. For example, the discussion of statistics in labor negotiations is only one example of the use of statistical series by the labor movement. Many uses by other sectors could be emphasized including use of crop reports and other agricultural statistics by individual farmers and consumers, statistical analyses by state and local governments in establishing governmental policy, and use of statistics by news media as an underpinning for planning future program emphasis, reporting on current problems, etc.

As noted in the introduction to this report, the discussion of the importance of reliable statistics which are evident in government, labor, industry, and universities are highlighted above to demonstrate that accurate and credible Federal statistics are: ". . . absolutely essential if the ongoing policy and planning needs of private and governmental users alike are to be satisfied."

APPENDIX B

NOVEMBER 10, 1972.

STATEMENT OF POLICY BY THE SECRETARY OF LABOR CONCERNING THE ROLE OF THE BUREAU OF LABOR STATISTICS

In Order No. 4969, dated November 25, 1969, the Secretary delegated authority for labor statistics programs to the Commissioner of Labor Statistics. Traditionally, the Bureau of Labor Statistics, which the Commissioner heads, has had a dual responsibility. One is to serve as the statistical and research arm of the Department of Labor, supplying the Department and its program offices with data important to their functioning. The other is to provide information to the public on subjects concerning labor in the most general and comprehensive sense. Both responsibilities require that the Bureau maintain, in the highest degree, scientific independence and integrity. The second function, particularly, requires that the public be confident that the Bureau does, in fact, possess these qualities and that they will be preserved.

The purpose of this statement is to reaffirm the importance of the Bureau's scientific integrity, and to set forth certain guidelines that will help to preserve it.

The decision-making process in producing statistics involves:

The allocation of BLS resources.

The appointment of personnel and selection of advisory committees.

The determination of appropriate statistical methods and operating procedures.

The preservation of confidential records supplied by respondents to surveys.

The preparation of technical analysis and interpretation of the data.

The release of information to the public.

The Commissioner's decisions with regard to these matters must, of course, follow the policy, budget and program objectives established by the Department of Labor. They must also conform to the statistical standards and policies established by the Office of Management and Budget under the Federal Reports Act. However, there shall be no decisions which are not in concert with the professional and technical expertise of the Bureau. Under these conditions scientific independence will continue to be the hallmark of the Bureau of Labor Statistics.

A number of specific safeguards help to preserve this scientific independence. Among them are the following:

1. Two active advisory councils are informed about and advise upon BLS programs and decisions. They are the Business Research Advisory Council, with representatives drawn from the business community, and the Labor Research Advisory Council, with representatives from labor unions. The two councils operate independently of one another, and both have numerous committees concerned with every subject-matter area covered by the BLS.

2. A new Academic Advisory Council will be organized later this year, with members from several professional organizations. This new group, consisting of economists and statisticians in universities and research institutions, also will advise the BLS on its program and procedures.

3. In the release of principal economic indicators BLS follows guidelines established by the Office of Management and Budget that help to assure the objectivity of Federal statistics:

a. Data are released by the principal statistical officer in charge of the agency. This means that the Commissioner determines the date and hour of release and approves the text of the release, and that the BLS is clearly identified as the source agency in the release.

b. Data are released as promptly as possible, and always within two working days after they have been compiled and checked.

c. The schedule of release dates is published in advance.

d. In order to clearly separate the release of data from policy-oriented commentary, no comments by a policy-making official are made until at least one hour after the release of the data by the BLS.

4. The Secretary has delegated to the Commissioner full authority to set up appropriate procedures and regulations to safeguard the confidentiality of the reports made to BLS by respondents to its surveys. These regulations apply throughout the Department as well as to other agencies or individuals within or outside the government, and prevent the use of BLS data for other than statistical purposes.

JAMES D. HODGSON,
Secretary of Labor.

Source: *Statistical Reporter,* December 1972, pages 91–92.

APPENDIX C

LISTING OF SELECTED MEDIA ARTICLES CONCERNING INTEGRITY OF THE FEDERAL STATISTICAL SYSTEM*

September 29, 1971—*The Washington Post,* "Nixon Ousting Labor Analysis" by Frank C. Porter.

November 17, 1971—*The New York Times,* "Lawmaker Sees Census Politics" by Jack Rosenthal.

February 25, 1972—*Journal of Commerce,* "A Staff Report—Does the Administration Cloud Statistics on Business Activity?"

August 1972—Annual Meeting of the American Statistical Association *Statistics and Politics* by Philip M. Hauser.

September 6, 1972—*The Washington Post,* article by Nick Katz, "Farm Income Knowingly Overstated by $1 billion".

October 22, 1972—*The New York Times,* Washington Report Article by Eileen Shanahan on intepretation of economic statistics.

November 5, 1972—*The New York Times,* Letter to the Editor from Harold C. Passer discussing above article by Eileen Shanahan on his interpretation and pronouncements during the recession in 1970.

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*The official report of *The President's Commission on Federal Statistics* includes a lengthy discussion of various groups which are users of statistics—Volume I, pp. 77, 102.

*Editorial comments have also included political cartoons such as that in *The New Yorker*'s issue of October 14, 1972, depicting the "Bureau of Rosy Statistics."

November 6, 1972—*The Wall Street Journal*, Review and Outlook—"The BLS Fuss."

November 27, 1972—*The Wall Street Journal*, Letter to the Editor by Senator Proxmire pointing out that the Joint Economic Committee had been holding monthly employment data hearings since they were discontinued by BLS.

December 20, 1972—*American Banker*, Business Outlook by J. A. Livingston, reports the surprise and astonishment of economists and statisticians at the accepted resignation of Geoffrey H. Moore as Commissioner of Labor Statistics.

January 29, 1973—*The Wall Street Journal*, front page news item noting resolution by the Industrial Relations Research Association.

APPENDIX D

RESOLUTION BY THE INDUSTRIAL RELATIONS RESEARCH ASSOCIATION EXECUTIVE BOARD

December 29, 1972.

The Executive Board of the Industrial Relations Research Association, having received and considered a report from its committee appointed to investigate recent events concerning the U.S. Bureau of Labor Statistics, resolves as follows:

1. that public confidence in the professional integrity and credibility of the Bureau of Labor Statistics is essential, because the Bureau publishes data and materials which are used regularly in the labor-management relations, business contracts and economic forecasts;

2. that the credibility of the Bureau of Labor Statistics has been impaired by events of the last two years, including the termination of press conferences by Bureau of Labor Statistics personnel and the subsequent reassignment of key personnel in the Bureau;

3. that the Board views with particular concern the acceptance of the requested resignation of the Commissioner of Labor Statistics three months prior to the expiration of his statutory term of office, because this termination under these circumstances represents a sharp break with the long-established tradition that this position has not been regarded as a political appointment;

4. that it is most important if further impairment of the credibility of the Bureau of Labor Statistics is to be avoided, that the new Commissioner be a person with the highest professional qualifications and objectivity;

5. that it is desirable that the decision to discontinue press briefings by the Bureau of Labor Statistics technical personnel should be carefully reconsidered;

6. that nothing in this resolution should be construed to indicate that this Association questions the integrity of the preparation of BLS figures.

To be signed by: Ben Aaron, President 1972, Douglas Soutar, President, 1973, David Johnson, Secretary-Treasurer.

Source: *Congressional Record*, January 11, 1973, page 788.

APPENDIX E

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C. 20503

APRIL 26, 1972.

To the Heads of Executive Departments and Establishments.

Subject: Prompt compilation and release of statistical information.

1. *Purpose.* The purpose of this Circular is to insure that the principal statistical series which are issued by agencies to the public annually or more frequently are released without unnecessary delay and that the publication dates for the principal weekly, monthly and quarterly indicators are made publicly available in advance. The prompt release of official statistics on a regular schedule is of vital importance to the proper management of both private and public affairs.

2. *Rescission.* This Circular supersedes and rescinds Circular No. A–91, dated February 12, 1969. It covers annual and semiannual series as well as those issued more frequently. Also it reduces from quarterly to annually the reports required by the Office of Management and Budget on the release of certain statistical series having more limited use than the principal indicators identified each month in the OMB publication, *Statistical Reporter*.

3. *Authority.* This Circular is issued under the authority of Section 103 of the Budget and Accounting Procedures Act of September 12, 1950 (31 U.S.C. 18b), Executive Order 10253 of June 11, 1951, and Executive Order 11541 of July 1, 1970.

4. *Coverage.* The Circular applies to all statistical series issued by agencies to the public annually or more frequently, unless otherwise exempted by the OMB.

5. *Objectives.* It is the aim of this Circular to accomplish the following objectives:

a. The shortest practicable interval should exist between the date or period to which the data refer and the date when compilation is completed. Prompt public release of the figures should be made after compilation. In the case of principal indicators, the goal is to accomplish compilation and release to the public within 20 working days. Within this period no more than two working days should be allowed for the public release of data, unless other arrangements are approved by the OMB.

b. In the case of other series, more time can be allowed, but every effort should be made to keep it to a minimum. Series requiring an inordinately long time to compile should be reviewed to see what purpose they serve and whether they should be discontinued or reduced in frequency (e.g., monthly series made quarterly or annual).

c. Release dates for principal economic indicators will appear each month in the OMB publication, *Statistical Reporter*. Care should be taken in scheduling these release dates so that they can be met. Unless directed otherwise by OMB, figures which become available early should be released early.

d. Initial release of statistical series should be made by the statistical agency in a written report. A press release should be issued if it would significantly speed up the release of the data to the public. There should be a one-hour separation between the issuance of the release by the statistical agency and released commentary.

6. *Responsibilities.* Each agency is directed to review continually its practices in releasing statistical series to the public and to take such action as may be necessary to carry out the objectives of this Circular.

7. *Reports and records.* Each agency that publishes statistics subject to the provisions of this Circular will submit reports to the OMB and maintain records in accordance with instructions in the Attachment and in the formats of the Exhibit.*

8. *Inquiries.* For any information concerning this Circular, please call the Office of Management and Budget, Statistical Policy Division, telephone: code 103–4911 or 395–4911.

GEORGE P. SHULTZ,
Director.

AMERICAN ASSOCIATION FOR PUBLIC OPINION RESEARCH,
New York, N.Y.

At the 28th Annual Conference of the American Association for Public Opinion Research in Asheville, North Carolina, the Executive Council of AAPOR adopted the following resolution unanimously, on May 20, 1973.

The integrity and accuracy of census data are vital to our political and economic systems, and to the practice of public opinion research. It is essential that the Bureau of the Census remain free of political influence and that it continue to attract professional personnel of the highest caliber. Its director must be an individual who can command the respect and confidence of its staff and of users of the census data.

We strongly urge the Senate, keeping these criteria in mind, to consider with exceptional care the credentials of any nominee to this office.

HAROLD MENDELSOHN,
President.

STATEMENT OF THE EXECUTIVE COMMITTEE OF THE AMERICAN ECONOMIC ASSOCIATION ON INTEGRITY IN THE FEDERAL STATISTICS SERVICES

We are deeply concerned over the issue of intrusion of political influence into the process of reporting and collecting Federal statistics. Symptoms of such intrusion are the increasing use of political rather than professional staff to release and interpret Federal economic statistics, the forced resignations of highly qualified statistician-economists like Dr. Geoffrey Moore as Commissioner of Labor Statistics and Dr. George Hay Brown as Director of the Bureau of the Census, and the appointments of Mr. Vincent Barabba as Acting Director of Census and Mr. Edward D. Failor as Administrator of the Social and Economic Statistics Administration.

Our immediate concern is that neither Mr. Barabba nor Mr. Failor appears to have the high professional qualifications required for the demanding tasks of overseeing the gathering and reporting of the Federal statistics on which analysis and forecasting for the U.S. economy are necessarily based. Their service to Mr. Nixon in the 1972 political campaign may well qualify them for some appropriate recognition, but we question the wisdom of political appointments to such exacting professional positions. Such appointments will reinforce doubts about the integrity of Federal statistics and threaten the quality of Federal data hitherto viewed as among the best, perhaps the best, in the world.

Since Mr. Barabba's appointment is subject to Senate confirmation, we urge the Senate Post Office and Civil Service Committee to submit his qualifications to the most searching scrutiny and to reject his nomination unless evidence of relevant professional qualifications not apparent to us is found in that process.

Our broader and longer-range concern is over the quality and integrity of the Federal statistical service as a whole. In this connection, we fully endorse the four recommendations of the select committee of the American Statistical Association and the Federal Statistics Users' Conference, as follows:

1. Heads of statistical agencies should be nonpolitical professionals of high stature and reputations and be in the career service.

2. These heads of agencies should have direct control of their own activities particularly with respect to hiring and firing, budget and planning, and publication.

3. Data should be released on a fixed, free stated time schedule by the agency which produced the data.

4. Advisory committees to statistical agencies should be selected without regard for political affiliation with a number of specific appointments from professional statistical organizations.

Signed: —— ——.

Phone message from Rendigs Fels, Secretary-Treasurer, 6/18/73.

"The Executive Committee has approved the statement by mail ballot. There was no dissent among those responding. Two mem-

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* Attachments available from the Office of Management and Budget upon request.

bers who are out of the country did not respond."

THE AMERICAN SOCIOLOGICAL ASSOCIATION,
June 19, 1973.

Dr. CLIFFORD HILDRETH,
President, American Statistical Association, Washington, D.C.

DEAR DR. HILDRETH: In its meeting on June 3, 1973, the Council of the American Sociological Association, representing more than 14,000 members, was informed of your vital leadership in challenging the nomination of Mr. Vincent P. Barabba as Director of the Bureau of the Census. Upon reading your exchange of correspondence with The Honorable Frederick B. Dent, Secretary of Commerce, Council, by unanimous resolution, instructed me to convey to you our total support in your efforts to convince the Administration and the Senate of the United States that this type of appointment to this key post constitutes a grave threat to the integrity of basic data collection and dissemination by the Bureau of the Census.

As you know, the Bureau of the Census is a prime source of information for the wide-ranging scientific and applied work of sociologists. Many of our efforts, including those to analyze social problems, chart social change, study social institutions, and inform public policy, rely in a fundamental way on the validity and reliability of data developed by the Bureau of the Census. Accordingly, it is essential that our colleagues, both in this discipline and in the other social sciences, have full confidence in the Director of the Bureau. Our appraisal of the qualifications of the current nominee, Mr. Barabba, does not convey that confidence.

Therefore, the American Sociological Association applauds your efforts to sensitize our political leadership to the necessity for appointing a Director with training and experience equal to the administrative and technical challenge of the position. To do less is to undermine an organization that must command respect if it is to attract competent researchers and continue to produce information essential to the understanding of American society.

Sincerely yours,

OTTO N. LARSEN,
Executive Officer.

THE BIOMETRIC SOCIETY,
Chapel Hill, N.C., June 4, 1973.

Dr. CLIFFORD HILDRETH,
Department of Economics, University of Minnesota, Minneapolis, Minn.

DEAR CLIFFORD: The Regional Advisory Board of the Biometric Society (ENAR) discussed at some length the appointment of persons to head the Commerce Department's Social and Economic Statistics Administration and to head the Census Bureau who have no statistical qualification.

The Advisory Board voted unanimously to go on record as being against such appointments and affirmed their support of the resolution passed by the ASA Committee. The Advisory Board requested that I bring these appointments to the attention of those attending the Joint Spring Meeting. Xerox copies of the New York Times story were distributed at the Presidential Invited Address and I spoke to those attending this session about the urgency of writing their Senators about the appointment of unqualified persons to such important posts.

Sincerely yours,

JAMES E. GRIZZLE,
Professor.

June 17, 1973.

Prof. CLIFFORD HILDRETH,
Minneapolis, Minn.

DEAR PROFESSOR HILDRETH: On June 11 the executive committee of the Biometric Society, WNAR, discussed the question of qualifications for persons appointed to administrative positions within government agencies responsible for gathering, analyzing, and reporting statistical information. This was prompted by the general interest within the statistical community concerning the two recent nominees to head the Census Bureau and the Commerce Department's Social and Economic Statistics Administration. Our committee strongly supported the concept that recognized professional competence in statistics be a major consideration in these appointments and recommended that such a viewpoint, as expressed in the report of the joint committee of the American Statistical Association and Federal Statistics Users Conference, be proposed to our membership for discussion and possible action. This was done on the same day at the annual business meeting of the society. As President I was instructed to convey to you and the other American statistical societies, our support for the committee report from A.S.A. and F.S.U.C. and to pursue any further positive action by the societies directed toward maintaining and improving the professional competence of those responsible for governmental activities in statistics.

Yours truly,

JAMES S. WILLIAMS,
President, Biometric Society, WNAR.

CONFERENCE ON RESEARCH IN INCOME AND WEALTH,
New York, N.Y., June 15, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce, Washington, D.C.

DEAR MR. SECRETARY: We the members of the Conference on Research in Income and Wealth have voted to communicate our views about the qualifications for the positions of Director of the Bureau of the Census and Administrator of the Social and Economic Statistics Administration. We are a private organization of about 150 statisticians and economists in government, universities and private research organizations.

As intensive users of government statistics, we feel that the heads of these agencies and other statistical agencies of the government should demonstrate concern for accuracy and high technical standards in statistics as well as independence from strong partisan political involvement.

We urge you to make sure that whoever occupies these positions meets these qualifications without question.

Very truly yours,

FRANK DE LEEUW,
Chairman of the Executive Committee (for the membership of the Conference).

AMERICAN PSYCHOLOGICAL ASSOCIATION,
Washington, D.C., June 15, 1973.

Dr. CLIFFORD HILDRETH,
President, American Statistical Association, Washington, D.C.

DEAR DR. HILDRETH: Enclosed is a copy of a letter sent by the President, Division of Consumer Psychology of the American Psychological Association to the Senate Committee on Post Office and Civil Service. It expresses the concern of the Division that political considerations might influence the appointments of individuals to head the Census Bureau and the Social and Economic Statistics Administration.

The American Psychological Association shares the concern of its Division of Consumer Psychology. It joins the American Statistical Association in its hope that appointments to head these programs will be of individuals of demonstrated statistical competence and administrative skill and not on the basis of political considerations.

Sincerely yours,

KENNETH B. LITTLE,
Executive Officer.

DIVISION OF CONSUMER PSYCHOLOGY,
June 8, 1973.

At the June 1 meeting of the Executive Committee of Division 23, the Consumer Psychology Division of the American Psychological Association, members expressed the following concerns related to the appointment of the heads of the Census Bureau and the Social and Economic Statistics Administration:

"As professional psychologists engaged in the practice of consumer research, we are keenly concerned with maintaining the ethical principles that govern the interpretation of research findings and the relations of the researcher to the people who are the sources of his evidence.

"It is unthinkable to us that any political controversy could surround those responsible for the integrity of government data of the highest social, political and economic importance. The quality of these data is dependent upon the competence and morale of our colleagues, social scientists in career government service.

"With these considerations in mind, we ask the Senate to look carefully into the qualifications of the recent nominees to head the Census Bureau and the Social and Economic Statistics Administration."

As this year's President of the Division, I was asked to forward this expression of our feelings to you.

Respectfully,

THEODORE F. DUNN, PH. D.,
President, Consumer Psychology Division, APA.

RESOLUTION, JUNE 15, 1973

The Council of the Institute of Mathematical Statistics, having taken cognizance of the appointment of Mr. Edward D. Failor as Head of the Social and Economic Statistics Administration and of the proposed appointment of Mr. Vincent P. Barabba as Head of the Bureau of the Census, wishes to express the Society's distress concerning the grave implications of these appointments.

The two agencies involved are at the heart of U.S. federal statistics, and need at their direction persons with substantial statistical training. They must also remain above any suspicion of political manipulation.

The proposed appointments are not calculated to satisfy these conditions. On the public record, as we appraise it, the evidence does not establish the qualifications of the candidates to satisfy these essential requirements.

THE UNIVERSITY OF WISCONSIN,
Madison, Wis., May 1, 1973.

Mr. FRED C. LEONE,
Executive Director, American Statistical Association, Washington, D.C.
Mr. JOHN H. AIKEN,
Executive Director, Federal Statistics Users' Conference, Washington, D.C.

GENTLEMEN: We, the undersigned members of the Department of Statistics, University of Wisconsin-Madison, support the recommendations made by the American Statistical Association—Federal Statistics Users' Conference Committee on Maintaining the Professional Integrity of Federal Statistics as they were published in the April 1973 issue of The *American Statistician*. We hope these recommendations will be promptly implemented.

We commend the Committee on its work and note with concern the Committee's primary finding "that while there is no evidence that statistical results have been altered to support a particular point of view, there are tendencies—through reduced span of authority of professional leadership, appointment of noncareer personnel, and cur-

rent and proposed reorganizations—to reduce or inhibit the independence of Federal statistical personnel."

Sincerely yours,

John Gurland, Gus Walker, Richard Johnson, John Van Rygin, N. R. Hope, G. C. Teter, H. J. Arnold.

William G. Hunter, Robert B. Miller, James C. Helsman, Sam T. Rose, G. R. Dettechapp, Jerome H. Klotz, Bill Hass, Jerome H. Senturn.

TESTIMONY OF MR. TONY GALLEGOS SUBMITTED TO THE SENATE POST OFFICE AND CIVIL SERVICE COMMITTEE ON THE NOMINATION OF VINCENTE R. BARABBA

In view of the fact that we were unable to present our remarks in person, the following comments are submitted for the record:

As National Chairman of the American GI Forum—we should like to point out that the GI Forum is the largest Spanish-speaking Veteran's organization and has been in existence since World War II.

We in the Forum, share with other Spanish-speaking organizations the same negative feeling about the role that the Census Bureau has played in the gathering of population statistics. It appears that the practices which created an undercount for the Spanish-speaking are still in effect. With the appointment of Vincent R. Barabba we ask that an end be made to these practices and that a more equitable use of population statistics as they pertain to Spanish-speaking, Spanish-surnamed citizens of this nation be made.

Mr. PROXMIRE. I yield 5 minutes to the Senator from Minnesota and 3 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. HUMPHREY. Mr. President, I join with the distinguished Senator from Wisconsin in his opposition to the confirmation of the nomination of Mr. Vincent Barabba to be Director of the Bureau of the Census.

I also note that my distinguished senior colleague, Senator MONDALE, is also opposed to the nomination.

Mr. President, I am opposed to the confirmation of Mr. Vincent Barabba for the position of Director of the Census. I oppose this nomination not from doubts of the nominee's personal qualities, but from the conviction that in this time of increasing suspicion and decreasing credibility of governmental agencies, the Census Bureau leadership cannot be allowed to have the appearance of political compromise or any tinge of political partisanship.

Mr. Barabba has fine personal qualities, a fine character, and is a good man, a good guy, as we say. I am sure that he has many fine attributes.

Mr. President, both the Senator from Wisconsin and I are privileged to serve on the Joint Economic Committee. The Senator from Wisconsin has been chairman of that committee. I am sure that we could list for our colleagues many occasions in the last few years when we have had difficulties with some of the statistical evidence that has come before our committee. What I think the Senator from Wisconsin is stating here is that in this particular position we need a man trained in statistical data, in statistics and statistical information, a person of professional ability and training. And it seems to me that on that basis Mr. Barabba fails the test.

Mr. Barabba's experience is in owning and running a marketing research organization that did political polling for the reelection of President Richard Nixon. Mr. Barabba has also conducted political polling for a number of other Republican candidates.

I might add that most of them have been members of the Republican Party. I might say that a distinguished gentleman from California, Mr. Mannit, a Democrat, wrote me and expressed his personal approval of Mr. Barabba and spoke of him with the highest of praise.

Mr. President, the president of the American Statistical Association, Prof. Clifford Hildreth—who I am proud to say is a faculty member of the University of Minnesota—wrote to me opposing the confirmation of Mr. Barabba. Dr. Hildreth writes:

> The problem of maintaining a federal statistical system of high usefulness and unquestioned integrity has been an increasing concern of professional statisticians for several years . . . I hope you and Senator Mondale will seriously consider the desirability of refusing confirmation to Mr. Barabba . . .

Mr. President, Dr. Hildreth has also written the Secretary of the Commerce Department, Frederick Dent, opposing the nominations. To Mr. Dent, Mr. Hildreth wrote:

> I find no evidence that either the appointee or the nominee has had statistical training, experience or contact with the statistical profession. Such appointments are in direct conflict with the judgments of responsible statisticians including a large number who have rendered outstanding service to the Bureau of Census and/or other governmental agencies.

Mr. President, the position of Census Director demands the highest standards of experience and professional excellence available in our country. Businessmen, labor leaders, labor-management negotiators, academics, the U.S. Congress, the Council of Economic Advisers, and just about any other agency utilizes the statistics gathered and published by the Census Bureau. There must be and, indeed, there cannot be any politicizing of those statistics.

These statistics must have automatic and unimpeachable credibility. And the Director of the Census must represent that credibility in his professionalism.

For these reasons, I shall vote against the confirmation of Mr. Barabba for the position of Census Director, but, again, with no criticism of him personally.

Mr. President, I ask unanimous consent that my letter to Chairman MCGEE and Professor Hildreth's letter to me and my response to him be printed, plus Professor Hildreth's letters of April 30 and May 25 to Secretary of Commerce Dent and Prof. Walter Heller's letter to Senator MCGEE be placed in the RECORD at this point. I also ask that an editorial from the Washington Post entitled "Integrity in Numbers" be printed in the RECORD.

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

UNIVERSITY OF MINNESOTA,
Minneapolis, Minn., May 10, 1973.

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

MY DEAR SENATOR HUMPHREY: The problem of maintaining a Federal statistical system of high usefulness and unquestioned integrity has been an increasing concern of professional statisticians for several years. The enclosed report of a joint committee of the American Statistical Association and the Federal Statistics Users' Conference expresses this concern and makes several constructive recommendations. The report has been approved by the Board of Directors of ASA and the Board of Trustees of FSUC.

As indicated in my letter of April 30 to Secretary Dent (copy enclosed), the judgments underlying the report were clearly violated by the recent selection of Mr. Failor and Mr. Barabba for key statistical posts in the Department of Commerce. As a concerned Minnesota citizen I hope you and Senator Mondale will seriously consider the desirability of refusing confirmation to Mr. Barabba and exerting whatever pressures may be available to get the appointment of Mr. Failor withdrawn.

I sincerely hope the nominee for Commissioner of Labor Statistics (see enclosed letter to Secretary Brennan) will be one that professional statisticians can support.

Sincerely yours,

CLIFFORD HILDRETH,
Professor of Economics.

U.S. SENATE,
Washington, D.C., May 16, 1973.

Mr. CLIFFORD HILDRETH,
Professor of Economics, Center for Economic Research, Science Classroom Building, Minneapolis, Minn.

DEAR PROFESSOR HILDRETH: Thank you for your recent letter concerning the nomination of Mr. Vincent Barabba to be Director of the Census and the appointment of Mr. Edward Failor as head of the Social and Economic Statistics Administration.

I certainly agree with you that the heads of the federal statistical bureaus must be of unquestioned integrity and professional background. For that reason, I am enclosing a letter I have written to Senator Gale McGee asking for indepth hearings on the nomination of Mr. Barabba. I am also enclosing a statement I made to the Washington Post on this subject.

I appreciate your bringing this problem to my attention.

Sincerely,

HUBERT H. HUMPHREY.

U.S. SENATE,
Washington, D.C., May 16, 1973.

Hon. GALE W. MCGEE,
Chairman, Post Office and Civil Service Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a letter written by Dr. Clifford Hildreth of the University of Minnesota. Dr. Hildreth is the President of the American Statistical Association, and in his letter to me he expressed his concern over the nomination of Mr. Vincent Barabba as Director of the Census, and the appointment of Mr. Edward D. Failor as head of the Commerce Department's Social and Economic Statistics Administration.

I would hope that in the case of Mr. Barabba your Committee would examine the background and qualifications of the nominee in great detail. A position of this nature demands the highest standards of experience and professional excellence available in our country. The value of federal statistics can not be placed in doubt or compromised. There can be no political influence in the collection, production or dissemination of data which is crucial to policy and program

judgments made by government and private sector. I would also hope that Dr. Hildreth and others would have an opportunity to testify on this nomination.

As for Mr. Failor's appointment, although this position is not subject to Senate confirmation, I would hope that the Secretary of Commerce would re-examine this appointment in view of Mr. Failor's obvious lack of qualifications for this statistical post.

Sincerely,

HUBERT H. HUMPHREY.

MAY 25, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.

MY DEAR MR. SECRETARY: Your letter of May 11 is appreciated, but I must disagree sharply with its implications. The central idea in the recent ASA–FSUC report on integrity was that, at the very least, political appointments to statistical agencies raise reasonable public doubts about the integrity of the statistics gathering and dissemination process. This alone greatly reduces the value of Federal statistics. Events of the past several years and the expressions of concern that have come from many sources amply confirm this contention.

If political appointments are allowed to continue, actual political manipulation of data is a possibility. Manipulations of time and manner of releasing data, and kinds of data gathered, are already widely believed to have been politically motivated. Satisfactory alternative explanations have not been offered.

Even if, which I gravely doubt, the question of integrity could somehow be resolved, the question of effectiveness of Federal statistical programs would remain a crucial matter. I agree that good administration is vital in SESA and Census, but I cannot see how appointees who have not had training or experience in statistics or social sciences can administer statistical programs in these areas better than capable administrators who have had relevant training and experience. A head who can understand the technical problems faced by his staff and who can directly share in the evaluation of proposed improvements would appear to be in a much better position to "strengthen . . . the statistical and analytical functions of the Social and Economic Statistics Administration".

Sincerely yours,

CLIFFORD HILDRETH,
President.

UNIVERSITY OF MINNESOTA,
Minneapolis, Minn., May 25, 1973.

Senator GALE W. MCGEE,
Chairman, Post Office and Civil Service Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR MCGEE: The Post Office and Civil Service Committee has before it the nomination of Vincent P. Barabba as Director of the Census.

A review of Mr. Barabba's qualifications strongly suggests that he lacks the professional qualifications and stature that are needed to direct the work of this vital statistical agency. Indeed, his appointment would be prejudicial to the quality of the Federal statistical services and injurious to the morale of professionally qualified staff in the Bureau.

On the basis of many years of cooperation with officials of the Census Bureau, and having chaired one of its advisory committees, I know what a vital role the Director plays in maintaining the morale and quality of the staff of the Census Bureau and the integrity and respect for its work. The economics profession, like our colleagues in statistics, have had reason to be proud of the work of the Census Bureau and the reputation and competence of previous Directors.

Presidents have respected the professional role of the Bureau and the principle of its professional independence—in short they have recognized that some Presidential appointments must be free of partisan politics and that this position is unquestionably one of them. The nomination of Mr. Barabba makes clear that the Nixon Administration thinks otherwise.

Since Mr. Barabba's professional qualifications for this position are minimal—matching those, perhaps, of some of the junior professional people he would supervise—one can only conclude that political considerations dominate this nomination. Surely, if the morale of the Census Bureau staff and the quality of its work were uppermost—or even high—in Mr. Nixon's priorities, Mr. Barabba would not have been nominated for this post at a time when the quality and integrity of the Federal statistical services are being called into question. It is particularly important to appoint a person of high professional qualifications and unquestioned objectivity to head the Census Bureau. Whatever his qualifications may be for other posts, Mr. Barabba does not meet these tests.

To provide chapter and verse on the nature of my concern about the integrity of our statistical system and the inadequacy of Mr. Barabba's qualifications for this vital post, I enclose copies of articles from the *Minneapolis Star* and *New York Times*, as well as the authoritative articles on the subject in the April, 1973 issue of the *American Statistician*. My Minnesota colleague, Clifford Hildreth, current President of the American Statistical Association, assures me that these articles accurately reflect the judgments of the statistics profession. Economists and other social scientists with whom I have discussed this matter are equally distressed.

If I can be of any further assistance to your committee in the consideration of Mr. Barabba's nomination, please let me know.

Respectfully yours,

WALTER W. HELLER,
Regents' Professor of Economics and President-elect American Economic Association.

AMERICAN STATISTICAL ASSOCIATION,
Washington, D.C., April 30, 1973.

Hon. FREDERICK B. DENT,
Secretary of Commerce,
Washington, D.C.

MY DEAR MR. SECRETARY: During the two and one-half weeks that have elapsed since the announcement of Mr. Failor's appointment as Administrator of the Social and Economic Statistics Administration and Mr. Barabba's nomination as Director of the Census, I have made numerous inquiries of my associates in the statistics profession to try to learn something of the statistics backgrounds of the men selected. With the exception of Mr. Barabba's brief service on a Census Advisory Committee, I find no evidence that either the appointee or the nominee has had statistical training, experience, or contact with the statistical profession.

Such appointments are in direct conflict with the judgments of responsible statisticians including a large number who have rendered outstanding service to the Bureau of the Census and/or other government agencies. These judgments were restated in a recent report of a joint committee of the American Statistical Association and the Federal Statistics Users Conference about which I wrote you in February. Your kind acknowledgement in March contained your assurance "that the report will receive full consideration by this office and by other personnel associated with the Commerce Department's statistical programs". I am unable to reconcile this assurance with the recent announcement.

The designations of Mr. Failor and Mr. Barabba for these vital posts underscore our Committee's recommendation (page three) that heads of statistical agencies should be in the career services: Census, SESA and BLS were particularly cited.

I deeply hope the criteria stated by our Committee will be recognized in filling current and future vacancies. ASA will continue to cooperate in any way possible to maintain and improve all Federal statistical programs. However, it is our firm conviction that our efforts and those of statisticians in government cannot be highly effective unless the programs are headed by good administrators of demonstrated statistical competence.

Sincerely yours,

CLIFFORD HILDRETH,
President.

AMERICAN STATISTICAL ASSOCIATION,
Washington, D.C., April 30, 1973.

Hon. PETER J. BRENNAN,
Secretary of Labor,
U.S. Department of Labor,
Washington, D.C.

MY DEAR MR. SECRETARY: I greatly appreciate your letter of March 21 regarding the recent report of the Joint Committee of the American Statistical Association and the Federal Statistics Users Conference. Your determination to maintain the highest standards in all the Department's statistical activities is most heartening.

I believe our Committee's recommendations are particularly relevant to the selection of a Commissioner of Labor Statistics. The Commissioner must be a man who has demonstrated high administrative ability, complete integrity and the highest statistical competence. I am moved to emphasize these considerations now because the neglect of statistical competence in recent appointments to key statistical posts in some Federal agencies is a cause of deep concern and disappointment in the statistics profession.

The American Statistical Association is anxious to help in any way possible and I am sure this is true of other statistical organizations and of leading statisticians acting individually. Please call on me if there is any constructive help that ASA or I might offer.

Sincerely yours,

CLIFFORD HILDRETH,
President.

SUMMARY

The enclosed report is a response by a select committee of the American Statistical Association and the Federal Statistics Users' Conference to concerns that the Federal Statistical system has been subjected to political pressures to the extent that the honesty and the value of Federal statistics could come seriously into doubt. Because "it is clearly difficult to prove misuse of political power" and because several groups, including the Subcommittee on Census and Statistics of the House Committee on Post Office and Civil Service had already reported on these charges, the present Committee chose to concentrate on a set of recommendations which, if followed, would tend to minimize any possible political influence or suspicion of influence in the collecting and reporting of Federal statistics.

These recommendations are:

1. Heads of statistical agencies should be nonpolitical professionals of high stature and reputations and be in the career service.

2. These heads of agencies should have direct control of their own activities particularly with respect to hiring and firing, budget and planning, and publication.

3. Data should be released on a fixed, free stated time schedule by the agency which produced the data.

4. Advisory committees to statistical agencies should be selected without regard for political affiliation with a number of specific appointments from professional statistical organizations.

The Report lays out general areas where statistical programs should be revised and improved under strict professional guidance. It recommends the development of adequate measures of reliability and sensitivity for all principal statistical series and urges that a senior professional statistician be identified with each series. He will be responsible for and familiar with the data and its limitations. The Report encourages media contact with this statistician and press conferences where needed.

The Committee cites the many areas of life in which Federal statistics play an extremely important role—government policy making, business dealings, labor relations, the provision of social services such as health care, the distribution of revenues, university programs, scientific research, and others. The Committee observes that the data reported must be accurate, consistent, timely and beyond even the appearance of suspicion if Federal statistics are to continue to be useful in so many segments of American life.

The Committee's recommendations do not preclude political use of data but rather attempt to preclude political influence in their collection, production and initial publication.

MAINTAINING THE PROFESSIONAL INTEGRITY OF FEDERAL STATISTICS: A REPORT OF THE AMERICAN STATISTICAL ASSOCIATION—FEDERAL STATISTICS USERS' CONFERENCE, COMMITTEE ON THE INTEGRITY OF FEDERAL STATISTICS

INTRODUCTION AND SUMMARY

Origin of committee

In late 1971, the Federal Statistics Users' Conference Board of Trustees appointed a Subcommittee to obtain further details and information concerning the personnel reassignments and reorganization of Federal statistical agencies. In early 1972, the President of the American Statistical Association was authorized by the ASA Board of Directors to appoint representatives of that Association to a joint ASA-FSUC Committee on the Integrity of Federal Statistics to draw up a statement reaffirming the need for a Federal statistical system of unquestioned integrity and to develop recommendations concerning procedures designed to protect the integrity of the Federal statistical system.

Growing concern

During the past two years the integrity of the Federal statistical system has come into question. There is growing concern that the Federal statistical system may become politicized to the extent that political expediency may override the canons of professionalism and objectivity which have long characterized major statistical agencies of the U.S. Government.

Accurate and reliable Federal Statistics are absolutely essential if the ongoing policy and planning needs of private and governmental users alike are to be satisfied.[1] The critical role of the Federal statistical system—including all major statistical organizations which are involved in the collection, compilation, analysis, and distribution of a wide range of indicators of the health and well-being of the U.S. socioeconomic system—has been underscored during the current struggle to reduce the rate of inflation and to reduce the level of unemployment in the American economy. The Federal statistical system generates a large number of annual, quarterly, monthly, and even weekly statistical indices which relate to these problem areas which have center stage among current domestic issues.

Wide public concern about the extension of political control over professional statistical agencies was highlighted at the time of the Bureau of Labor Statistics' cancellation of press conferences concerning unemployment and employment data (March 19, 1971). These concerns were heightened as a result of several major developments concerning the Federal statistical agencies. These other developments included:

(1) Reassignment of personnel and reorganization of the Bureau of Labor Statistics[2], especially those persons previously associated with the press conferences which had been discontinued.

(2) A number of specific personnel shifts and several premature retirements of top level statistical personnel in important statistical agencies, including the U.S. Bureau of the Census.

(3) A reorganization of statistical agencies within the Commerce Department which resulted in a merger of analytical and policy agencies, reducing significantly the authority and power of the major operating statistical agency.

(4) Temporary discontinuance by the Bureau of Labor Statistics of the Urban Employment Survey which, since 1969, had been providing labor force and other information about residents in poverty areas in major metropolitan centers.[3]

These specific events were inevitably accompanied by charges and countercharges concerning the intent and desirability of the actions. For example, two congressional committees investigated these developments.[4] Hearings were published by the Joint Economic Committee. The Subcommittee on Census and Statistics of the House Committee on Post Office and Civil Service issued a report on October 5, 1972, entitled "Investigation of Possible Politicization of the Federal Statistical Programs".

Other professional associations have also expressed concern about this matter. For example, the Industrial Relations Research Association (IRRA) which has a particular interest in labor force statistics formed a committee chaired by Professor Killingsworth, Michigan State University, to explore the specific charges which related to the Bureau of Labor Statistics. Concerns have also been expressed formally and informally by the members of the American Sociological Association, the Population Association of America, American Economic Association, The Econometric Society, and the National Bureau of Economic Research's Conference on Research in Income and Wealth.

Approach taken

In view of the wide-ranging interest in problems relating to the integrity of the Federal statistical system, the ASA-FSUC Committee elected to review the record generated by the Congressional hearings and investigations, the official statements of responsible appointed officials, and to discuss informally with selected government and nongovernment officials the appropriate policy and administrative actions to be taken at this time to assure that public confidence in Federal statistics will not be undermined.

In view of the importance of this issue, the Committee chose to conduct its deliberations in a quiet, nonpolitical context with the hope of providing general guidelines concerning effective policy in this area, purposely scheduling its report for release following the National election. This report summarizes the activities and conclusions reached by this Committee.

The Committee decided not to focus on specific charges or allegations since other reports have covered this ground and, importantly, since it is clearly difficult to prove misuse of political power in such specific instances. Rather, the Committee notes that, because of the number of actions which have given rise to public concern, it is essential, at this time, to focus on both the importance of Federal statistics for policy analysis and on identifying and recommending policy for maintaining the integrity of the Federal statistical system in the future. While most developments in and of themselves appear to have had a seemingly plausible and acceptable rationale, their frequency of occurrence and conjuncture in a relatively short time period (with all the disturbing implications falling on the same side) have naturally raised suspicion and concern among a broad and diversified body of users and professional statisticians. These events continued to occur during the period of the Committee's deliberations.

Working premise

Beginning with the basic judgment that the essential function of the Federal statistical system is to provide the best possible measures of social, biological, physical, and economic factors which are essential as the foundation for analysis, policy formulation, and for the effective administration and evaluation of public and private programs, the Committee believes that the system must include several basic ingredients:

(1) The statistics themselves must be accurate, consistent, and timely.

(2) The public must have confidence in the statistics which are generated and in the professional ability of the people who produce them.

(3) Statistical programs must be continually revised and improved to reflect new characteristics of the subjects being measured and embrace new subjects as national priorities change. These revisions must be undertaken on the basis of sound statistical principles to assure that the refinements continually result in more reliable and more sensitive statistical indicators.

(4) Technical measures of reliability and sensitivity should be available to define the uncertainties and limitations associated with specific series. This requires equal attention to be given to the gathering of basic statistical data and to the compilation, adjustment, and presentation of the resulting analytical measures and statistical reports.

These characteristics are discussed in the body of this report.

Considerable attention has been given by the statistical profession to procedures for improving the quality and character of specific statistical series. Recently, a broad review of the production and use of statistics in the Federal Government was completed by the President's Commission on Federal Statistics.[5] The Commission emphasized the need for developing a broad view in government of the scope of statistical activities including specific attention to coordinating statistical activities, eliminating obsolete

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[1] Appendix A includes a discussion of the needs for reliable statistics which are evident in government, labor, industry, and universities.

[2] A statement by the Secretary of Labor concerning the role of the Bureau of Labor Statistics and emphasizing that "the Bureau maintain, in the highest degree, scientific independence and integrity" appears in *The Statistical Reporter*, Dec. 1972, pp. 91–92.

[3] According to the Statistical Policy Division of OMB, during the period when the Current Population Survey was being revised on the basis of the 1970 Population Census, the Urban Employment Survey was discontinued because the cost of continuing the Survey seemed excessive relative to the value of the Survey. This discontinuance was recommended by a technical committee composed of representatives from the various statistical agencies.

[4] The public concern regarding these developments is further evidenced in a series of news commentaries, letters to the editors, and editorials. A selected list of such articles is available from the Committee Chairman.

[5] *The President's Commission on Federal Statistics*, Volumes I and II, 1971.

programs, building public confidence in data gathering, and improving the comparability of statistical series.

In contrast, little attention has been given to steps that have been taken, or additional steps that need to be taken, to develop public confidence in the Federal statistical system, or to identify policy measures which will ensure wide professional respect for a diverse, multifaceted statistical system. Nevertheless, this Committee believes that there are certain principles which should be emphasized at this time to provide an opportunity for maintaining and building public confidence in the integrity of the Federal statistical system. These recommendations have been developed to parallel the four conditions which are outlined in the body of this report as the basis for building a credible statistical system.

Recommendations of the committee

Based upon the findings which are stated at the end of this report, the ASA–FSUC Committee on the Integrity of Federal Statistics believes that there is sufficient concern so that specific steps should be taken to allay fears concerning the politicization of the Federal statistical system and to assure the maintenance of high-level, professional statistical work. In light of the importance of such concerns, the Committee urges immediate and careful consideration of the following recommendations. The recommendations are grouped in relation to the conditions outlined above; the order of listing does not imply any priority.

Accurate, Consistent, and Timely Statistics. In order to assure that the Federal statistical system is capable of providing the best measures of social and economic factors which are essential as the foundation for analysis, policy formulation, and for the administration and evaluation of public and private programs, it is essential that the statistics themselves, as collected and developed, be accurate, consistent, and timely. As a policy recommendation for achieving this objective the Committee recommends:

(1) The Statistical Policy Division of the Office of Management and Budget should be encouraged in their efforts to broaden their directive (Circular No. A–91, "Prompt Compilation and Release of Statistical Information")[6] to apply to all possible statistical series as a means of better assuring the timely flow of statistics.

(2) The Statistical Policy Division should continue to be led by recognized professional statisticians who have experience in both the Federal statistical system and have established recognition as professional statisticians in their own right. The Division should report to the top level of the Office of Management and Budget.

(3) The Office of Management and Budget should encourage establishment through a recognized professional agency—such as the National Academy of Sciences, the American Statistical Association, etc.—of an ombudsman position whose role is focused on receiving professional and lay criticisms of the Federal statistical system.

The ombudsman role can be particularly significant in evaluating the conceptual base of specific statistical programs. The conceptual base used for defining a statistical series can be influential in relation to political interpretation of the resulting data. Consequently, a high-level professional with resources to call upon specialists, operating as an ombudsman for the professional community could be an important contributor to assuring an independent point of view with regard to critical statistical series.

Public Confidence in the Federal Statistical System. A key factor in assuring public confidence in the Federal statistical system is the professional statistician's evaluation of the quality of the effort by such agencies. Hence, the Committee makes the following recommendations concerning the organization and professionalization of Federal statistical work:

(1) Heads of statistical agencies should be in the career service, a practice which has been and is now observed in all areas except for the Director of the Bureau of the Census, Administrator of the Social and Economic Statistics Administration (SESA), and the Commissioner of Labor Statistics.

The leadership of the government's statistical programs should be of demonstrated professional competence and free of political influence.

The Committee recommends that specific qualities be identified for screening potential appointees to head Federal statistical agencies. Our specific suggestions are that as a minimum the candidates should meet most of the following characteristics and be selected without regard for political affiliation:

(a) Membership in a professional statistical association such as—American Statistical Association, Biometric Society, Institute of Mathematical Statistics, and the Econometric Society—and membership in one other professional society (American Economic Association, Population Association of America, National Association of Business Economists, American Sociological Association, Industrial Relations Association, etc.) for at least five recent years.

(b) Ability to make new contributions to knowledge in the field of statistics, or subject matter areas of the agency involved, as evidenced by publication of articles in professional journals, or awards by Federal statistical agencies.

(c) National recognition in the field of statistics as evidenced by honors, such as a Fellow of ASA, member of ISI, high office in professional society or major publication.

(d) Demonstrated professional achievement such as evidenced by successful operation of major statistical projects, by promotions to successively higher position in a Federal statistical organization or working in a responsible statistical position in private industry, education, nonprofit, or labor.

(2) The heads of major statistical agencies should have direct control of such functions as appointments of personnel, budget priority setting, program planning, and publications.

A removal of these functions from the statistical bureau creates an unfortunate reduction in the effectiveness of the professional statisticians, weakening the Federal statistical system.

(3) In the release of the data, care should be taken to stress the professional statistical production agency—not the department with overall policy responsibility. Initial release should be made by the production agency, except in cases where one agency performs contract services for another. This is particularly true where two individual agencies are created for separate production and analysis.

Specifically, the production agency should be responsible for technical adjustments to the data such as seasonal adjustments and determination of comparability with previous time series. This may mean a major upgrading of the dedication and competence of the statistics-producing sections of agencies which are basically regulatory or administrative.

(4) Because of the importance of technical advisory committees, guidelines should be established to guarantee the selection and rotation of memberships on such committees without regard for political affiliation and with a number of specific appointments from appropriate professional organizations.

In particular, the Federal Advisory Committee Act (92nd Congress, HR4383) should be followed. Consistent with the intent of this Act, the present Committee recommends that the membership of advisory committees to statistical agencies include a number of appointments to be made by [7] recognized professional organizations such as the American Statistical Association, Industrial Relations Research Association, Federal Statistics Users' Conference, American Economic Association, the National Association of Business Economists, the American Sociological Association, etc. (This is consistent with the requirement that the membership of advisory committees be fairly balanced in terms of the points of view represented with specific attention to the professional point of view.) Further, it is recommended by this Committee that the meeting dates for key statistical agency advisory committees be published through professional society publications in addition to announcement in the Federal Register. This will create the opportunity for widespread professional input and recognition.

Statistical Programs Must be Revised and Improved. A sound Federal statistical system requires adequate budget support and development. The Committee applauds the record of the past four years during which the statistical budget has increased from $195 million to $313 million. Professional control of the nature and priorities of improvements is especially important. Given the need to improve the quality and character of specific statistical series, the Committee urges continued consideration of the potential benefits in reliability and effectiveness which can be achieved by appropriate increases in existing levels of support for Federal statistical production and analysis.

Current economic policy is emphasizing the growing pressures on the Federal budget and the consequent requirements for reductions in expenditures. This Committee feels strongly that the benefit of a strong statistical system clearly outweighs the costs which are currently associated with the Federal statistical system.

Technical Measures of Reliability and Sensitivity. Adequate measures of reliability and sensitivity should be developed for all principal statistical series where feasible. Since the interpretation of statistics is primarily undertaken by nonstatisticians, it is essential that there be adequate access to technical advice concerning the nature and limitations of individual statistical series. To facilitate this development, the Committee makes the following recommendations:

(1) The policy of including the name of a senior professional statistician who is responsible for and familiar with the data described in the news release should be extended to all major statistical releases so that the designated professional statistician can be contacted to explain the limitations of the data presented.

Media representatives and others should be encouraged to call this individual for access to professional information concerning the nature and limitations of these series under discussion. Press conferences may be warranted if the demands for explanation become burdensome.

(2) More provision should be made for professional, periodic evaluation of important statistical series, such as that provided in the earlier President's Committee to Appraise Employment and Unemployment Statistics, to provide for regular evaluation of important statistical series.

A good example of such initiative is the recent progress by the Statistical Policy Division of the Office of Management and Budget to create an advisory committee on the national accounts and the establishment of at least two other similar committees which are

[6] Revision of A–91, dated April 26, 1972.

[7] An alternative would be to submit a slate of nominees when the agency requires final authority.

being planned for Fiscal 1974. Such study commissions, if adequately funded, can provide a wide range of professional judgment and will assure deeper understanding by the professional community with respect to limitations and alternatives to existing statistical programs.

BACKGROUND AND REVIEW

The need for public confidence in Federal statistics

The public and private decisions which must be made daily in the conduct of the nation's business, commerce, and social welfare programs require increasingly sophisticated analysis. This is possible only if the data base is available and reliable. The formulation of economic, political, and other types of policy will be haphazard and subject to more than the normal margin of error if the statistics which support policy decisions are not sufficiently accurate. While it is true that timely and accurate statistics will not ensure wise solutions to our problems, they are definitely essential to the process of identifying the appropriate direction.

Reliable statistics increase many times our chances for success, especially as they provide the basis for development of better theory and explanation of the workings of socioeconomic processes. This is especially important, at present, now that policymakers are relying so heavily on the use of this data system in their effort to solve pressing social and economic problems. It is not an exaggeration to say that the future direction of national policy could be at stake.

Nothing could undermine the politician and implementation of his policy recommendations as much as an accumulated and intense public distrust in the statistical basis for the decisions which the policy-maker must inevitably make, or in the figures by which the results of these decisions are measured. Unless definite action is taken to maintain public confidence in Federal statistics and in the system responsible for their production, there will be growing tendencies to distrust leadership.

The statistical community, both generators and users, has long been concerned with the integrity of the U.S. statistical system. For example, the President's Committee to Appraise Employment and Unemployment Statistics commented more than 10 years ago:

"The need to publish the information in a nonpolitical context cannot be overemphasized. By and large this has been the case—the collection and reporting of the basic data have always been in the hands of technical experts. Nevertheless, a sharper line should be drawn between the release of the statistics and their accompanying explanation and analysis, on the one hand, and the more general type of policy-oriented comment which is a function of the official responsible for policy making, on the other." [8]

As noted later in this report, recent directives regarding the regular scheduling of releases regarding important economic indicators and the delay of at least an hour for the issuance of policy interpretations have been in line with the 1962 statement. It remains true that, as that report indicated more than a decade ago, the importance of a credible statistical system *cannot be overemphasized*. Federal statistics play a vital role in effective decision-making by government, business, labor, and universities, as outlined in Appendix A.

The President's Commission to Appraise Employment and Unemployment is only one example in the long history of commissions which have focused on Federal statistical activities. A chronological review of 12 major commissions on statistics, beginning with a House select committee in 1844, is contained in the report by Paul Feldman [9] which was prepared for the President's Commission on Federal Statistics and reported in 1971.

The Importance of High Technical Standards in the Federal Statistical System. Since both public and private decision-makers rely heavily upon the products of the Federal statistical system, it is essential that continuing efforts be undertaken to maintain high technical standards in relation to specific statistical programs. A lack of confidence in Federal statistics can result if unduly large errors are evident in published data.

This Committee has not attempted to identify specific weaknesses in present statistical programs, although it is evident that selected programs have been the subject of controversy and technical concern. For example, when the Census Bureau publishes data for extremely small areas, it makes data available for intensive scrutiny by local experts who are able to identify errors that would have been otherwise undetected. Some errors of this sort were found after both the 1960 and 1970 Census. It is regrettable that resources are not available for making corrections in the reported small area data which are increasingly being used as the basis for public and private policy planning. Or, to cite another example, the recent revision of the Survey of Consumer Expenditures (and the transfer of field responsibility from the Bureau of Labor Statistics to the Census Bureau) has generated considerable discussion concerning the amount of testing given to the new approach, the relative costs involved, and the expected reliability and usefulness of the final results.

Both of these examples illustrate the importance of using highly professional procedures in the development of statistical systems and in the revision of collection or analytical techniques. Problems in the implementation of new approaches are inevitable. However, a high level of professionalism is critical to assure a minimum of such difficulties and to generate confidence that the difficulties will be handled in a sound and professional manner. In short, statistics have long been taken for granted—like the air we breathe. Recently, environmentalists have focused attention on the need to protect the quality of the air we breathe. Likewise, administrators are beginning to recognize the necessity for maintaining the quality of statistics as the basis for sound governmental decision-making.

Requisites of an adequate statistical system

The preceding sections have outlined the importance of a sound statistical system which enjoys widespread public confidence. In this section we will turn to the requirements for developing and maintaining a credible and adequate statistical system. As indicated earlier, there are four essential ingredients to achieving this objective. These are briefly discussed below.

Accurate, Consistent, and Timely Statistics. In order for the public to have confidence in the statistical system, it is essential that every effort be made to produce statistics which are accurate, consistent, and timely. It is difficult to meet all three of these criteria with equal emphasis. For example, in an effort to be timely it is often necessary to develop preliminary statistical indicators which are then subject to significant revision when more information becomes available. Likewise, significant problems occur when attempting to develop consistency in statistics produced by agencies with differing purposes, diverse administrative responsibilities, and uneven statistical capabilities.

Nevertheless, while these difficulties must be recognized, it is essential that every effort be made to assure that all governmental statistical agencies strive to meet the highest standards of (1) conceptual development, (2) statistical sampling, (3) internal consistency, and (4) historical continuity.

Public Confidence in Federal Statistics. It is relatively easy to convene professional statisticians to evaluate sample design, historical records of reliability or consistency, or to estimate significance in ranges of errors as tests of the criteria identified in the previous section. In contrast, it is somewhat more difficult to determine specifically those ingredients which will assure public confidence in the statistical system. However, assuming that the basic statistics are accurate, it is essential that the public understand and appreciate this accuracy or the value and usefulness of accurate statistics will be seriously undermined.

The first step in developing public confidence is undoubtedly the development of peer group confidence in the statistics. In other words, if the professional statisticians, biologists, physical and social scientists, etc., who utilize the data have confidence in the statistical system and in the accuracy of the data, it is more likely that the general public will accept this professional judgment as the basis for placing their confidence in the resulting statistics.

Peer group confidence begins with the appointment and advancement of highly professional persons to keep policy and program roles in Federal statistical agencies. The professional ability of all agency staff members involved in the collection, compilation, and analysis of Federal statistics is crucial to the development and maintenance of strong peer group confidence in the Federal statistical system.

In a second area, it should be noted that public confidence in the Federal statistical system is strongly influenced by the actions of the press. Most members of the working press cannot be expected to make professional interpretations of the variety of statistical series which are produced by the Federal statistical system. Therefore, it is essential that the press have available to it clear reports concerning important characteristics of specific statistical series and access to expert counsel in the interpretation of those reports.

The third factor related to the public confidence in the Federal statistical system is associated with political use and interpretation of the data. As noted at the outset, a major concern of this Committee has been the exploration of approaches to reducing political influence on the statistical system. Public confidence is influenced both by overt political pressure and by the appearance of political pressures. It is the Committee's position that every effort must be made to reduce both political pressure and the appearance of political pressure if peer group confidence is to be enhanced and if the general public's confidence in the Federal statistical system is to be maintained.

To illustrate the dangers of political pressure on statistical decisions, consider the technical problem associated with assigning the cost of air pollution and emission control equipment on automobiles as a component of the Consumer Price Index. There was considerable debate whether to classify this equipment as a quality improvement—consequently, not influencing the Consumer Price Index—or as a cost increase which would be reflected in the Consumer Price Index.

A statistical decision on cost versus quality in automobile pricing has to be made annually and in 1972 it had to be made during an election campaign. If political considerations were to enter this statistical issue, it would be beneficial to labor to include the

[8] *Measuring Employment and Unemployment*, President's Committee to Appraise Employment and Unemployment Statistics, September, 1962, p. 20.

[9] Feldman, Paul, *The President's Commission on Federal Statistics*, 1971, Volume II, Chapter 10, pp. 477–495.

emission control equipment as a cost increase, thereby adding a "cost-of-living" increase to the wages of millions of workers and, perhaps, politically reflecting adversely on the success of controls in holding down inflation.

Alternatively, political advocates who are concerned with demonstrating the success of anti-inflationary policies would urge classification of this equipment as a quality improvement, as would those interested in demonstrating the increased productivity of labor and the greater output of the economy.

A technical committee of professional statisticians was convened to resolve this statistical issue, and there is no evidence that political pressure was exercised. However, the nature of this type of decision illustrates the importance of producing technical statistical decisions which are above suspicion and maintaining them in an arena which is independent from political pressure. The cumulative effect of a series of political decisions concerning such technical details would be to destroy the effectiveness of the statistical measures as well as to undermine public confidence in the data themselves. This illustration reinforces the importance of professional judgment and decision-making as essential elements in a quality statistical system.

In summary, while it is difficult to identify specifically actions that will assure public confidence in the Federal statistical system, it is important to focus on (1) building peer group confidence in the statistical community by emphasizing professionalism in statistical agencies, (2) improving the understanding of the working press by providing easy access to expert counsel, and (3) minimizing even the appearance of political pressure or influence on the statistical system by eliminating situations and events which arouse these concerns.

Revision and Improvement of Statistical Programs. It is not sufficient to maintain the status quo even if the available statistics are accurate, timely, and consistent. The characteristics of the subjects being measured are subject to continual change. Further, as national priorities change, new subjects must be considered as the focus for Federal statistics.

It is essential that the statistical system include provision for developing revisions and improvements which will encompass sound statistical principles. As indicated earlier in the brief example concerning the Consumer Expenditure Survey, revisions and refinements will inevitably create certain difficulties. It is essential that the decisions to institute such refinements and revisions be based on a firm expectation that more reliable and more sensitive statistical indicators will result, and that revision or discontinuance of a series should not be initiated simply because the available results had proved embarrassing or unresponsive to specific administrative policies.

Each year a number of improvements in the Federal statistical system are recommended and, frequently, adopted. This continual upgrading of the system must be encouraged and, where possible, accelerated. In relation to many other Federal activities, the cost of the Federal statistical system is small. However, with the current demands for budget stringencies, all areas are subject to pressure for future reduction. In view of the importance of statistical programs as the basis for overall policy formulation, caution should be exercised when pruning existing budget or rejecting new programs which may be essential in the development of public policy.

A professional statistical system requires both well-qualified leadership and adequate budget support. It is recognized that there is a need for central planning to insure proper balance among all areas of demand for improved Federal statistical series. The Statistical Policy Division in the Office of Management and Budget should be encouraged to continue development of statistical policy which emphasizes these points. An outstanding beginning has been made as evidenced by the growth in support of statistical programs from $194.6 million in Fiscal 1970 to $312.6 million which has been requested for Fiscal 1974, an increase of 61 percent. During this period, programs for economic statistics increased from $126.3 million to $174.8 million, an increase of 38 percent, and programs for social and demographic statistics increased from $68.3 million to $137.8 million, a growth of 102 percent.

Adequate Technical Measures of Reliability and Sensitivity. The actual utilization of statistics in decision-making can be significantly influenced by the method of presentation and documentation as reflected in statistical reports. In order to minimize the problems of misuse of statistical series, it is essential that the available reports provide specific technical measures of the reliability and sensitivity of the data at hand. While many users of statistical series do not require full technical documentation of statistical procedures used in compilation, adjustment, and analysis of the data, it is essential for those who have a need or concern about these subjects that the basic reports include either indications of these technical factors or provide reference to source documents where these procedures are defined in detail.

The availability of this information is particularly important in distinguishing between preliminary, revised, and final estimates for key statistical components. If the available report does not clearly call attention to the character of the data being reported, there is a danger that broad media dissemination of the statistical measures will fail to reflect the limitations of the data themselves. Over time, the failure to distinguish between preliminary and final estimates tends to reduce public confidence in the statistical system by generating the appearance that frequent revisions were unanticipated when, in fact, they may be part of the basic procedures used.

The four characterisics of an adequate statistical system which have been discussed above serve as the framework for the following specific findings of the Committee and the recommendations which were presented earlier.

Findings of the committee

The causes for concern which led to the formation of this Committee have been intensified during the past year. The primary finding of this Committee on the Integrity of Federal Statistics is that while there is no evidence that statistical results have been altered to support a particular point of view, there are tendencies—through reduced span of authority of professional leadership, appointment of noncareer personnel, and current and proposed reorganizations—to reduce or inhibit the independence of Federal statistical personnel. Therefore, it is particularly unfortunate that a continuing sequence of events has created broad concern regarding the professional integrity of the overall system, especially as a consequence of premature retirements of key professional staff members who, in other respects, would be expected to offer more years of exceptional service.

While the Committee has not elected to pursue specific allegations, it is clear that the organizational structure—especially through current and pending reorganizations—provides increasing opportunities to exert political influence on the development and interpretation of statistical programs. Specifically:

(1) Agency appointments of noncareer personnel, especially those with strong political affiliations rather than statistical credentials, can have an inhibiting influence on the quality, independence, and objectivity of statistical work. A further implication of such developments, in the longer term, will be a reduction in morale and a reduced incentive of both young and mature professionals to associate themselves with agencies which have overt political overtones. This will result in a deterioration of the professional role of Federal statistical agencies.

(2) The reorganization of statistical agencies undertaken in 1971 as the result of a directive from the Office of Management and Budget was intended to reduce the number of separate statistical agencies, to centralize production functions, and to separate the production of statistics from their use in the formulation of policy. These goals would have widespread professional support. However, the application of the directive in the Commerce Department led to the creation of a complicated overlay for the Census Bureau and the former Office of Business Economics, considerably downgrading the role and independence of the operating agencies. In the new organization, the opportunities for influence by noncareer officials for the selection of new programs, for the reduction of old programs, and for other program changes have been substantially increased.

(3) Since, for about two years, target dates for the release of *principal* economic indicators have now been published in advance, the discretionary authority over the timing of these releases has been eliminated. The OMB directive (Circular No. A–91, "Prompt Compilation and Release of Statistical Information"), designed to assure that deadlines are established for the preparation and release of statistical series, has not yet been implemented on an across-the-board basis. Until the efforts now being made to this end in the Statistical Policy Division are put into effect, it is still possible to withhold some reports from preparation or to delay others for political purposes.

The Committee believes that specific steps should be taken to allay the growing fears concerning politicization of the Federal statistical system and to ensure and maintain a high level of credible, professional, statistical work. In the light of the importance of such concerns, the Committee urges that the recommendations listed earlier be promptly implemented and that such actions be properly publicized.

ASA-FSCU COMMITTEE ON THE INTEGRITY OF FEDERAL STATISTICS

Joseph W. Duncan, Chairman: Battelle Memorial Institute.

Daniel H. Brill (ASA): Commercial Credit Company.

Bernard Clyman (FSUC): The Equitable Life Assurance Society of the United States; Queens College, City University of New York.

A. Ross Eckler (ASA), Retired: (Formerly, Director, U.S. Bureau of the Census).

Thomas A. Hannigan, Jr. (FSUC): International Brotherhood of Electrical Workers.

Robert E. Lewis (FSUC): First National City Bank, New York.

Robert S. Schultz, III (ASA): New York State Council of Economic Advisers.

DeVer Sholes (ASA): Chicago Association of Commerce & Industry.

APPENDIX A: ILLUSTRATIVE USES OF STATISTICS IN GOVERNMENT, BUSINESS, LABOR, AND UNIVERSITIES

These brief highlights concerning the role of statistics in governmental, industrial, labor, and universities' decision-making show the importance of selected key statistical series. It should be noted, of course, that there are many specialized statistical series which are mentioned below which have particularly significant roles in areas where they are applied. There is no intent in this report to evaluate the importance of any specific series.

The Role of Statistics in Government. The importance of the Federal statistical system for policy-making and administration at the Federal, state, and local governmental levels

is well-known. Almost every statistical program has its origin with legislative action which in turn requires data collection in support of program planning, administration, or evaluation. For example, the Decennial Census is mandated by a Constitutional requirement to establish the number of representatives from geographical areas throughout the nation.

The importance of maintaining public confidence in the output of our statistical system can be illustrated by selecting a few examples of the multitude of applications of statistical data in the legislative and executive branches of government. In many cases, the very organization of government itself is dependent upon statistical information. In addition to the apportionment requirement noted earlier, the size of staffs of elected representatives depend directly upon information regarding the number of people in a state or in a Congressional district. At the state and local levels, there are hundreds of provisions in various states where the population level established by the latest Decennial Census is used as a basis for allocating funds, creating boards, granting licenses, establishing jurisdictions of local officials, and setting salary levels.

Official statistical measurements are central to the development of legislative programs by the Congress. The record of legislative hearings is typically filled with statistical exhibits and there are literally innumerable references to specific items of data. Whether legislative policy is being determined, a new program is being established, or the results of existing programs are being reviewed, the legislative uses of governmental statistics are both numerous and extensive.

The range of data involved is impressive. For example, the development of social programs such as those relating to Social Security, welfare, and aid to specific classes of the population depends administratively on data concerning employment, income, hours of work, dependency, and many related subjects. As another example, policy-makers concerned with the problems of our environment and the use of natural resources require data on existing resource availability and utilization as the basis for defining available alternatives and appropriate policies. In this area the available data base must be used to provide estimates of the growth in future uses of these resources, to prepare estimates of time required for resource depletion and to provide a basis for deciding upon quotas and the allocation of supplies among competitive claimants.

In the regulatory area, the role of data as the basis for policy determination is especially evident. Regulation in the fields of transportation, power, and communications—to cite three broad areas—are based to a great extent upon statistical information concerning the number and size of businesses involved, their capacity, capital investment, and degree of penetration in the total market. If the public were to lose confidence in the basic data which are used by regulatory agencies, the very nature of regulation itself would be subject to distrust and controversy.

To many observers of Federal policy-making, the continuing intervention of the administrative agencies of the Federal government in the national economy is perhaps the most evident policy interaction. The national income and wealth accounts play a major role in establishing legislation and policy concerning prices, wages, monetary trends, economic stabilization, and related topics. These data are typically the basis for research and policy planning in the executive branch of government and are continually used to evaluate results achieved by administrative programs. Data concerning cost of living, unemployment levels, and capacity utilization, provide the underpinning for national economic policy including such vital areas as budget formulation and fiscal administration, as well as the administration of specific programs.

The allocation of Federal and state funds depends directly upon a number of statistical measures—including the size of the population as a whole or selected classes of the population such as public assistance recipients. Data concerning income levels, miles of highway, numbers of pupils, and other measures are provided for in a network of legislation enacted by the Congress and by state legislators. Decisions at a variety of governmental levels relating to urban renewal, public housing, recreational facilities, drainage and water supply, and health and educational facilities of all kinds must be made in the light of full information regarding the population and its characteristics.

These examples indicate that it would indeed be difficult to overestimate the value of sound statistical information in the governmental structure of the United States—a structure which has long been accustomed to making decisions on the basis of facts. The ultimate test of programs depends upon objective evaluation of the results achieved. For this purpose, reliable and continuing social and economic statistics of unquestioned validity are essential. In addition, there should be provided a body of administrative statistics for each major program, properly planned and clearly presented so that agency officials, the Congress, and the general public can judge the results that have been obtained and can call for improvements when necessary.

The Role of Statistics in Business. In addition to the internally generated statistics unique to individual businesses, most corporations rely upon Federal data for many of their critical decisions in areas such as business planning, market research, financial administration, purchasing, and personnel administration.

Corporate long-range planning frequently begins with analysis of national income accounts and related data such as industry production levels as the basis for establishing the broad market context for individual corporate operations. In fact, many large corporations employ full-time economists whose primary function is analyzing national economic developments and determining their impact upon the individual corporation.

Businessmen look to statistics to tell them how the economy in general is faring as a guide in making long-range investment decisions or setting sales quotas for the year ahead. They want to get advance warning on cyclical turning points and the amplitude and duration of expansions and contractions. But frequently their needs are more precise. They want to know how each of their product lines is faring relative to industry as a whole. They want to gauge the growth of individual markets as a guide to inventory policy, plant and equipment expenditures, and new product development. They want to assess Federal budget deficits, monetary policy and interest rate trends as they may affect the financing of their firms' growth and investment. They rely on figures on prices, labor markets, wages, and supplies of materials as guides to their current operations.

Market research departments in industry extensively utilize Federal data concerning population characteristics and industry characteristics to determine basic market trends and opportunities.

Financial departments in major corporations carefully evaluate basic monetary trends as measured by the Federal Reserve System to determine current and future financial developments which will influence the cost and availability of capital to the corporation.

Purchasing officers rely upon Federally produced statistics, such as commodity price data of the Departments of Agriculture and Labor and figures on shipments and inventories from the Department of Commerce to determine availability and cost of basic materials for manufacturing the firm's products.

Personnel departments rely upon local and national wage and income surveys to determine appropriate salary and fringe benefits schedules.

Hence, it is evident that in nearly all facets of business and industry, basic decisions which are essential to effective operation of the corporation are made on the basis of Federal data.

Additionally, the Federal statistical system is vital to the concerns of business in many respects beyond their internal use of data for operations and planning. The quality of the statistical base used in establishing regulatory policy, administrative programs such as the New Economic Policy—Phases II and III, and the formulation of legislative guidelines (in vital areas such as pollution standards, product quality, and import-export regulations) is crucial to business leaders and decision-makers.

The Role of Statistics in Labor Negotiations. Federal statistics directly affect the entire scope of industrial relations, including collective bargaining and contract administration. Collective bargaining is a key element in the American free enterprise system, and it could not be successfully carried on without reliable Federal statistics acceptable to all interested parties—labor, management, and the general public alike. Both parties at the bargaining table need objective insight and understanding into each other's position. Also, they direct much of their efforts toward convincing the general public of the equity of their own positions as reflected in objective official statistics. In this often supercharged atmosphere, negotiations would quickly deteriorate into chaos if no reliable and acceptable statistics were available as the focus of discussion. The same would be true of the day-to-day operations of contract administration.

Statistics of key importance for collective bargaining and contract administration include wages by industry, region and state, and trends and industry data relating to fringe benefits such as paid holidays, vacations, health insurance, and pension benefits. Cost-of-living provisions based on the Consumer Price Index affect the income of four million workers and pensions of two million retirees. Business and labor groups use the Consumer Price Index to develop retirement and health insurance programs, the government, to formulate social and economic policies, and individuals, to check on their real earnings. The Pay Board adopted consumer price indexes along with productivity indexes as the two major criteria governing acceptable noninflationary wage increases.

Labor market conditions and the amount of unemployment are matters of primary interest to union and management negotiators as indicators of the economic situation in given areas or localities. Statistics measuring the frequency and severity of work injuries by industry are of great importance to labor and management since they serve as the basis for specific insurance provisions and new laws designed to protect workers from death and disabling injury. Any lack of confidence in their accuracy or reliability by either of the parties concerned would jeopardize this accepted approach to the settlement of conflicting positions.

The interest of labor in good statistics is not limited to their usefulness in labor negotiations, however. Statistical information is vital in the formulation of much legislation which either expands or restricts the basic rights of labor and management. Many far-reaching economic decisions made by government leaders, such as establishing the Construction Industry Stabilization Council,

plus the imposition of wage and price controls, are based upon Federal statistics.

The Role of Statistics in Universities. Universities continually conduct research designed to assist businesses, labor organizations, and government agencies in making sound decisions of the kind illustrated above. In addition, universities use Federal statistics to test basic theories on which such decisions are based and to search for more useful theories in a diverse range of topics including all areas of social, biological, physical, and economic systems. Much of this basic research is cooperative among government, business, and universities. Clearly, we cannot develop true understanding of basic social and economic processes unless our historical records are comprehensive and accurate.

Of equal importance, the entire education process depends upon the evaluation and interpretation of basic data. If the student and/or teacher lacks confidence in the information base, it is difficult for the educational endeavors to proceed.

Other Roles. There are many important uses for statistics which have not been mentioned in the above sections.[10] The intent here is simply to illustrate the importance of statistics in a wide range of sectors. For example, the discussion of statistics in labor negotiations is only one example of the use of statistical series by the labor movement. Many uses by other sectors could be emphasized including use of crop reports and other agricultural statistics by individual farmers and consumers, statistical analyses by state and local governments in establishing governmental policy, and use of statistics by news media as an underpinning for planning future program emphasis, reporting on current problems, etc.

As noted in the introduction to this report, the discussion of the importance of reliable statistics which are evident in government, labor, industry, and universities are highlighted above to demonstrate that accurate and credible Federal statistics are: ". . . absolutely essential if the ongoing policy and planning needs of private and governmental users alike are to be satisfied."

APPENDIX B: NOVEMBER 10, 1972—STATEMENT OF POLICY BY THE SECRETARY OF LABOR CONCERNING THE ROLE OF THE BUREAU OF LABOR STATISTICS

In Order No. 49–69, dated November 25, 1969, the Secretary delegated authority for labor statistics programs to the Commissioner of Labor Statistics. Traditionally, the Bureau of Labor Statistics, which the Commissioner heads, has had a dual responsibility. One is to serve as the statistical and research arm of the Department of Labor, supplying the Department and its program offices with data important to their functioning. The other is to provide information to the public on subjects concerning labor in the most general and comprehensive sense. Both responsibilities require that the Bureau maintain, in the highest degree, scientific independence and integrity. The second function, particularly, requires that the public be confident that the Bureau does, in fact, possess these qualities and that they will be preserved.

The purpose of this statement is to reaffirm the importance of the Bureau's scientific integrity, and to set forth certain guidelines that will help to preserve it.

The decision-making process in producing statistics involves:

The allocation of BLS resources.

The appointment of personnel and selection of advisory committees.

The determination of appropriate statistical methods and operating procedures.

The preservation of confidential records supplied by respondents to surveys.

The preparation of technical analysis and interpretation of the data.

The release of information to the public.

The Commissioner's decisions with regard to these matters must, of course, follow the policy, budget and program objectives established by the Department of Labor. They must also conform to the statistical standards and policies established by the Office of Management and Budget under the Federal Reports Act. However, there shall be no decisions which are not in concert with the professional and technical expertise of the Bureau. Under these conditions scientific independence will continue to be the hallmark of the Bureau of Labor Statistics.

A number of specific safeguards help to preserve this scientific independence. Among them are the following:

1. Two active advisory councils are informed about and advise upon BLS programs and decisions. They are the Business Research Advisory Council, with representatives drawn from the business community, and the Labor Research Advisory Council, with representatives from labor unions. The two councils operate independently of one another, and both have numerous committees concerned with every subject-matter area covered by the BLS.

2. A new Academic Advisory Council will be organized later this year, with members from several professional organizations. This new group, consisting of economists and statisticians in universities and research institutions, also will advise the BLS on its program and procedures.

3. In the release of principal economic indicators BLS follows guidelines established by the Office of Management and Budget that help to assure the objectivity of Federal statistics:

a. Data are released by the principal statistical officer in charge of the agency. This means that the Commissioner determines the date and hour of release and approves the text of the release, and that the BLS is clearly identified as the source agency in the release.

b. Data are released as promptly as possible, and always within two working days after they have been compiled and checked.

c. The schedule of release dates is published in advance.

d. In order to clearly separate the release of data from policy-oriented commentary, no comments by a policy-making official are made until at least one hour after the release of the data by the BLS.

4. The Secretary has delegated to the Commissioner full authority to set up appropriate procedures and regulations to safeguard the confidentiality of the reports made to BLS by respondents to its surveys. These regulations apply throughout the Department as well as to other agencies or individuals within or outside the government, and prevent the use of BLS data for other than statistical purposes.

JAMES D. HODGSON,
Secretary of Labor.

Source: *Statistical Reporter,* December 1972, pages 91–92.

APPENDIX C: LISTING OF SELECTED MEDIA ARTICLES CONCERNING INTEGRITY OF THE FEDERAL STATISTICAL SYSTEM [11]

September 29, 1971—*The Washington Post,* "Nixon Ousting Labor Analysts" by Frank C. Porter.

November 17, 1971—*The New York Times,* "Lawmaker Sees Census Politics" by Jack Rosenthal.

February 25, 1972—*Journal of Commerce,* "A Staff Report—Does the Administration Cloud Statistics on Business Activity?"

August, 1972—Annual Meeting of the American Statistical Association *Statistics and Politics* by Philip M. Hauser.

September 6, 1972—*The Washington Post,* article by Nick Katz, "Farm Income Knowingly Overstated by $1 billion".

October 22, 1972—*The New York Times,* Washington Report Article by Eileen Shanahan on interpretation of economic statistics.

November 5, 1972—*The New York Times,* Letter to the Editor from Harold C. Passer discussing above article by Eileen Shanahan on his interpretation and pronouncements during the recession in 1970.

November 6, 1972—*The Wall Street Journal,* Review and Outlook—"The BLS Fuss."

November 27, 1972—*The Wall Street Journal,* Letter to the Editor by Senator Proxmire pointing out that the Joint Economic Committee had been holding monthly employment data hearings since they were discontinued by BLS.

December 20, 1972—*American Banker,* Business Outlook by J. A. Livingston, reports the surprise and astonishment of economists and statisticians at the accepted resignation of Geoffrey H. Moore as Commissioner of Labor Statistics.

January 29, 1973—*The Wall Street Journal,* front page news item noting resolution by the Industrial Relations Research Association.

APPENDIX D: RESOLUTION BY THE INDUSTRIAL RELATIONS RESEARCH ASSOCIATION EXECUTIVE BOARD, DECEMBER 29, 1972

The Executive Board of the Industrial Relations Research Association, having received and considered a report from its committee appointed to investigate recent events concerning the U.S. Bureau of Labor Statistics, resolves as follows:

1. that public confidence in the professional integrity and credibility of the Bureau of Labor Statistics is essential, because the Bureau publishes data and materials which are used regularly in the labor-management relations, business contracts and economic forecasts;

2. that the credibility of the Bureau of Labor Statistics has been impaired by events of the last two years, including the termination of press conferences by Bureau of Labor Statistics personnel and the subsequent reassignment of key personnel in the Bureau;

3. that the Board views with particular concern the acceptance of the requested resignation of the Commissioner of Labor Statistics three months prior to the expiration of his statutory term of office, because this termination under these circumstances represents a sharp break with the long-established tradition that this position has not been regarded as a political appointment;

4. that it is most important, if further impairment of the credibility of the Bureau of Labor Statistics is to be avoided, that the new Commissioner be a person with the highest professional qualifications and objectivity;

5. that it is desirable that the decision to discontinue press briefings by the Bureau of Labor Statistics technical personnel should be carefully reconsidered;

6. that nothing in this resolution should be construed to indicate that this Association questions the integrity of the preparation of BLS figures.

To be signed by: Ben Aaron, President 1972, Douglas Soutar, President, 1973, David Johnson, Secretary-Treasurer.

Source: *Congressional Record,* January 11, 1973, page 788.

[10] The official report of *The President's Commission on Federal Statistics* includes a lengthy discussion of various groups which are users of statistics—Volume I, pp. 77–102.

[11] Editorial comments have also included political cartoons such as that in *The New Yorker's* issue of October 14, 1972, depicting the "Bureau of Rosy Statistics".

APPENDIX E: EXECUTIVE OFFICE OF THE PRESIDENT—OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C. 20503

April 26, 1972, Circular No. A–91, Revised.

To: The Heads of executive departments and establishments.

Subject: Prompt compilation and release of statistical information.

1. *Purpose.* The purpose of this Circular is to insure that the principal statistical series which are issued by agencies to the public annually or more frequently are released without unnecessary delay and that the publication dates for the principal weekly, monthly and quarterly indicators are made publicly available in advance. The prompt release of official statistics on a regular schedule is of vital importance to the proper management of both private and public affairs.

2. *Rescission.* This Circular supersedes and rescinds Circular No. A–91, dated February 12, 1969. It covers annual and semi-annual series as well as those issued more frequently. Also it reduces from quarterly to annually the reports required by the Office of Management and Budget on the release of certain statistical series having more limited use than the principal indicators identified each month in the OMB publication, *Statistical Reporter.*

3. *Authority.* This Circular is issued under the authority of Section 103 of the Budget and Accounting Procedures Act of September 12, 1950 (31 U.S.C. 18b), Executive Order 10253 of June 11, 1951, and Executive Order 11541 of July 1, 1970.

4. *Coverage.* The Circular applies to all statistical series issued by agencies to the public annually or more frequently, unless otherwise exempted by the OMB.

5. *Objectives.* It is the aim of this Circular to accomplish the following objectives:

a. The shortest practicable interval should exist between the date or period to which the data refer and the date when compilation is completed. Prompt public release of the figures should be made after compilation. In the case of principal indicators, the goal is to accomplish compilation and release to the public within 20 working days. Within this period no more than two working days should be allowed for the public release of data, unless other arrangements are approved by the OMB.

b. In the case of other series, more time can be allowed, but every effort should be made to keep it to a minimum. Series requiring an inordinately long time to compile should be reviewed to see what purpose they serve and whether they should be discontinued or reduced in frequency (e.g., monthly series made quarterly or annual).

c. Release dates for principal economic indicators will appear each month in the OMB publication, *Statistical Reporter.* Care should be taken in scheduling these release dates so that they can be met. Unless directed otherwise by OMB, figures which become available early should be released early.

d. Initial release of statistical series should be made by the statistical agency in a written report. A press release should be issued if it would significantly speed up the release of the data to the public. There should be a one-hour separation between the issuance of the release by the statistical agency and related commentary.

6. *Responsibilities.* Each agency is directed to review continually its practices in releasing statistical series to the public and to take such action as may be necessary to carry out the objectives of this Circular.

7. *Reports and records.* Each agency that publishes statistics subject to the provisions of this Circular will submit reports to the OMB and maintain records in accordance with instructions in the Attachment and in the formats of the Exhibit.[12]

[12] Attachments available from the Office of Management and Budget upon request.

8. *Inquiries.* For any information concerning this Circular, please call the Office of Management and Budget, Statistical Policy Division, telephone: code 103–4911 or 395–4911.

GEORGE P. SHULTZ,
Director.

INTEGRITY IN NUMBERS

Federal statistics are the guide by which the government steers the massive economic and social policies that touch the lives of us all. These statistics are very sensitive. The monthly reports on inflation, for example, are calculated in tenths of a percentage point. A few tenths of a point, up or down, are a disaster or a triumph for the administration. A few more tenths of a point can turn an election.

Professional scholars and analysts have been expressing rising concern over political pressures on the agencies that gather and compute these crucial figures. Their concern rose sharply this spring when the administration picked men from President Nixon's re-election campaign operations to head two of the most prestigious statistical agencies. Last Tuesday, we denounced these appointments, and this morning we publish a letter in reply from Paul R. Squires, the associate director of one of those agencies, the Census Bureau. Mr. Squires correctly points out a factual error in our editorial Tuesday. The Bureau of Labor Statistics is, of course, in the Department of Labor and not, as we erroneously said, in the Department of Commerce. Otherwise, unfortunately, our comments on Tuesday were accurate. If anything, we have come to this issue a bit late.

Last December, the Industrial Relations Research Association published a resolution declaring that "the credibility of the Bureau of Labor Statistics has been impaired by events of the last two years." Those events had just culminated in the White House's decision to fire the highly qualified head of the Bureau, Dr. Geoffrey Moore. Five months later, the job still has not been filled.

The American Statistical Association and the Federal Statistics Users' Conference set up a point Committee on the Integrity of Federal Statistics that, after a year's study, brought out its report in February. "The causes for concern which led to the formation of this committee have been intensified during the past year," it declared. It spoke of "premature retirements of key professional personnel," and a reorganization pattern that "provides increasing opportunities to exert political influence on the development and interpretation of statistical programs."

What could political pressure accomplish? Certainly nothing so obvious as falsified figures. But this committee report offers an illustration of the danger. Suppose that an automobile manufacturer adds pollution control equipment to its cars and raises the price. Does the price increase represent an improvement in the quality of the car? All of the price increase? Part of it? If it is counted as a quality improvement, then it shows up in the statistics as growth in real economic production, wealth, and manpower productivity. If it is counted as a cost increase, it shows up as more inflation. In that case, it could trigger cost-of-living raises for millions of workers, and strengthen the political criticism of the administration's economic strategy.

In mid-April, the administration chose Vincent P. Barabba to head the Census Bureau, and Edward D. Failor to run the Social and Economic Statistics Administration, a division of the Commerce Department that includes the Census Bureau. The president of the American Statistical Association, Professor Clifford Hildreth of the University of Minnesota, promptly protested both choices on grounds that neither "has had statistical training, experience, or contact with the statistical profession."

Mr. Barabbas's experience lies in running a market research organization that did polling for Mr. Nixon during the campaign. The issue is whether a person associated with campaign polling ought now be placed in charge of the Census. Mr. Failor is an Iowa lawyer who, earlier in the Nixon administration, was at the Bureau of Mines. His record there is the subject of some controversy. He defends it, but the General Accounting Office has sharply criticized it. Subsequently Mr. Failor was employed by the Committee for the Re-Election of the President.

Sen. William Proxmire (D-Wisc.) has been following these appointments, as chairman of the Joint Economic Committee's subcommittee on statistics. He has called on President Nixon to withdraw both names, and he is right. "The question is," the Senator observes, "will the American people believe inflation statistics when Campaign '74 rolls around next year? These appointments put that public faith in jeopardy."

Mr. MOSS. Mr. President, I rise to state that I shall vote against the nomination of Mr. Vincent Barabba to be Director of the Bureau of the Census. I cast a negative vote in the Post Office and Civil Service Committee based on my understanding that Mr. Barabba does not meet certain professional requirements.

I, of course, recognize that there are many jobs that can be filled by a person of general competence. Good administrative ability and commonsense is often to be preferred to technical training when a person is dealing with a broad field of human relations or is concerned with wide policy considerations. But a job that is as technical and as demanding as this one of Census Director requires more than general administrative ability. Moreover, we make certain that the post remains completely free of political overtones. I think it requires that we have a person of demonstrated professional competence.

As the chairman of the Committee on Post Office and Civil Service said, there is no requirement, no legal requirement, that a person nominated for the Director of the Bureau of the Census have this professional background. By the same token there is no requirement that the Chief Justice of the United States or a member of the Supreme Court be a lawyer or a member of the bar. However, I think none of us would feel that a man appointed by the President, who did not have training in the law or some experience in the law, would be an adequate nominee to be a member of the Supreme Court.

And certainly a man nominated for Surgeon General or for any other position requiring training should be a professional man.

It is the lack of this type of professional training that makes Mr. Barabba unsuited for the job of Census Director.

Besides requiring leaders with professional expertise, Federal statistical agencies must also have firm credibility. Many critical decisions in our society—including basic decisions of Government policy—rely in whole or part upon statistics. Also, figures on employment, inflation, and many other key indicators of Government performance are derived from statistics. Our statisticians must be professionals of the highest order, and they must be above partisanship.

Unfortunately, Mr. President, a num-

ber of serious questions have been raised about the professional qualifications of Mr. Barabba. Moreover, his background of political activity makes it inconceivable to me that Census Bureau statistics during his term as director could escape the suspicion of political influence. Particularly at a time when public confidence in Government decisions is at an alltime low, we should not further jeopardize that confidence by confirming a Census Director whose qualifications are political more than professional.

I do not criticize the character or the integrity of Mr. Barabba. Undoubtedly he is an able man, and as a young man he has made a good record in the field of marketing. He is a man interested in government, who has participated in polling work for his party.

All of these things are commendable, and I do not fault him on this account. But I do say that he is lacking, and woefully lacking, in the expertise we should look for in the man who is to head the Bureau of the Census.

This is not a policymaking department in the Government. It involves the exact science of taking statistics, compiling them, and presenting them in an accurate and professional way so that there is no questions about their accuracy. Our Federal statistics are useful to us only if they are collected and presented in a thoroughly professional manner.

That is what we require in the Director of the Census Bureau. For that reason, I cannot vote for Mr. Barabba. He simply does not possess the necessary professional qualifications.

The PRESIDING OFFICER. All time of the Senator from Utah has expired.

The Senator from Wyoming has 18 minutes remaining.

Mr. McGEE. Mr. President, I yield 3 minutes to the Senator from Texas.

Mr. TOWER. I thank my friend from Wyoming.

Mr. President, to insist that an appointee for a position be approved by or a member of a particular trade or professional association, I think, must be rejected on the face of it. My distinguished friend from Wyoming has mentioned the professional association to which I belong, the American Political Science Association, suggesting that that membership does not qualify me to be a college administrator; and indeed it does not.

That rationale, if we followed it, I think, would require us to insist that the Secretary of Labor be a trade unionist and that the Secretary of Defense be a professional military man.

Of course, I think it would be nice if members of the Federal Power Commission were experienced in the oil business, but we do not necessarily do things that way around here. We put people in charge of specific jobs because of their peculiar abilities as people, and in many instances not because of any particular experience.

In the case of Mr. Barabba, I think that his experience well commends him for this job, regardless of what the Statistical Association may say. Because Mr. Barabba has proved himself to be very accomplished at gathering masses of data and reducing those data to manageable proportions, and of applying proper analysis to those data and making them useful. I think that is pretty good experience.

He is obviously a man who has achieved great success in this field. I do not think that we should worry that he has had some political background. We appoint people with political backgrounds to positions in government every day.

It is done in both Republican and Democratic administrations.

It is in the nature of things.

Past heads of the Bureau of the Census have had less experience in the data-gathering business, and have themselves been political appointees. So I think that argument is specious at best. I know Mr. Barabba to be a man of the highest professional character. I have known him for some time and I know he is extremely professional and extremely effective at whatever he does. I know he is a man who, having gathered data and analyzed it, tells it to you, the way it is, and not the way he thinks you would like to hear it.

So I have no question in my mind about his objectivity in this admittedly sensitive and important job. I hope the Senate will reject the arguments that have been raised against him, and will confirm him for the post of Director of the Census.

Mr. McGEE. Mr. President, I yield myself such time as I may require. It will not be long, but I want to address myself to the remarks of the Senator from Wisconsin, because he has made some very interesting points. But I would point out that he has also introduced a bill S. 2020, that is before our committee, the day before this hearing on Mr. Barabba. S. 2020 would add some new credentials in some of the other statistical areas it would require congressional approval, particularly in regard to the administrator of Social and Economic Statistics Administration; and I think this is a very commendable thing. We are going to hold hearings on it and make a recommendation to this body legislatively about how to upgrade SESA. But that has little relevance to the nominee for this particular office.

The relevance of the opinion of the American Statistical Association to the nomination has been raised again and again, that the statisticians oppose Mr. Barabba. But I think it is a mixed bag, if I may suggest so, Mr. President. There are those statisticians who likewise have doubts that a statistician could effectively administer another group of statisticians, holding that the real point is to select an administrator.

There is no requirement that directors of statistical organizations must be professional statisticians, in fact, a review of Dr. Jean Gibbons article "A Question of Ethics" in the April 1973 edition of the American Statistician illustrates quite clearly the difficulty a "professional statistician" would encounter in "directing" the Bureau of the Census. Dr. Gibbons identifies the manner in which a statistician should inform his employers of his neutral position on all strictly nonstatistical aspects of a study:

> The statistician is an independent professional expert who does not make judgments or decisions outside of the area of his expertise, which is specifically and solely statistical theory and techniques. In any study relating to debatable issues, the statistician does not take sides in the design of the experiment, on the analysis of data, or on the presentation or interpretation of the results. Further, he will not be a party to manipulations and analyses which are, in his honest opinion, not statistically proper.

I am simply suggesting that while professional statisticians have an important role in the Bureau of the Census, the man we are interested in is appointed as an administrator. But now he also ought to meet other requirements, apparently, and have other credentials, for we are told by our distinguished colleague from Wisconsin that not only does the Statistical Association oppose him, but so does the American Economic Association; so he has got to be an economist. Likewise, so does the American Psychological Association oppose him, so we have to make him a psychologist. And the American Sociological Association opposes him.

All of them oppose him this afternoon. Where were they when we held the hearings? Mr. President, we had to go out and scratch for someone to come in and testify their "druthers" in this case. We tried to examine everyone, and now they are writing letters to the Senator from Wisconsin.

So they oppose it. Are we going to make a sociologist out of the Director of the Census? What about a mathematician? Maybe he ought to be a mathematics major as well. I might add that I have not had time to check with the Wyoming Wool Growers, but maybe they have some views. Maybe he ought to be a wool-gatherer as well.

What about the VFW, the Parent-Teachers Association, or the DAR? We can carry this to the ridiculous.

We are not picking a statistician. We are not picking a psychologist. We are not picking any of the other professional groups that have been dragged in here by the heels to suggest that somehow there is an avalanche of opposition. The executive directors and the members of the boards of those associations sat around talking to each other, and now they come in here trying to make a protest at the 11th hour.

Mr. President, your committee heard this case, and we heard most of all, in the most intelligent way, from our colleague from Wisconsin, who had his complete say. We have pending before the Senate right now legislation introduced by the Senator from Illinois (Mr. STEVENSON), his bill S. 2142 seeks to establish a U.S. Statistical Commission, transferring a number of agencies into this organization and establishing a 1-year blue ribbon commission to study further reorganization.

So, along with Senator STEVENSON and the Senator from Wisconsin, we have proposals for upgrading the requirements for several of the offices. That is

great. But we cannot make them retroactive. It is not fair to the nominee. If he is honest, and they have all agreed that he is a man of integrity, then I say it is too late at this hour to try to invent sudden, new requirements for a responsible position. Let us make them at some future time and go through the legislative procedure and get the job done.

But this committee has considered Mr. Barabba well and fully and with criticism within the committee. We wanted to know all the facts.

Mr. President, we are ready to stand on the recommendation that Mr. Barabba be appointed as the new Director of the Bureau of the Census.

I would only add, in all fairness to Charlie Ferris, that we have not received his nomination as a coach of the Redskins but I would hasten to point out there that we are not even interested in George Allen. But we only are interested in the fact that Edward Bennett Williams administers the Redskins. He picked George Allen. I doubt that Mr. Williams would make a very fast split end in today's pro football. But he does know how to administer. That is the whole point at stake here.

I would hope that we might proceed to vote.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. CLARK). Seven minutes remain.

Mr. McGEE. I yield 3 minutes to the Senator from Hawaii (Mr. FONG) and then I want to yield the remainder of that time, if it is still enough, to the Senator from Wisconsin so that we might accommodate him on the time.

Mr. FONG. Mr. President, I am quite amused at the argument made by the Senator from Wisconsin that he is afraid, if Mr. Barabba were appointed Census Director, he would doctor the figures, that he would try to give out erroneous figures rather than the figures that his bureau collected. The Senator from Wisconsin, the Senator from Utah, and Senator from Minnesota do not question the integrity nor the honesty of Mr. Barabba, yet they are afraid, if he were appointed Director of the Census, that he would, somehow, doctor the figures.

The fact that a man is a professional does not give him integrity, nor does it give him honesty. The fact that a man is not a professional does not make him a dishonest man or say that he has no integrity.

We have shown that Mr. Barabba is a very decent and outstanding individual. In fact, the distinguished Senator from Wisconsin (Mr. PROXMIRE) says that Mr. Barabba is a decent and fine man and that he does not question his honesty or integrity.

The only objection they have against Mr. Barabba is that he is not a professional.

Let us examine the biographies of the six men who held the post over the past 30 years.

From the biographies, we find that four of the six Census Directors have not been professional statisticians. Since no one has claimed that these people have not done a good job, we assume that they have done a good job.

Let us consider five of Mr. Barabba's six immediate predecessors over the past 30 years.

First, the Director, from 1941 to 1949, Mr. J. C. Capt, had not finished college and was neither a researcher nor a statistician but, rather, was a small businessman. Yet he was a good Census Director.

The second Director, from 1950 to 1953, Dr. Roy Peel, had previously been a political science professor and a political writer. He was not a statistician; yet there was no complaint against him.

The third Director, from 1953 to 1960, Mr. Robert W. Burgess, was a professional statistician and an economist.

The fourth Director, from 1961 to 1965, Mr. Richard Scammon, a friend and college associate of the distinguished Senator from Minnesota, had been a political scientist and an electoral researcher. He was never a statistician, and there was no complaint during his tenure as Census Director.

The fifth Director, from 1955 to 1969, Dr. Ross Eckler, was a professional statistician.

The sixth Director, from 1969 to 1973, Dr. George H. Brown, had earned a Ph. D. in economics, but was a market researcher and not a professional statistician.

So you see, Mr. Presdent, for the past 30 years we have had six Census Directors, only two of whom were professional statisticians.

In the face of that history, Mr. President, I find it impossible to accept the argument that the position of Census Bureau Director requires a professional statistician.

Mr. HANSEN. Mr. President, it is my very real pleasure to add a word about Mr. Vincent R. Barabba who has been nominated to be Director of the Census.

It has been my honor to know Mr. Barabba for a number of years and to have seen his administrative abilities and fine business sense close up. He will bring vigor, desire, and a highly positive attitude to the position as Director and I am pleased to have this means to endorse the President's choice.

Mr. Barabba will bring not only the required technical expertise to the job but an intimate knowledge of good business practices, having been involved in important computer-based services activities for a number of years, while based in California.

Mr. President, I have known Vincent Barabba for almost 12 years now and have always found him to be straightforward and vigorous in the execution of any assignment. I am sure he will do the same excellent job as Director of the Census.

Vincent Barabba will bring both business acumen and integrity to his position with the Federal Government. It is a big job, but I know he will discharge his responsibilities as he always has, with vigor and vision.

Mr. CRANSTON. Mr. President, we have before us today the nomination of Mr. Vincent Barabba, of Los Angeles, Calif., to be Director of the Bureau of the Census.

The Census Bureau is of vital importance to the functioning of our Government. The information gathered by that agency forms a basis for Government planning of programs and for the allocation of funds that affect the lives of all Americans.

The person who heads the Bureau must have a solid background in statistics and a firm commitment to gathering accurate and complete data about the numbers, characteristics, and distribution of our population. I am convinced that Mr. Vincent Barabba is such a person.

The Director of the Bureau of the Census does not need to be a professional statistician. He can employ statisticians. He must be an administrator with an understanding of the uses of statistics. I believe, Mr. Barabba meets those qualifications.

Mr. Barabba was educated at Woodbury Business College, California State University at Northridge, and has a master's degree in business administration from the University of California at Los Angeles. Upon the completion of his education he was president of Datamatics, Inc. He later became chairman of the board of Decision Making Information, Inc., a California marketing and research firm, and was a director of the Central Bank of Glendale, Calif. He has been deeply involved in the advanced technical application of computers to analyze population data in marketing and other types of surveys.

After his nomination, I met with Vincent Barabba in my office. I was impressed with his intelligence and with his desire to fulfill the difficult job for which we are considering him. Mutual acquaintances in California have indicated to me their deep respect for Mr. Barabba's ability and integrity.

For these reasons, I support Mr. Barabba's nomination and hope that you will see fit to confirm it.

Mr. McINTYRE. Mr. President, I would like to make a few observations with respect to the nomination of Mr. Vincent P. Barabba to be Director of the Bureau of the Census.

For the past several years the Subcommittee on Government Regulation of the Senate Select Committee on Small Business, of which I have the honor to be chairman, has been concerned with the Federal paperwork burden. The Census Bureau is certainly a contributor to this problem although to a lesser degree than many other Federal agencies.

On July 11, I had scheduled a hearing by my subcommittee to hear testimony from the Census Bureau as to their assessment of the Federal paperwork burden and their overall philosophy in collecting, analyzing, and disseminating Census data for the benefit of all sectors of the business community. Unfortunately, I had to cancel the July 11 hearings because the Department of Commerce was unable, or unwilling, to provide a witness who could address these vital questions relating to the Bureau of the Census which were under consideration by the subcommittee.

I wish to state now for Mr. Barabba, and for the record, that I intend to reschedule these hearings as early as possible when Congress returns from its recess in August. I am hopeful that Mr. Barabba will, during that period of time,

have ample opportunity to begin an examination of past practices of the Census Bureau and will be able to offer the subcommittee new plans, concepts, and programs which he will implement during his stewardship of this most important statistical agency of the Federal Government.

There have been some questions raised by various persons as to Mr. Barabba's fitness for this post. I will give the President the benefit of the doubt in this appointment. But, Congress must make sure that he does the task in a way to meet the people's and the Government's needs.

Mr. McGEE. Mr. President, I yield the remainder of my time to the distinguished Senator from Wisconsin (Mr. PROXMIRE).

PROFESSIONAL STATISTICIAN NOT REQUIRED

Mr. PROXMIRE. Mr. President, this body might be called a tunnel of wind because no one is paying any attention to what we are saying here, because if they did, they would know that I did not say at any time that we needed a professional statistician as the head of the Census Bureau. I did not say that. I did say that he would have to be professionally qualified, in order to carry on the many disciplines, as Mr. Hildreth pointed out, that would be required for him to serve in that job competently.

Mr. Scammon was a good Census Bureau Director although he had been a political scientist and an electoral researcher. He was a researcher for Western Europe in the Department of State for 7 years and he had good qualifications, as Mr. Hildreth pointed out. Mr. Barabba does not have those professional qualifications.

PROFESSIONAL ASSOCIATIONS OPPOSE HIM

The point is that no professional association that uses the Census Bureau will support this nomination. He does not have to be a psychologist to meet the approval of the psychologists' association, he does not have to be a sociologist to meet with the approval of the sociologists' association, and he does not have to be an economist to seek the approval of the economic association. They do not say he has to be like them. They say he has to have professional qualifications which will provide him with the capability of understanding what the Census Bureau is doing. It is a very, very complex agency, an agency which, as the Senator from Utah (Mr. Moss) pointed out, does not have any political power but is a factfinding agency that should have a competent professional in charge.

DIRECTOR'S BOSS ALSO POLITICAL APPOINTEE

One final point, and that is that it would be one thing if we were only concerned about Mr. Barabba. We are also concerned about Mr. Edward Failor, Mr. Barabba's boss. He does not require Senate confirmation, unfortunately, but he will be the head of the Social and Economic Statistics Administration—SESA—at the Department.

Mr. Failor is totally unqualified to head the Social and Economic Statistics Administration. He comes to the job directly from CREEP, the Committee to Re-Elect the President, where he wrote canned partisan speeches for congressional candidates.

Prior to that, he was Chief of the Office of Assessments and Compliance of the Bureau of Mines where his stewardship received a stinging rebuke in a General Accounting Office report. His other qualifications include a position as a legislative lobbyist for the Association of Coin Operated Laundries in Iowa.

Mr. President, these are the two men who would be principally responsible for our statistics. That is the reason why I think the Senate should provide a resounding no to the nomination of Mr. Barabba.

The PRESIDING OFFICER (Mr. CLARK). All time on this nomination has now expired.

The question is, Shall the Senate advise and consent to the nomination of Vincent R. Barabba, of California, to be Director of the Census?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. CANNON), the Senator from Minnesota (Mr. MONDALE) are necessarily absent.

I further announce that the Senator from South Dakota (Mr. ABOUREZK) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. MONDALE) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON) is absent to attend the funeral of a friend.

The Senator from Utah (Mr. BENNETT) is necessarily absent.

The Senator from New Hampshire (Mr. COTTON) is absent because of illness.

The result was announced—yeas 73, nays 20, as follows:

[No. 324 Exec.]

YEAS—73

Aiken	Fong	Nunn
Allen	Fulbright	Packwood
Baker	Goldwater	Pastore
Bartlett	Gravel	Pearson
Bayh	Griffin	Pell
Beall	Gurney	Percy
Bible	Hansen	Randolph
Brock	Hartke	Roth
Brooke	Hatfield	Saxbe
Buckley	Helms	Schweiker
Burdick	Hollings	Scott, Pa.
Byrd, Harry F., Jr.	Hruska	Scott, Va.
Byrd, Robert C.	Inouye	Sparkman
Case	Jackson	Stafford
Cook	Javits	Stevens
Cranston	Johnston	Symington
Curtis	Long	Taft
Dole	Magnuson	Talmadge
Domenici	Mansfield	Thurmond
Dominick	Mathias	Tower
Eagleton	McClellan	Tunney
Eastland	McClure	Weicker
Ervin	McGee	Williams
Fannin	McIntyre	Young
	Montoya	

NAYS—20

Bentsen	Hathaway	Moss
Biden	Huddleston	Muskie
Chiles	Hughes	Nelson
Church	Humphrey	Proxmire
Clark	Kennedy	Ribicoff
Hart	McGovern	Stevenson
Haskell	Metcalf	

NOT VOTING—7

Abourezk	Cannon	Stennis
Bellmon	Cotton	
Bennett	Mondale	

So the nomination was confirmed.

Mr. McGEE. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION—TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate return to the consideration of legislative business and that there now be a period for the transaction of routine morning business for not to exceed 10 minutes, with statements limited therein to 3 minutes.

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

UNANIMOUS-CONSENT AGREEMENT ON S. 1828 AND S. 1560

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent—and this matter has been cleared with the other side—that, at such time as S. 1828 is called up and made the pending question before the Senate, there be a time limitation thereon of 10 minutes, to be equally divided between the junior Senator from West Virginia (Mr. ROBERT C. BYRD) and the minority leader or his designee.

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

Mr. ROBERT C. BYRD. I ask unanimous consent that on tomorrow, at the hour of 10:30 a.m., the Senate proceed to the consideration of S. 1560, a bill to extend the Emergency Employment Act of 1971, and for other purposes; that that bill remain the business before the Senate until disposed of or until the hour of 2 p.m., whichever is the earlier; and that upon the disposition of that bill, or no later than the hour of 2 p.m. tomorrow, the Senate proceed to the consideration of S. 1828; that upon the disposition of that bill, the Senate proceed to the consideration of S. 372, the so-called Campaign Spending Act; and that that bill remain the unfinished business of the Senate until disposed of.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

The text of the unanimous-consent agreement is as follows:

UNANIMOUS-CONSENT AGREEMENT

Ordered, That, on July 25, 1973, upon disposition of S. 1560 or at the hour of 2:00 p.m., whichever is earlier, the Senate proceed to the consideration of S. 1828, a bill to require the President to appoint, with the advice and consent of the Senate, the head of the Mining Enforcement and Safety Administration, Department of the Interior, and that time thereon be limited to 10 minutes, to be equally divided and controlled by the Senator from West Virginia (Mr. Robert C. Byrd) and the Minority Leader or his designee.

TOXIC SUBSTANCES CONTROL ACT OF 1973

Mr. TUNNEY. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 426.

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 426) to regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes, which were to strike out all after the enacting clause, and insert:

SHORT TITLE; CONTENTS

SECTION 1. This Act may be cited as the "Toxic Substances Control Act of 1973".

TABLE OF CONTENTS

Sec. 1. Short title; contents.
Sec. 2. Declaration of policy.
Sec. 3. Definitions.
Sec. 4. Test protocols.
Sec. 5. Limited premarket screening of substantially dangerous chemical substances.
Sec. 6. Regulations applicable to a hazardous chemical substance.
Sec. 7. Imminent hazards.
Sec. 8. Reports.
Sec. 9. Exemptions and relationships to other laws.
Sec. 10. Chemical Substances Board.
Sec. 11. Research.
Sec. 12. Administrative inspections and warrants.
Sec. 13. Exports.
Sec. 14. Imports.
Sec. 15. Confidentiality.
Sec. 16. Prohibited acts.
Sec. 17. Penalties.
Sec. 18. Injunctive enforcement and seizure.
Sec. 19. Environmental prediction and assessment.
Sec. 20. Cooperation of Federal agencies.
Sec. 21. Study of chemical substances classification system.
Sec. 22. State regulations.
Sec. 23. Judicial review.
Sec. 24. National security waiver.
Sec. 25. Authorization for appropriations.

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 whose manufacture, distribution, use, or disposal may pose an unreasonable risk to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances necessitates the regulation of such chemical substances in intrastate commerce as well.

(b) It is the policy of the United States that—

(1) hazardous and potentially hazardous chemical substances should be adequately tested with respect to their effect on health and the environment and that such testing should be the responsibility of those who manufacture, import, or process such chemicals;

(2) adequate authority should exist to regulate the distribution and use of chemical substances found to pose an unreasonable risk to health or the environment, and to take action with respect to chemical substances which are imminent hazards; and

(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 substances do not pose an unreasonable risk to health or the environment.

(c) It is the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that he shall consider the economic and social impact of any action he proposes to take under this Act.

DEFINITIONS

SEC. 3. (a) As used in this Act:

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

(2) The term "chemical substance" means (A) any organic or inorganic substance of a particular molecular identity: (B) any uncombined radical or element; or (C) any mixture.

(3) The term "mixture" means any mixture which (A) occurs naturally, or (B) is produced by an industrial chemical process and which is marketed or used without separation into its constituents.

(4) The term "environment" includes water, air, land, all living things therein, and interrelationships which exist among these.

(5) The term "importer" means any person who (A) imports a chemical substance for distribution in commerce for commercial purpose, or (B) reimports a chemical substance, which was manufactured or processed in whole or in part in the United States for distribution in commerce for commercial purpose.

(6) The term "manufacturer" means any person who manufactures a chemical substance.

(7) The term "manufacture" means to produce or manufacture.

(8) The term "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.

(9) The term "test protocol" means—

(A) a test designed to determine the effect of a chemical substance or the use of a chemical substance on health or the environment, including a test designed to determine the effect of the manufacture, processing, distribution, use, or disposal of such substance on health or the environment,

(B) the procedures or standards to be used in making such test, and

(C) the results to be achieved from such test which the Administrator determines are necessary to evaluate whether such chemical substance poses or is likely to pose an unreasonable risk to health or the environment.

(10) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, or the Trust Territories of the Pacific Islands.

(11) The term "to distribute in commerce" and "distribution in commerce" means to sell in commerce, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.

(12) The term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation between a place in a State and any place outside thereof.

(13) The term "United States", when used in the geographic sense, means all of the States (as defined in paragraph (10)).

(b) Any action which may be taken by the Administrator under any provision of this Act with respect to a chemical substance may be taken by the Administrator in accordance with that provision with respect to a class of chemical substances. Whenever the Administrator takes action uner a provision of this Act with respect to a class of chemical substances, any reference in this Act to a chemical substance (insofar as the reference relates to such action) shall be deemed to be a reference to each chemical substance in such class.

TEST PROTOCOLS

SEC. 4. (a) If the Administrator finds that testing of a chemical substance or of the use of a chemical substance in accordance with a test protocol for such substance is necessary to protect against unreasonable risk to health or the environment, he may, by rule, (1) prescribe a test protocol for such substance, and (2) require, in accordance with subsection (d), that one or more persons perform the test called for in such protocol.

(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) the extent to which the test protocol is reasonably predictive of the potential adverse effects of the chemical substances on health or the environment;

(4) any data concerning the safety of the chemical substance which may affect the requirements of the test protocol; and

(5) the extent to which a risk to health or the environment can be reasonably or more efficiently evaluated by testing the component chemical substances which comprise a mixture or series of mixtures in lieu of testing any or all mixtures of the same chemical substance components in different component ratios.

(c) A test protocol under this section may include tests for carcinogenesis, teratogenesis, mutagenesis, persistence, the cumulative and synergistic properties of the substance and epidemiological studies of the effect of such substance.

(d) A rule under subsection (a) may require each person who is a manufacturer, processor, or importer of the chemical substance to which a test protocol applies to perform the test called for in the last protocol. In the case of a test protocol for a chemical substance for which there is more than one manufacturer, processor, or importer, the Administrator may, in appropriate cases, permit the manufacturers, importers, or processors who are required to perform the tests called for in a test protocol to designate one or more of their number, or, to designate a qualified independent third party, to perform the required tests and permit the sharing of costs of such tests. If manufacturers, importers, or processors required to perform the tests are not able to agree upon a designee within a reasonable time, or if the agreed-upon designee is not acceptable to the Administrator, (1) the Administrator may order one or more of such manufacturers, processors or importers, or designate a qualified independent third party, to perform the required test, and (2) he may order those manufacturers, processors or importers who do not conduct the tests to provide fair and equitable contribution for the costs of such tests in an amount determined under rules of the Administrator.

(e) After allowing a reasonable time for completion of the required tests, the Administrator may order any manufacturer, processor, or importer who is required to perform the tests called for in a test protocol under this section to transmit to the Administrator the test data developed pursuant to such test protocol.

(f) Subject to section 15 (relating to the confidentiality of certain information), upon receipt of test data under subsection (e) the Administrator shall promptly publish in the Federal Register a notice which identifies the chemical substance for which test data have been received, lists the uses or intended uses of such substance, and describes the nature of the tests performed and the data which were developed; such data shall be made available, consistent with the terms of section 15, for examination by interested persons. Notice under this subsection shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(g) Any rule under this section and any amendment or revocation of such a rule shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

LIMITED PREMARKET SCREENING OF SUBSTANTIALLY DANGEROUS CHEMICAL SUBSTANCES

SEC. 5. (a) Within eighteen months after the date of enactment of this Act, and from time to time thereafter, the Administrator shall, by rule, identify and publish in the Federal Register a list of chemical substances (or chemical substances with respect to a particular use or uses) which the Administrator finds are likely to pose substantial danger to health or environment. For the purposes of this section, "substantial danger to health or environment" means an unreasonable risk of death, of widespread or severe personal injury or illness, or of widespread or severe harm to the environment.

(b)(1) In making the finding required under subsection (a), the Administrator shall consider all relevant factors including—

(A) the effects of the substance on health and the magnitude of human exposure;

(B) the effects of the substance on the environment and the magnitude of environmental exposure; and

(C) any benefit of the chemical substance and the availability of less hazardous substances for any use of such substance.

(2) In determining whether (A) one or more mixtures, or (B) chemical substances which are components of such mixtures, should be listed under subsection (a), the Administrator shall consider whether the risk to health or the environment is associated with such mixtures or components or both and whether such risk can be more reasonably evaluated by testing the mixtures or by testing one or more components of such mixtures.

(c) A chemical substance listed under subsection (a) which was manufactured and distributed in commerce for commercial purpose prior to its listing may not be manufactured or distributed in commerce for a new use unless at least ninety days prior to such manufacture or distribution, the person intending to manufacture or distribute the chemical substance for such new use submits to the Administrator test data developed in accordance with a test protocol promulgated under section 4 which is applicable to such intended use, or (in the absence of such a test protocol) test data which such person believes shows that the intended new use of the chemical substance would not pose an unreasonable risk to health or the environment.

(d) A chemical substance listed under subsection (a) which was not manufactured or distributed in commerce for commercial purpose prior to its listing may not be manufactured or distributed in commerce unless at least ninety days prior to such manufacture or distribution, the person intending to manufacture or distribute such substance submits to the Administrator test data developed in accordance with a test protocol promulgated under section 4 which is applicable to the manufacture, distribution, use or disposal of such substance, and (to the extent that such a test protocol does not apply to the manufacture, distribution, use, or disposal of such substance) test data which such person believes shows that the manufacture, distribution, use, and disposal of the chemical substance would not pose an unreasonable risk to health or the environment.

(e) A person intending to manufacture or distribute in commerce a chemical substance for which no applicable test protocol has been prescribed under section 4 may petition the Administrator to develop and issue a test protocol for such substance or for the intended use of such substance. The Administrator shall either grant or deny any such petition within sixty days of its receipt. If the petition is granted, the Administrator shall diligently proceed to develop a test protocol for such substance. If the petition is denied, the Administrator shall publish in the Federal Register the reasons for such denial.

(f)(1) The Administrator may exempt any person from the obligation to submit data under subsections (c) and (d) of this section if he determines that the submission of test data by such person would be duplicative of data previously submitted in accordance with those subsections, but no such exemption may take effect before the date of termination of the premarket screening for which the data on which the exemption is based were submitted.

(2) If the Administrator, under paragraph (1), exempts any person from submitting data under this section because of the existence of previously submitted data and if such exemption takes effect during the reimbursement period for such data (as defined in paragraph (3)), then (unless the parties can agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(A) to the person who previously submitted data on which the exemption was based, for a portion of the costs incurred by him in complying with the requirement under this section to submit such data, and

(B) to any other person who has been required under this paragraph to contribute with respect to such data.

An order under this paragraph shall be considered final agency action, for purposes of judicial review.

(3) For purposes of this subsection:

(A) The reimbursement period for any previously submitted data is a period—

(i) beginning on the date of termination of the premarket screening for which the data were submitted, and

(ii) ending five years after such date of termination (or, if later, at the expiration of a period after such date equal in length to the period which the Administrator determines was necessary to develop the previously submitted data).

(B) The termination of the premarket screening for which data were submitted is the earliest date (after submission of such data) on which the person who submitted such data is no longer prohibited (by this section or by reason of a proposed rule made immediately effective under subsection (i) or section 6(d)) from proceeding with the manufacture and distribution with respect to which the data were submitted.

(g) The Administrator may for good cause shown extend the ninety-day period under subsection (c) or (d) of this section for an additional period not to exceed ninety days. Subject to section 15 of this Act, notice of such extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(h) Subject to section 15 (relating to the confidentiality of certain information), upon rceipt of test data under subsection (c) or (d) the Administrator shall promptly publish in the Federal Register notice which identifies the chemical substance for which test data have been received; lists the uses or intended uses of such substance; and, describes the nature of the tests performed and the data which were developed. Such data shall be made available, consistent with the terms of section 15, for examination by interested persons. Notice under this subsection shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(i) If on the basis of available data or the absence of acceptable data under subsections (c) and (d), the Administrator proposes a rule to regulate such chemical substance under section 6 of this Act within the ninety-day period specified in subsections (c) and (d) or within the period as extended in accordance with subsection (g), such proposed rule may take effect immediately, pending completion of the administrative proceeding required under section 6 of this Act. After such rule is proposed and takes effect, the Administrator may refer the rule to a committee formed under section 10(c) of this Act. The Administrator shall refer such rule to such committee if requested by any interested person.

(j) Rules under this section which identify chemical substances as likely to pose substantial danger to health or the environment or any amendment or revocation of such rules shall be promulgated pursuant to section 553 of title 5, United States Code, except that the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

(k) The Administrator may, upon application, exempt any person from the foregoing requirements of this section, for the purpose of permitting such person to manufacture and distribute in commerce a listed chemical substance for test marketing purposes or specially limited purposes (1) upon a showing by such person that the manufacture and distribution of such substance for those purposes would not pose an unreasonable risk to health or the environment, and (2) under such restrictions as the Administrator considers appropriate.

REGULATIONS APPLICABLE TO A HAZARDOUS CHEMICAL SUBSTANCE

SEC. 6. (a) If the Administrator finds that a rule under this section respecting a chemical substance is necessary to protect against unreasonable risk to health or the environment, he may prescribe a rule consisting of one or more of any of the following types of requirements:

(1) Requirements prohibiting the manufacture or distribution in commerce of such chemical substance or limiting the amount of such chemical substance which may be manufactured or distributed in commerce.

(2) Requirement prohibiting the manufacture or distribution in commerce of such chemical substance for a particular use or uses or limiting the amount of such chemical substance which may be manufactured or distributed in commerce for such use or uses.

(3) Requirements that such chemical substance or article containing such substance be marked with or accompanied by clear and adequate warnings and instructions with respect to its use or disposal, in such form and bearing such content as the Administrator determines to be appropriate.

(b)(1)(A) Rules under this section may

be limited in application to specified geographic areas.

(B) The authority of the Administrator to prescribe a rule under subsection (a)(2) prohibiting the manufacture and distribution in commerce of a chemical substance for a particular use shall include authority to prescribe a rule prohibiting the distribution in commerce of a chemical substance for a particular use in a concentration in excess of a level specified in such rule.

(2)(A) No rule may be prescribed under subsection (a)(1) of this section which limits the amount of a chemical substance which may be manufactured, imported, or distributed in commerce unless the Administrator finds that the risk to health or environment associated with such chemical substance cannot be prevented or reduced to a sufficient extent by means of a rule prescribed under subsection (a)(2) prohibiting the manufacture or distribution in commerce of such substance for particular use or uses or by means of a rule prescribed under subsectioin (a)(3).

(B) No rule may be prescribed under subsection (a)(2) which limits the quantity of a chemical substance which may be manufactured, imported, or distributed for a particular use or uses unless the Administrator finds that the risk to health or environment associated with such substance cannot be prevented or reduced to a sufficient exetnt by means of a rule prescribed under subsection (a)(3), or by means of a rule under subsection (a)(2) prohibiting the distribution in commerce of a chemical substance for a particular use in a concentration in excess of a level specified in such rule.

(3)(A) Rules described in subsection (a)(1) of this section which limit the amount of a chemical substance which may be manufactured, imported, or distributed in commerce, and rules described in subsection (a)(2) which limit the quantity which may be manufactured, imported, or distributed for a particular use or uses, shall include provision for assigning production, importation, or distribution quotas to persons who wish to manufacture, import, or distribute the chemical substance. The permissible quota for each such person shall be determined in accordance with criteria prescribed under subparagraph (B).

(B) The Administrator shall by rule prescribe criteria which shall take into account all relevant factors, including—

(i) effects on competition,

(ii) the market shares, productive capacity, and product and raw material inventories of persons applying for quotas.

(iii) emergency conditions, such as fires or strikes, and

(iv) effects on technological innovation.

The last sentence of section 23(c) shall not apply to rules under this subparagraph (B).

(c) In issuing such rules under subsection (a) the Administrator shall consider all relevant factors including—

(1) the effects of the substance on health and the magnitude of human exposure;

(2) the effects of the substance on the environment and the magnitude of environmental exposure; and

(3) the benefits of the substance for various uses and the availability of less hazardous substances.

(d) The Administrator shall specify in any rule under subsection (a) the date on which it shall take effect, which shall be as soon as feasible. Where the Administrator determines that the manufacture, processing, distribution, use, or disposal of a chemical substance is likely to result in harm to health or the environment prior to the completion of a rulemaking proceeding under subsection (a) respecting such substance and where the Administrator determines that such action is necessary in the public interest, he may declare a proposed rule under subsection (a) immediately effective pending completion of the rulemaking proceeding.

(e) If the Administrator has good cause to believe that a particular manufacturer or processor is manufacturing or processing a chemical substance in a manner which permits or causes the adulteration of a chemical substance and if the Administrator determines that, as a result of such adulteration, the chemical substance poses an unreasonable threat to health or the environment—

(1) the Administrator 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 quality control procedures are inadequate to prevent the adulteration of the chemical substance, the Administrator 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.

For the purposes of this subsection, a chemical substance shall be deemed to be adulterated if it bears or contains any added substance or contaminant which itself, or in combination with the chemical substance, presents an unreasonable risk to health or the environment.

(f)(1) Rules under subsection (a) shall be promulgated pursuant to section 553 of title 5 of the United States Code; except that in promulgating any such rule, (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (B) a transcript shall be kept of any oral presentation; and (C) during any such oral presentation the Administrator shall include an opportunity for cross-examination as provided in paragraph (2).

(2)(A) Except as provided in paragraph (B), during any such oral presentation, the Administrator shall include an opportunity for cross-examination to such extent and in such manner as the Administrator considers necessary and appropriate in view of the nature of the issue or issues involved and the number of the participants and the nature of their interests.

(B) If only a single interested person seeks to avail himself of an opportunity for cross examination in a proceeding to promulgate a rule under subsection (a), or if the Administrator determines that all persons who seek to avail themselves of such an opportunity are members of a single class sharing an identity of interest, the Administrator shall afford such single interested person or representative of such class (as designated by the participants of such class) an opportunity to conduct cross-examination to the same extent that cross-examination is permitted under section 556 of title 5, United States Code.

(g) The Administrator, at the time he promulgates any final rule under this section, shall include a detailed statement on the economic impact of such action, including, but not limited to, consideration of the effects on business enterprises and labor forces and the effect on the national economy.

IMMINENT HAZARDS

SEC. 7. (a) The Administrator may file an action in United States district court—

(1) against an imminently hazardous chemical substance and any article containing such substance for seizure of such substance or article under subsection (b)(2) of this section, or

(2) against any person who is a manufacturer, processor, distributor, or retailer of such chemical substance or article.

Such an action may be filed notwithstanding the existence of a rule under sections 4, 5, or 6 of this Act, and notwithstanding the pendency of any administrative or judicial proceeding under any provision of this Act. As used in this section, the term "imminently hazardous chemical substance" means a chemical substance which presents imminent and unreasonable risk to health or the environment. The risk to health or the environment shall be considered imminent if it is shown that the manufacture, processing, distribution, use, or disposal of a chemical substance is likely to result in harm to health or the environment prior to the completion of an administrative proceeding under this Act.

(b)(1) The district court in which such action is filed shall have jurisdiction to grant such temporary or permanent relief as may be necessary to protect health or the environment from the unreasonable risk associated with the chemical substance or article containing such substance. Such relief may include (in the case of an action under subsection (a)(2)) a mandatory order requiring (A) notification of such risk to those purchasers of such chemical substance or an article containing such chemical substance which are known to the defendant; (B) public notice; (C) recall; and (D) the replacement or repurchase of such chemical substance or article containing such substance.

(2) In the case of an action under subsection (a)(1), the chemical substance or article containing such substance may be proceeded against by process of libel for the seizure and condemnation of such substance or such article in any United States district court within the jurisdiction of which such substance or article is found. Proceedings in cases instituted against a chemical substance or article containing such substance under the authority of this section shall conform as nearly as possible to proceedings in rem in admiralty.

(c) Where appropriate, concurrently with the filing of an action under this section or as soon thereafter as may be practicable, the Administrator shall initiate a rulemaking proceeding under section 6 of this Act.

(d)(1) An action under subsection (a)(2) of this section may be brought in the United States district court for the District of Columbia or in any judicial district in which any of the defendants is found, is an inhabitant, or transacts business; and process in such an action may be served on a defendant in any other district in which such defendant resides or may be found. Subpenas requiring attendance of witnesses in such an action may run into any other district. In determining the judicial district in which an action may be brought under this section in instances in which such action may be brought in more than one judicial district, the Administrator shall take into account the convenience of the parties.

(2) Whenever proceedings under this section involving identical chemical substances or articles containing such substances are pending in courts in two or more judicial districts, they shall be consolidated for trial by order of any such court upon application reasonably made by any party in interest, upon notice to all parties in interest.

(e) Notwithstanding any other provision of law, in any action under this section, the Administrator may direct attorneys employed by him to appear and represent him.

REPORTS

SEC. 8. (a)(1) Except as provided in subsections (b) and (c), the Administrator may, by rule, require any manufacturer, importer, or processor of any chemical substance to submit reports to him annually, and at such more frequent time as he may reasonably require, containing any or all of the following:

(A) The names of any or all chemical substances manufactured, imported, or processed by the manufacturer, importer, or processor thereof.

(B) The chemical identity and molecular structure of such substances insofar as is known to such manufacturer, importer, or processor, or insofar as such are reasonably ascertainable.

(C) The categories of use of each such substance, insofar as they are known to such manufacturer, importer, or processor, or insofar as such are reasonably ascertainable.

(D) Reasonable estimates of the amounts of each substance manufactured, imported, or processed for each such category of use.

(E) A description of the byproducts, if any, resulting from the manufacture, processing, or disposal of each such substance, insofar as they are known to such manufacturer, importer, or processor, or insofar as such are reasonably ascertainable.

(2) For purposes of this subsection, the term "byproduct" means a chemical substance produced as a result of the manufacture, processing, use, or disposal of some other chemical substance.

(3) The Administrator may, by rule, exempt manufacturers, importers, 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, or if he finds that such reports would provide information which duplicates information otherwise available to him.

(b)(1) Subject to paragraph (2) of this subsection, the Administrator shall have no authority under subsection (a) of this section to require any manufacturer, processor or importer of any chemical substance to submit reports to him in the manner therein provided except with respect to a chemical substance or an article containing such substance—

(A) for which a test protocol has been prescribed under section 4(a) of this Act;

(B) which is contained in the list of chemical substances which the Administrator has by rule identified and published in the Federal Register under section 5(a) of this Act; or

(C) which are covered by a rule under section 6(a) of this Act.

(2)(A) The limitations on reporting contained in paragraph (1) of this subsection shall apply only to a manufacturer, processor, or importer which is a small business concern; except that if the Administrator determines that such a concern is substantially engaged in the development of one or more new chemical substances, he may order such concern to make reports with respect to any new chemical substance developed by it.

(B) For purposes of this subsection, the term "small business concern" means a manufacturer, processor, or importer which is (i) a small business concern within the meaning of the section 121.3–11(a) of title 13 of the Code of Federal Regulations (as in effect on the date of enactment of this Act) or (ii) any other concern which is independently owned and operated and not dominant in its field of operations, and which the Administrator of the Small Business Administration by rule defines as a small business concern for purposes of this subsection, taking into account relevant factors such as concentration of output in the industry of which it is a part, total number of concerns in such industry, and the size of such concern relative to the size of industry leaders.

(c) The Administrator may not require any manufacturer, importer, or processor to submit reports under this section with respect to any chemical substance which he manufactures, imports, or prepares for distribution for use as a standard or reagent and for research or laboratory purposes.

(d) 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 by publishing a notice in the Federal Register invite and afford all interested persons an opportunity to provide in writing information respecting the health or environmental effects of a chemical substance.

EXEMPTIONS AND RELATIONSHIPS TO OTHER LAWS

SEC. 9. (a) This Act shall not apply to—

(1) tobacco and tobacco products;

(2) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured or distributed in commerce for use as a pesticide; or

(3) drugs, devices, or cosmetics (as such terms are defined in sections 201 (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act) and food. The term "food" as used in this paragraph means all food, as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act, including poultry and poultry products (as defined in section 4(e) and (f) of the Poultry Products Inspection Act), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(b) The Administrator shall have no authority under sections 5, 6, and 7 of this Act to take action to prevent or reduce an unreasonable risk to health or the environment associated with a particular chemical substance or article containing such substance if such risk to health or the environment could be prevented or reduced to a sufficient extent by actions taken under any other Federal law; including the Atomic Energy Act of 1954, the Clean Air Act, the Federal Water Pollution Control Act, the Federal Hazardous Substances Act, the Occupational Safety and Health Act of 1970, the Consumer Product Safety Act, subpart 3 of part F of title III of the Public Health Service Act (relating to electronic product radiation), and the Acts administered by the Secretary of Transportation relating to the transportation of hazardous substances.

(c) If it appears to the Administrator that any chemical substance may pose an unreasonable risk to health or the environment which could be prevented or reduced to a sufficient extent by actions taken under other Federal laws, he shall transmit any data received from manufacturers, importers, or processors, or data otherwise in his possession which is relevant to such risk to the Federal executive department or agency, independent regulatory agency or other authority of the Federal Government with authority to take legal action.

(d) In administering the provisions of this Act, the Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of any other appropriate Federal executive department or agency, independent regulatory agency or other authority of the Federal Government. The Administrator shall report annually to the Congress on actions taken to coordinate with such other Federal agencies and actions taken to coordinate the authority under this Act with the authority granted under other Acts referred to in subsection (b) of this section.

CHEMICAL SUBSTANCES BOARD

SEC. 10. (a) There shall be established in the Environmental Protection Agency a Chemical Substances Board (hereinafter referred to in this section as the "Board") consisting of twelve scientifically qualified members. The Administrator shall appoint eleven members of the Board from a list of at least twenty-two individuals recommended to him by the National Academy of Sciences, and the Secretary of Health, Education, and Welfare shall appoint one member of the Board from whatever source he desires. Not more than one-third of the members of such Board shall be in the employ of or have any significant economic interest in any manufacturer, importer, or processor of chemical substances. 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. 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 directory 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 when acting under section 5(i) or the last sentence of 6(d) of this Act, before proposing any rules under section 4, 5, or 6 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 directory of consultants to the Board maintained under subsection (b), 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 scientifically qualified persons not more than one-third of which are in the employ of or have a significant economic interest in any manufacturer, importer, or processor of, or any person who distributes in commerce, 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 15 of this Act, all proceedings and deliberations of such committees and their reports and reasons therefor shall be available for public examination. 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 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.

(g) Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Board.

RESEARCH

SEC. 11. The Administrator is authorized to conduct such research and monitoring as is necessary to carry out his functions under this Act. To the extent practicable, such research and monitoring shall not duplicate the efforts of other Federal agencies. In order to carry out the provisions of this section, the Administrator is authorized to make contracts and grants for such research and monitoring.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

SEC. 12. (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 or for the purpose of otherwise facilitating the carrying out of his functions 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 manufactured, processed, stored, held, or maintained, including retail establishments, and to conduct administrative inspections thereof.

(2) Such entries and inspections shall be carried out through officers or employees (hereafter in this section 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 shipments data;

(C) pricing data;

(D) personnel data;

(E) research data (other than data required by this Act); 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 rules issued under this Act)—

(1) conducted with the consent of the owner, operator, or agent in charge of such premises; or

(2) in any 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 Act or rules 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 issue only upon an affidavit of an officer or employee having knowledge 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 type of property to be inspected, if any. The warrant shall identify the items or 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 specified. 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

SEC. 13. (a) This Act shall not apply to any chemical substance or article containing such substance if (1) it can be shown that such substance or article is manufactured, processed, sold, or held for sale for export from the United States (or that such chemical substance was imported for export), unless such chemical substance or article is, in fact, manufactured, processed, or distributed in commerce for use in the United States, and (2) such chemical substance or article containing such substance when distributed in commerce, or any container in which it is enclosed when so distributed, bears a stamp or label stating that such chemical substance or article is intended for export; except that (A) any manufacturer, processor, or exporter of such chemical substance shall be subject to the reporting requirements of section 8 of this Act; and (B) this subsection shall not apply to any chemical substance or article containing such substance if the Administrator finds that the chemical substance or article will, directly or indirectly, pose an unreasonable risk to health within the United States or to the environment of the United States.

(b) If submittal of test data is required for a chemical substance under section 4 or 5 of this Act, or rules applicable to such substance or article containing such substance have been prescribed or proposed under section 5 or 6 of this Act, the Administrator, subject to section 15 of this Act, may furnish to the governments of the foreign nations to which such chemical substance is exported, or is intended to be exported, notice of the availability of the data submitted to the Administrator under section 4 or 5 concerning such chemical substance, and notice of any rule applicable to such substance or article containing such substance which has been prescribed or proposed by the Administrator under section 5 or 6 of this Act.

IMPORTS

SEC. 14. (a) The Secretary of the Treasury shall refuse entry into the customs territory of the United States (as defined in general headnote 2 to the Tariff Schedules of the United States) of any chemical substance or article containing such substance offered for entry if it fails to conform with rules promulgated under this Act, or if it is otherwise prohibited under this Act from being distributed in commerce. 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 of 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, such consignee shall forfeit the full amount of such 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.

(b) The Secretary of the Treasury, in consultation with the Administrator, shall issue regulations for the enforcement of subsection (a) of this section.

CONFIDENTIALITY

SEC. 15. All information reported to or otherwise obtained by the Administrator or his representative under this Act, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be considered confidential and shall not be disclosed, except that such information may be disclosed to other officers or employees concerned with carrying out this Act (including the Chemical Substances Board and committees formed under section 10), or when relevant in any proceeding under this Act, except that disclosure in such a proceeding shall preserve the confidentiality to the extent possible without impairing the proceeding. All information reported to or otherwise obtained by the Administrator or his representative including information which contains or relates to a trade secret or other matter referred to in section 1905 of title 18, United States Code, shall be made available upon request of the duly authorized committees of the Congress.

PROHIBITED ACTS

SEC. 16. It shall be unlawful for any person to—

(1) fail or refuse to comply with section 4, 5, or 6 of this Act or any rule or order prescribed under those sections, or with any restriction under section 5(k) of this Act;

(2) fail or refuse to comply with section 8 or any rule or order thereunder;

(3) fail or refuse to permit access to or

copying of records, or fail or refuse to permit entry or inspection or take any other action as required under section 12 of this Act; or

(4) fail or refuse to comply with instructions with respect to the use or disposal of a chemical substance where such instructions are required by rule prescribed under section 6(a)(3) of this Act and where such failure or refusal to comply results in or is likely to result in death, severe personal injury or illness, or severe harm to the environment.

PENALTIES

SEC. 17. (a) Any person who knowingly violates section 16 of this Act shall be subject to a civil penalty not to exceed $25,000 for each day of violation.

(b) Any person who willfully violates any provision of section 16 (other than section 16(2)) of this Act, after having received notice of noncompliance from the Administrator, shall, in addition to or in lieu of a civil penalty imposed under subsection (a), on conviction, be fined not more than $25,000 for each day of violation or imprisoned for not more than one year, or both.

INJUNCTIVE ENFORCEMENT AND SEIZURE

SEC. 18. (a) Upon application by the Attorney General, the district courts of the United States shall have jurisdiction to restrain any violation of section 16 or to compel the taking of any action required by this Act or rule issued thereunder. Such actions may be brought by the Attorney General, on the request of the Administrator, in any United States district court of proper venue. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found, and subpenas for witnesses may run into any other district.

(b) Any chemical substance or article containing such substance which was manufactured or distributed in commerce in violation of an applicable rule prescribed under section 6, or in violation of section 5 of this Act, shall be liable to be proceeded against, by process of libel for the seizure and condemnation of such substance or such article in any United States district court within the jurisdiction of which such substance or article is found. Proceedings in cases instituted against a chemical substance or article containing such substance under the authority of this section shall conform as nearly as possible to proceedings in rem in admiralty. Actions under this subsection may be brought by the Attorney General on the request of the Administrator.

ENVIRONMENTAL PREDICTION AND ASSESSMENT

SEC. 19. The Administrator 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. 20. Upon request by the Administrator, each Federal agency is authorized—

(1) to make its services, personnel, and facilities available (with or without reimbursement) to the Administrator to assist him in the performance of his function; and

(2) 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.

STUDY OF CHEMICAL SUBSTANCES CLASSIFICATION SYSTEM

SEC. 21. 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. 22. (a) Nothing in this Act shall affect the authority of any State or local government to regulate any chemical substance, or to establish and enforce standards for test protocols for chemical substances to protect health or the environment, except that—

(1) if the Administrator prescribes a rule under section 6 of this Act applicable to a chemical substance, a State or local government may not, after the effective date of such rule, establish or continue to enforce any restriction of its own applicable to such substance for purposes similiar to such rule, other than a total ban on use or distribution; and

(2) if the Administrator prescribes a rule under section 4 of this Act applicable to a chemical substance, a State or local government may not after the effective date of such rule establish or continue to enforce any standards for test protocols applicable to such substance or class for purposes similar to those of a rule under section 4.

(b) The Administrator may by rule, 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 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.

JUDICIAL REVIEW

SEC. 23. (a) Not later than sixty days following promulgation of a rule under sections 4, 5, and 6 of this Act, any person adversely affected by such rule, or any interested person, may file a petition with the United States Court of Appeals for the District of Columbia or for the circuit in which such person resides or has his principal place of business for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose and to the Attorney General. The Administrator shall transmit to the Attorney General, who shall file in the court, the record of the proceedings on which the Administrator based his rule as provided in section 2112 of title 28, United States Code, and shall include the transcript of any oral presentation of data, views, or arguments required under sections 4, 5, and 6.

(b) If the petitioner applies to the court for leave to adduce additional data, views, or arguments and shows to the satisfaction of the court that such additional data, views, or arguments are material and that there are reasonable grounds for the petitioner's failure to adduce such data, views, or arguments in the proceeding before the Administrator, the court may order the Administrator to provide additional opportunity for oral presentation of data, views, or arguments and for written submissions. The Administrator may modify its findings, or make new findings by reason of the additional data, views, or arguments so taken and shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original rule, with the return of such additional data, views, or arguments.

(c) Upon the filing of the petition under subsection (a) of this section, the court shall have jurisdiction to review the rule to which the petition relates in accordance with chapter 7 of title 5 of the United States Code and to grant appropriate relief, including interim relief, as provided in such chapter. Rules promulgated by the Administrator under section 4, 5, or 6 of this Act and reviewed under this section shall not be affirmed unless the findings required to be made under those sections are supported by substantial evidence on the record taken as a whole.

(d) The judgment of the court affirming or setting aside, in whole or in part, any rule promulgated by the Administrator which is reviewed in accordance with the terms of this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certified, as provided in section 1254 of title 28 of the United States Code.

(e) The remedies provided in this section shall be in addition to and not in lieu of any other remedies provided by law.

CITIZEN CIVIL ACTION

SEC. 24. (a) Except as provided in subsection (b) of this section, any interested person may commence a civil action for injunctive relief on his own behalf—

(1) against any person (including (A) the United States, and (B) 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 rule, order, or restriction prescribed under section 4, 5, or 6 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. Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (a)(2) of this subsection shall be brought in the district court of the District of Columbia, or in the district court for the district in which the plaintiff is domiciled.

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 rule, or

(B) if the Administrator (or Attorney General on his behalf) has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the rule, but if such action is commenced after the giving of notice any such person giving such notice may intervene as a matter of right in such action; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought ten days after such notification in the case of an action under this section for the failure of the Administrator to act under section 6.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by rule.

(c) In any action under this section, the Administrator, 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 reasonable fees for attorneys and expert witnesses to the prevailing 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 rule or order or to seek any other relief.

(f) For purposes of this section, the term "person" means an individual, corporation, partnership, or association, and (subject to

subsection (a)(1)(B)) any State, municipality, or political subdivision of a State.

(g) When any actions brought under subsection (a)(1) of this section 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 thereof to the other courts having jurisdiction of the cases covered thereby.

(h) This section shall apply only with respect to civil actions filed more than two years after the date of enactment of this Act.

NATIONAL SECURITY WAIVER

SEC. 25. The Administrator shall waive compliance with any provision of this Act upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this Act. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator determines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the House Armed Services Committee and the Senate Armed Services Committee.

AUTHORIZATION FOR APPROPRIATIONS

"SEC. 26. (a) There is hereby authorized to be appropriated not to exceed $9,240,000, $11,100,000, and $10,100,000 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 construct any research laboratories.

(b) To help defray the expenses of implementing the provisions of this Act, the Administrator may, by rule, require the payment of a reasonable fee from any person required to submit test data under sections 4 and 5 of this Act. Such rules shall not provide for any fee in excess of $2,500. In setting the amount of such a fee, the Administrator shall take into account the ability to pay of the person required to submit the data and the cost to the Administrator of reviewing such data. Such rules may provide for the sharing of the expense of such a fee in any case in which the expenses of testing are shared under section 4(d).

And amend the title so as to read: "An Act to regulate interstate commerce to protect health and the environment from hazardous chemical substances."

Mr. TUNNEY. Mr. President, I move that the Senate disagree to the amendment of the House on S. 426 and ask for a conference with the House on the disagreeing votes of the two Houses thereon, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Presiding Officer appointed Mr. MAGNUSON, Mr. HART, Mr. TUNNEY, Mr. GRIFFIN, and Mr. COOK conferees on the part of the Senate.

QUORUM CALL

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT. C. BYRD. Mr. President, I ask unanimous consent that, following the remarks of Mr. WEICKER on tomorrow under the order previously entered, there be a period for the transaction of routine morning business, not to extend beyond the hour of 10:30 a.m., with statements therein limited to 3 minutes.

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

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10 o'clock a.m. After the two leaders or their designees have been recognized under the standing order, Senator WEICKER will speak for not to exceed 15 minutes, after which there will be routine morning business, with a 3-minute limitation on statements, the period for morning business not to extend beyond 10:30 a.m.

At 10:30 a.m., the Senate will take up S. 1560, the public service employment for unemployed persons bill. It is possible that yea-and-nay votes could occur on amendments thereto.

At no later than 2 o'clock p.m., the Senate will take up S. 1828, a bill to require Senatorial confirmation of the head of the Mining Enforcement and Safety Administration. There is a time limitation on that bill of 10 minutes. There will be a yea-and-nay vote on passage of the bill.

Upon disposition of S. 1828 the Senate will move to the second track and will take up the campaign reform bill, S. 372. Yea-and-nay votes are expected to occur on amendments thereto. There is a time agreement on the bill and on amendments thereto.

To repeat, there will be yea-and-nay votes tomorrow.

ADJOURNMENT TO 10 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 the hour of 10 o'clock tomorrow morning.

The motion was agreed to; and at 5:40 p.m. the Senate adjourned until tomorrow, Wednesday, July 25, 1973, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate July 24, 1973:

U.S. ARMS CONTROL AND DISARMAMENT AGENCY

Thomas D. Davies, of Ohio, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency, vice Robert H. B. Wade, resigned.

DEPARTMENT OF THE TREASURY

Meade Whitaker, of Alabama, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service), vice Lee H. Henkel, Jr., resigned.

DEPARTMENT OF JUSTICE

Anthony J. P. Farris, of Texas, to be U.S. attorney for the southern district of Texas for the term of 4 years. (Reappointment.)

Harold M. Fong, of Hawaii, to be U.S. attorney for the district of Hawaii for the term of 4 years, vice Robert K. Fukuda, resigned.

DEPARTMENT OF STATE

The following-named persons for reappointment in the Foreign Service as Foreign Service officers of class 3, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Gori P. Bruno, of Texas.
Barbara Fagan Thomson, of California.
Aloysius John Warnecki, of Pennsylvania.

For appointment as Foreign Service officers of class 3, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Kenneth Lee Cooper, of Maryland.
John T. Doherty, of Maryland.
James Francis Rafferty, of New York.
Arthur Jensen Smith, of Ohio.

For appointment as Foreign Service information officers of class 3, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Francis P. Coward, of New York.
Daniel S. Endsley, of California.
Harry Leonard Heintzen, of Louisiana.
Michael A. Kristula, of Virginia.
Robert W. Macdonald, of New York.
Robert D. Murphy, of Maryland.
Philip A. Wolcott, Jr., of California.

For reappointment in the Foreign Service as a Foreign Service officer of class 4, a Consular officer, and a secretary in the Diplomatic Service of the United States of America:

Josiah H. Brownell, of Illinois.

For appointment as Foreign Service officers of class 4, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Lemuel David Coles, of Massachusetts.
Eddie Edwards, of Michigan.
Sherman Jay Fine, of Connecticut.
Samuel Eldred Lupo, of California.
William Henry Tienken, of the District of Columbia.

For appointment as Foreign Service information officers of class 4, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Frank L. Albert, of Oregon.
Thomas Proctor Crawford, of California.
Gary M. Edwards, of New York.
Guy W. Farmer, of Nevada.

James M. FitzGerald, of Virginia.
Ramon Garces, of Texas.
John Henry Hicks, of Missouri.
Wallace E. Keiderling, of Virginia.
Bernard C. King, of Michigan.
Frederick Griswold Mason, Jr., of Florida.
V. Miro Morville, of the District of Columbia.
Sally C. Opstein, of California.
William Pfender, of Michigan.
John Pouris, of New Jersey.
Robert A. Powers, of Virginia.
Clathan McClain Ross, of North Carolina.
Louis M. Steed, of Virginia.

For promotion from a Foreign Service officer of class 6 to class 5:

Daniel Linus Dolan, of Pennsylvania.

For reappointment in the Foreign Service as Foreign Service officers of class 5, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Elinor G. Constable, of New York.
Ruth S. Matthews, of Florida.
Dorothy M. Sampas, of Maryland.

For appointment as Foreign Service officers of class 5, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Irene Mary Bauer, of Kansas.
Leroy Ethridge Beal, of Missouri.
Antonio N. Del Grosso, of Massachusetts.
Irwin Ebenau, of California.
Jon G. Edensword, of Washington.
Marino S. Endrizzi, of Wisconsin.
Bernard J. Fennell, of Florida.
David C. Fields, of California.
Willie J. Green, of Alabama.
Ralph B. Hartwell, of New Hampshire.
Gerald Eugene Manderscheid, of California.
Sandra Louise Vogelgesang, of Ohio.
Doris E. Wood, of New Mexico.

For appointment as Foreign Service information officers of class 5, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

James Davis Burns, Jr., of Mississippi.
Martin Allan Charwat, of the District of Columbia.
Robert R. Gibbons, of Arizona.
William H. Lindsey, Jr., of Louisiana.
Michael Mennard, of California.
Wayne Stanford Peterson, of the District of Columbia.
Pierre Charles Pingitore, of New Hampshire.
Lester Rene Velez, of Puerto Rico.

For promotion from Foreign Service officers of class 7 to class 6:

Christopher T. Seaver, of California.
Theodore Eugene Strickler, of Pennsylvania.

For reappointment in the Foreign Service as Foreign Service officers of class 6, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Gwendolyn Coronway, of Pennsylvania.
Joseph O. Streicher, of Illinois.

For appointment as Foreign Service officers of class 6, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

James Taylor Blanton, of Texas.
Julia Maria Cardozo, of the District of Columbia.
Patricia R. Clark, of California.
Jerry C. Hunsaker, of Washintgon.
William Albert Hyde, of Maryland.
Pierre H. Jabbour, of South Dakota.
Guy C. Johnson, of California.
B. Jerry Lujan, of New Mexico.
Peter D. Orr, of Washington.
M. Jane Parker, of California.
Jerrilynn Pudschun, of California.
Fred L. Robinson, of Utah.
Paul Solomon, of California.
Thomas John Tepper, of Illinois.
Bobby L. Watson, of California.
Katherine M. White, of Arizona.

For reappointment in the Foreign Service as a Foreign Service officer of class 7, a Consular officer, and a secretary in the Diplomatic Service of the United States of America:

J. Diane Ballard McClellan, of California.

For appointment as Foreign Service officers of class 7, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Robert A. Bradtke, of Pennsylvania.
James W. Chamberlain, of Alabama.
Steven P. Coffman, of Texas.
Thomas P. Crowley, of Virginia.
Edwin P. Cubbison, of Florida.
Francis Xavier Cunningham, of Delaware.
Karl Imants Danga, of New York.
George Timothy Dempsey, of California.
Daria dePierre, of California.
Gray D. DeVight, of Hawaii.
H. Roy Eidem, of Virginia.
Theodore Minton Ford, of Massachusetts.
Susan Carey Fouts, of Texas.
Michael F. Gallagher, of Pennsylvania.
Stephen Michael Geis III, of Missouri.
Robert S. Hagen, of Illinois.
James Henry Hall, of Virginia.
Eileen M. Heaphy, of the District of Columbia.
Rodney L. Huff, of Maryland.
Daniel A. Johnson, of Florida.
Douglas Hugh Jones, of California.
Judith R. Kaufmann, of New Mexico.
Ronald K. Kirkpatrick, of Wisconsin.
Stephen H. Klemp, of Kansas.
Gary Larsen, of California.
Leonard Bruce Levine, of Maryland.
Peter J. Lynn, of Maryland.
John D. Maiers, of Iowa.
Judyt Landstein Mandel, of New York.
Robert E. McCarthy, of the District of Columbia.
Douglas L. McElhaney, of Michigan.
Kenneth R. McKune, of North Carolina.
Douglas B. McNeal, of Hawaii.
Kenneth Leroy Norton, of California.
John S. Patterson, of Virginia.
David Pfotenhauer, of Iowa.
Thomas L. Randall, Jr., of California.
Nicholas H. Riegg, of California.
William R. Rosner, of Ohio.
Stephen R. Snow, of Tennessee.
Karl H. Sprick, of California.
Kent R. Steinkamp, of Illinois.
Bruce D. Strathearn, of California.
Eric D. Tunis, of California.
Robert Michael Walter, of Indiana.
Gerald J. Whitman, of California.
Gerard P. Wilson, of New York.

For appointment as a Foreign Service information officer of class 7, a Consular officer, and a secretary in the Diplomatic Service of the United States of America:

John T. Ohta, of Hawaii.

For appointment as Foreign Service officers of class 8, Consular officers, and secretaries in the Diplomatic Service of the United States of America:

Marsha E. Barnes, of Kentucky.
Mary Ann Casey, of Colorado.
Laura A. Clerici, of South Carolina.
Robyn M. Facinelli, of Illinois.
John R. Kunkel, of Missouri.
Christopher J. LaFleur, of New York.
Simeon L. Moats, of Pennsylvania.
Nancy E. Morgan, of New Jersey.
Robert Allen Mosher, of Missouri.
Jon Lane Noyes, of Wyoming.
H. Richard Sindelar III, of Texas.
Robin Lane White, of Virginia.
Thomas Kenneth Wukitsch, of Illinois.

Foreign Service reserve officers to be Consular officers of the United States of America:

Allan W. Brown, of Virginia.
Donald H. Winters, of Virginia.

Foreign Service reserve officers to be Consular officers and secretaries in the Diplomatic Service of the United States of America:

S. Phillips L. Amerman, of Pennsylvania.
Themistocles G. Aposporos, of Maryland.
James W. Bourne, of Virginia.
Barry M. Broman, of Washington.
Whitley Bruner, of Virginia.
Barbara L. Carr, of Virginia.
James E. Cokes, of New Jersey.
Nancy Jane Cope, of California.
Cleto Di Giovanni, Jr., of Virginia.
Peter B. Edmonds, of the District of Columbia.
Serge N. Evanow, of Virginia.
Annie Sue Ford, of Florida.
Jon M. French, of Louisiana.
Richard Lee Gentry, of Kentucky.
James W. Goodsell, of Washington.
Patrick L. Gorman, of Virginia.
John S. Habib, of California.
Gardner R. Hathaway, of Virginia.
Thomas D. Hawbaker, of Iowa.
Peter A. Hayes, of Indiana.
Jack V. High II, of the District of Columbia.
Harry A. Hinderer, of Florida.
Porter L. Holbert, of Virginia.
Winfield Scott Hose, Jr., of Michigan.
Sharon E. Hunt, of Illinois.
David Barry Kelly, of Virginia.
Robert P. Lessard, of Rhode Island.
Walter M. Lomac, of Maryland.
William B. Lonam, of Maryland.
Alaster MacDonald, of Maryland.
Kevin Maloy, of Virginia.
James C. Marshall, of California.
Reginald James McHugh, of Wyoming.
Joseph F. McManus, of New Jersey.
Alan J. McTeague, of Virginia.
Andrew W. Moore, of Maryland.
Nancy Leslie Pelletreau, of New York.
Peter V. Raudenbush, of Virginia.
Drake S. Reid, of Maryland.
Stephen W. Richter, of Virginia.
Karl V. Rohrer, of Maryland.
Vincent M. Shields, of Virginia.
Robert E. Simpson, of New Jersey.
Richard F. Stolz, Jr., of Maryland.
Vernon G. Smith, of Maryland.
Larry M. Stumpp, of Virginia.
Jack L. Tech, of Maryland.
Lavondus R. Thomas, of Virginia.
Colin R. Thompson, of New York.
Joel D. Ticknor, of Virginia.
John E. Tomas, of Minnesota.
Daniel J. Wofford, of Oklahoma.
Felton M. Wyatt, of California.

Foreign Service reserve officers to be secretaries in the Diplomatic Service of the United States of America:

Hanson R. Malpass, of New Jersey.
Joseph A. Malpeli, of Pennsylvania.
Kathleen J. Mullen, of Pennsylvania.
Evelyn A. Wythe, of California.

Foreign Service staff officers to be Consular officers of the United States of America:

William R. Baque, of Florida.
John L. Brady, of the District of Columbia.
David L. Crandall, of Virginia.
Marjorie M. DeSombre, of Illinois.
David P. Hunt, of the District of Columbia.
Frank T. Kunsman, of Washington.
Lawrence J. Moran, of Massachusetts.
Lawrence A. Penn, of New York.
Diane C. Salisbury, of New York.
David E. Thurman, of Virginia.

IN THE AIR FORCE

The following-named officers for promotion as a Reserve of the Air Force, under the appropriate provisions of chapter 837, title 10, United States Code, as amended, and Public Law 92–129:

LINE OF THE AIR FORCE

Lieutenant colonel to colonel

Bothe, Robert Z., [redacted]
Bruce, Benjamin H., [redacted]

Cheshire, Joseph M., [redacted].
Dabney, Roger B., [redacted].
Doyle, Lawrence A., [redacted].
Flaten, Eric A., [redacted].
Frymire, Richard I., Jr., [redacted].
Glenn, Elmer, Jr., [redacted].
Grabovsky, Bruno J., [redacted].
Hamby, Eugene A., [redacted].
Hemstreet, Stanley W., [redacted].
Hill, Edward Y., [redacted].
Krausse, Joel B., [redacted].
Lane, Junior L., [redacted].
Marsella, Gaetano F., [redacted].
Martin, Robert E., [redacted].
O'Bryan, William H., Jr., [redacted].
Patterson, Ben L., Jr., [redacted].
Rosenbaum, Fred M., [redacted].
Serra, Harry A., [redacted].
Solomon, Kenneth S., [redacted].
Walker, Joe G., [redacted].
Wiles, Richard L., [redacted].
Yokoyama, Irvine K., [redacted].

MEDICAL CORPS

Flaherty, Timothy T., [redacted].
Harris, Hugh S., Jr., [redacted].
Paret, Robert W., [redacted].
Peterson, Evan A., Jr., [redacted].
Sheusi, Carl J., [redacted].

The following officers for promotion in the Air Force Reserve, under the provisions of section 8376, title 10, United States Code and Public Law 92–129.

NURSE CORPS

Lieutenant colonel to colonel

McKenna, Madeline, [redacted].

LINE OF THE AIR FORCE

Major to lieutenant colonel

Baird, Keith, M., [redacted].
Bauer, Fred L., [redacted].
Bilich, Melvin W., [redacted].
Brannan, Stephen E., [redacted].
Perry, William J., [redacted].

CHAPLAIN CORPS

Camp, Arthur J., [redacted].

DENTAL CORPS

Brown, Leo M., [redacted].

MEDICAL CORPS

Bickle, Rudolf G., [redacted].
Taylor, William M., [redacted].

NURSE CORPS

Biangardi, George A., [redacted].
Smith, Mary L., [redacted].
Wickizer, Russell R., [redacted].

The following persons for appointment as Reserve of the Air Force (Medical Corps), in the grade of lieutenant colonel, under the provisions of section 593, title 10, United States Code, and Public Law 92–129, with a view to designation as medical officers under the provisions of section 8067, title 10, United States Code:

MEDICAL CORPS

To be lieutenant colonel

Bergstrom, Terry J., [redacted].
Fox, Raymond M., Jr., [redacted].
Morris, John R., [redacted].

The following person for appointment as a Reserve of the Air Force, in the grade of lieutenant colonel (line of the Air Force), under the provisions of section 593, title 10, United States Code, and Public Law 92–129:

LINE OF THE AIR FORCE

To be lieutenant colonel

Law, Richard O., [redacted].

The following persons for appointment as a Reserve of the Air Force in the grade of lieutenant colonel (line of the Air Force), under the provisions of section 593, title 10, United States Code, and Public Law 92–129:

LINE OF THE AIR FORCE

To be lieutenant colonel

Barnes, Daniel J., [redacted].
Schneider, John E., [redacted].

The following person for appointment as a Reserve of the Air Force (Medical Service Corps), in the grade of lieutenant colonel, under the provisions of sections 593, and 1211, title 10, United States Code, and Public Law 92–129, with a view to designation as a Medical Service Corps officer under the provisions of section 8067, title 10, United States Code:

MEDICAL SERVICE CORPS

To be lieutenant colonel

Vanscoy, Howard W., Jr., [redacted].

IN THE NAVY

Comdr. Grace Murray Hopper, U.S. Naval Reserve (retired), for permanent promotion to the grade of captain on the retired list of the U.S. Naval Reserve, in accordance with article II, section 2, clause 2, of the Constitution.

Vice Adm. C. Edwin Bell, U.S. Navy, for appointment to the grade of vice admiral, when retired, pursuant to the provisions of title 10, United States Code, section 5233.

IN THE MARINE CORPS

The following-named officers of the Marine Corps for temporary appointment to the grade of lieutenant colonel:

Harold J. Alwan
Thomas P. Angus
Roy F. Arnold
Vladimir H. Bacik
Ernest F. Baulch
Ronald L. Beckwith
Cornelius F. Behan
Robert M. Black
Robert C. J. Blackington
Robert B. Booher
James A. Bracken, Jr.
James W. Bridges
Donald E. Bullard
Harlan P. Chapman
Robert C. Cockell
Charles K. Conley
Gene A. Deegan
Robert R. Doran
John M. Dye
Henry D. Fagerskog
James F. Farber
Mervin A. Fiel
Charles G. Gerard
Umberto Giannelli
Robert K. Goforth
Winston O. Goller
Robert L. Gray, Jr.
James T. Hagan III
George L. Hammond
Jack F. Hansston
Gerald E. Harbison
Hans S. Haupt
Thomas W. Haven
Richard W. Hawthorne
David Y. Healy
Edward J. Heise
Karl R. Heiser
John W. Hemingway
Charles E. Hester
Robert A. Hickethier
William H. Horner, Jr.
Anthony C. Huebner
Emmett S. Huff, Jr.
Laurice M. Hughes
Richard V. Hunt
William A. Johnson
Richard R. Johnson
Gerald G. Kemp
Lee T. Lasseter
Timothy B. Lecky
John B. Legge
Paul F. Lessard
Luther A. Lono
Elliot F. Mann
Charles L. Manwarring
Joseph P. Marada
Robert J. Martin
Jerry W. Marvel
Ronald B. McCrindle
James M. McGarvey
James A. McGinn
David S. McIntyre
Richard O. Merritt
Kenneth P. Millice Jr.
Robert F. Milligan
William F. Mullen
Robert G. Neal Jr.
Harold M. Nelson
Daniel F. M. Nielsen
John W. O'Donnell
Billy J. Palmer
Clarence R. Perry
Raymond F. Perry
Robert A. Phillips Jr.
Ferrell F. Powell Jr.
George C. Psaros
Earl S. Piper Jr.
Albert Pitt
Charles A. Reynolds
Paul E. Ridge
Geoffrey H. Root
Paul E. Roush
William J. Scheuren
John M. Solan
Patrick R. Stingley
James S. Tardy
Milton S. Thompson
John S. Vogt
Hobart M. Wallace Jr.
Mark H. Waterbury III
Eugene L. Wheeler
Lawrence A. Whipple
George P. Wuerch

IN THE ARMY

The following-named person for reappointment to the active list of the Regular Army and Army of the United States with grades as indicated, from the temporary disability retired list, for a period of 1 day, under the provisions of title 10, United States Code, sections 1211 and 3447:

To be major general, Regular Army, and lieutenant general, Army of the United States

Lawrence J. Lincoln, [redacted].

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 3962:

To be lieutenant general

Lt. Gen. Lawrence J. Lincoln, [redacted], Army of the United States (major general, U.S. Army).

DEPARTMENT OF TRANSPORTATION

Robert Henri Binder, of the District of Columbia, to be an Assistant Secretary of Transportation, vice John L. Hazard, resigned.

CONFIRMATIONS

Executive nominations confirmed by the Senate July 24, 1973:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Stanley B. Thomas, of New York, to be an Assistant Secretary of Health, Education, and Welfare.

DEPARTMENT OF THE TREASURY

William L. Gifford, of New York, to be a Deputy Under Secretary of the Treasury.

BUREAU OF THE CENSUS

Vincent R. Barabba, of California, to be Director of the Census.

(The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

HUNTINGTON (W. VA.) ADVERTISER EDITORIAL STRESSES NEED FOR MORE RESEARCH TO REMOVE POLLUTANTS FROM COAL

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES

Tuesday, July 24, 1973

Mr. RANDOLPH. Mr. President, the American people this summer are acutely aware of how they are personally affected by our country's energy shortage. The lack of adequate supplies of gasoline has brought home to the citizens of the United States the fact that the energy crisis is real.

This crisis affects more than just supplies of gasoline. It is, likewise, a complex situation with many interrelated factors. As we work to find realistic solutions to our energy requirements, environmental protection must remain prominent in our thinking. Effective and efficient means of removing pollutants are urgently needed. This is particularly true with respect to coal, which is America's most abundant energy source.

The Federal Government is involved in research to make coal a cleaner fuel. These activities, however, should be expanded. The Huntington, (W. Va.) Advertiser recently published an editorial discussing this situation and the need for expanded research to remove sulphur