mittee on Interstate and Foreign Commerce.

By Mr. ROSENTHAL (for himself, Ms. ABZUG, Mr. ADDABBO, Mr. ANDERSON of California, Mr. ASHLEY, Mr. BADILLO, Mr. BERGLAND, Mr. BEVILL, Mr. BINGHAM, Mr. BLATNIK, Mr. BRADEMAS, Mr. BRASCO, Mr. BROWN of California, Mr. CARNEY of Ohio, Mrs. CHISHOLM, Mrs. COLLINS of Illinois, Mr. CONYERS, Mr. CONTE, Mr. COREMAN, Mr. CULVER, Mr. DOMINICK V. DANIELS, Mr. DAVIS of South Carolina, Mr. DELLUMS, Mr. DE LUGO, and Mr. DENHOLM):

H.R. 10236. A bill to provide that the special cost-of-living increase in social security benefits enacted by Public Law 93–66 shall become effective immediately, and for other purposes; to the Committee on Ways and Means.

By Mr. ROSENTHAL (for himself, Mr. DENT, Mr. DRINAN, Mr. EDWARDS of California, Mr. EILBERG, Mr. FASCELL, Mr. FLOOD, Mr. FOLEY, Mr. FRASER, Mr. GAYDOS, Mrs. GRASSO, Mr. GREEN of Pennsylvania, Mr. GUDE, Mr. GUNTER, Mr. GUYER, Mr. HARRINGTON, Mr. HAWKINS, Mr. HECHLER of West Virginia, Mrs. HECKLER of Massachusetts, Mr. HELSTOSKI, Mr. HORTON, Mr. HOWARD, Miss JORDAN, Mr. KOCH, and Mr. LEGGETT):

H.R. 10237. A bill to provide that the special cost-of-living increase in social security benefits enacted by Public Law 93–66 shall become effective immediately, and for other purposes; to the Committee on Ways and Means.

By Mr. ROSENTHAL (for himself, Mr. LEHMAN, Mr. LENT, Mr. MCCLOSKEY, Mr. MCCORMACK, Mr. MCFALL, Mr. MELCHER, Mr. MEZVINSKY, Mr. MOAKLEY, Mr. MOLLOHAN, Mr. MOORHEAD of Pennsylvania, Mr. MOSS, Mr. MURPHY of New York, Mr. NIX, Mr. O'HARA, Mr. OWENS, Mr. PEPPER, Mr. PODELL, Mr. PRICE of Illinois, Mr. RANGEL, Mr. REUSS, Mr. RIEGLE, Mr. RINALDO, Mr. RODINO, and Mr. ROE):

H.R. 10238. A bill to provide that the special cost-of-living increase in social security benefits enacted by Public Law 93–66 shall become effective immediately, and for other purposes; to the Committee on Ways and Means.

By Mr. ROSENTHAL (for himself, Mr. RONCALIO of Wyoming, Mr. ROUSH, Mr. ROY, Mr. ROYBAL, Mr. SARBANES, Ms. SCHROEDER, Mr. SEIBERLING, Mr. SHIPLEY, Mr. SHOUP, Mr. JAMES V. STANTON, Mr. STUDDS, Mr. SYMINGTON, Mr. THOMPSON of New Jersey, Mr. THONE, Mr. THORNTON, Mr. TIERNAN, Mr. VIGORITO, Mr. CHARLES H. WILSON of California, Mr. WON PAT, Mr. WYDLER, Mr. YOUNG of Florida, and Ms. HOLTZMAN):

H.R. 10239. A bill to provide that the special cost-of-living increase in social security benefits enacted by Public Law 93–66 shall become effective immediately, and for other purposes; to the Committee on Ways and Means.

By Mr. VANIK (for himself and Mr. WOLFF):

H.R. 10240. A bill to provide for assistance in International Drug Control through the use of trade policy; to the Committee on Ways and Means.

By Mr. WALSH:

H.R. 10241. A bill to amend the State and Local Fiscal Assistance Act of 1972 to exempt any unit of local government which receives not more than $5,000 for the entitlement period from the requirement that reports of use of funds be published in a newspaper; to the Committee on Ways and Means.

By Mr. BROWN of Ohio:

H.J. Res. 718. Joint resolution authorizing and requesting the President to issue a proclamation designating October 7 to 13, 1973, as "Newspaper Week" and also designating October 13, 1973, as "Newspaper Carrier Day"; to the Committee on the Judiciary.

By Mr. PATMAN (for himself, Mr. BARRETT, Mrs. SULLIVAN, Mr. REUSS, Mr. ASHLEY, Mr. MOORHEAD of Pennsylvania, Mr. GONZALEZ, Mr. WIDNALL, Mr. J. WILLIAM STANTON, Mr. BLACKBURN, Mr. BROWN of Michigan, and Mr. ROUSSELOT):

H.J. Res. 719. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes; to the Committee on Banking and Currency.

By Mr. SPENCE (for himself, Mr. COLLINS of Texas, Mr. CONLAN, Mr. CRANE, Mr. DERWINSKI, Mr. FISHER, Mr. ICHORD, Mr. ROBINSON of Virginia, Mr. SEBELIUS, Mr. SMITH of New York, Mr. SYMMS, Mr. WARE, and Mr. YOUNG of South Carolina):

H.J. Res. 720. Joint resolution proposing an amendment to the Constitution of the United States relative to the balancing of the budget; to the Committee on the Judiciary.

By Mr. ZWACH:

H.J. Res. 721. Joint resolution to designate the period February 11, 1974 through February 17, 1974 as "National Peanut Butter and Milk Week"; to the Committee on the Judiciary.

By Mr. SNYDER (for himself, Mr. DERWINSKI, Mr. COLLINS of Texas, Mr. GROSS, Mr. RARICK, Mr. SKUBITZ, Mr. DAVIS of Georgia, Mr. LANDRUM, Mr. SYMMS, Mr. KETCHUM, Mr. CAMP, Mr. BURKE of Florida, Mr. ROUSSELOT, Mr. STEIGER of Arizona, Mr. STUBBLEFIELD, Mr. MANN, Mr. DON H. CLAUSEN, Mr. CLEVELAND, Mr. MYERS, Mr. GUBSER, Mr. GROVER, Mr. MCCLOSKEY, Mr. DICKINSON, Mr. STEPHENS, and Mr. GETTYS):

H. Con. Res. 295. Concurrent resolution providing for the date of sine die adjournment of the 93d Congress, 1st session; to the Committee on Rules.

By Mr. WON PAT:

H. Con. Res. 296. Concurrent resolution relative to giving serious consideration to the political status preference of the people of Guam and to recognize the contribution of their elected representatives toward the principle of government by the consent of the governed; to the Committee on Interior and Insular Affairs.

By Mr. MOAKLEY:

H. Res. 542. A resolution creating a select committee to conduct a study concerning possible American involvement in the overthrow of the Chilean Government of President Salvidor Allende in September 1973, and in the death of President Allende; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS

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

By Mr. BROWN of Ohio:

H.R. 10242. A bill for the relief of Capt. Terence A. Cochran, M.D., U.S. Army; to the Committee on the Judiciary

By Mr. MCKINNEY:

H.R. 10243. A bill for the relief of John J. Easton; to the Committee on the Judiciary.

PETITIONS, ETC.

Under clause 1 of rule XXII,

278. The SPEAKER presented a petition of Rev. H. Roy Anderson, Mount Vernon, N.Y., relative to court proceedings; to the Committee on the Judiciary.

SENATE—*Wednesday, September 12, 1973*

The Senate met at 10 a.m. and was called to order by Hon. DICK CLARK, a Senator from the State of Iowa.

PRAYER

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

Almighty God, our Creator, Redeemer, and Judge, may Thy spirit lay hold upon this Nation to forgive and renew its heart. Be to us now what Thou has been to our fathers. Open our eyes to all that belongs to things of the spirit. Open our minds to the truth. Open our lips to speak Thy word. As we toil here in high endeavor, use us for the cleansing and the moral renewal of the Nation.

We pray in His name who came to show us the kingdom. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., September 12, 1973.

To the Senate:

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

JAMES O. EASTLAND,
President pro tempore.

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

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 Acting President pro tempore (Mr. CLARK) laid before the Senate messages from the President of the United States submitting sundry nominations, and withdrawing the nomination of David J. Cannon, of Wisconsin, to be U.S. attorney for the Eastern District of Wisconsin, which nominating messages were referred to the appropriate committees.

(For nominations received today, see the end of Senate proceedings.)

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Tuesday, September 11, 1973, be dispensed with.

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

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Pennsylvania desire to be heard?

Mr. SCOTT of Pennsylvania. Mr. President, things are going along pretty peacefully here. I think I will not have anything to add to that at the moment.

EXECUTIVE SESSION—OFFICE OF ECONOMIC OPPORTUNITY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session to consider the nomination of Alvin J. Arnett, of Maryland, to be Director of the Office of Economic Opportunity, with the vote thereon to occur at 12 noon today.

The time will be equally divided between majority and minority leaders.

The clerk will state the nomination.

The second assistant legislative clerk read the nomination of Alvin J. Arnett, of Maryland, to be Director of the Office of Economic Opportunity.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum, with the time to be taken equally out of both sides and, may I say, I turn my time over to the distinguished Senator from New Jersey (Mr. WILLIAMS).

The ACTING PRESIDENT pro tempore. Without objection, the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. 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.

How much time does the Senator yield?

Mr. WILLIAMS. Mr. President, a parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. WILLIAMS. What is the time situation?

The ACTING PRESIDENT pro tempore. The time between now and 12 o'clock, when the vote is scheduled, is equally divided between the majority and minority leaders, and the majority leader has yielded his time to the Senator from New Jersey.

Mr. WILLIAMS. I yield myself 5 minutes.

Mr. President, on August 2, 1973, the committee voted 11 to 1 to favorably report out the nomination of Alvin J. Arnett for the position of Director of the Office of Economic Opportunity.

The committee's action was based on Mr. Arnett's forthright commitment to the goals and ideals of the Economic Opportunity Act.

During the committee's hearings, Mr. Arnett clearly stated that it was his intention to enforce the law as Congress had written it despite the administration's past position to the contrary.

Such sentiments are indeed refreshing, especially in light of certain events of the recent past which I would like to recall for my colleagues.

In January of this year, the President designated Mr. Howard Phillips to be the Director of OEO without sending his name to the Senate for confirmation. Shortly thereafter, despite the clear abuse of constitutional process and lack of regard for statutory intent, this appointee set out to accomplish his declared goal of dismantling the agency and gutting its programs—programs specifically designed by the Congress to help the poor and disadvantaged of this country.

As if these blatant illegalities alone were not enough, it was the results of these actions—the disruption brought to hundreds of worthwhile programs and to thousands of innocent lives, which prompted me to take immediate, and admittedly extraordinary, action—redress through the judicial arm of government. Joined by three of my committee colleagues, Senators PELL, MONDALE, and HATHAWAY, legal proceedings were initiated in the U.S. district court to stop the agency's dismantling and to remove the "Acting Director" from office.

The subsequent events, of course, are well known—the "Acting Director" was ousted; OEO as an agency survived the fiscal year, impounded funds were released; and once again the poor and disadvantaged of this country were given hope.

Immediately upon his appointment on June 26, 1973, as Director-Designate, Alvin Arnett was thrust into a veritable cauldron of controversy. Under court order, OEO was mandated to review and process some 650 pending grants before the end of fiscal year 1973—June 30. Ironically, most of these grants were the same ones purposely abandoned and left to die by Mr. Arnett's predecessor.

To his credit, and with the aid of two court-sanctioned extensions, the nominee succeeded in processing the outstanding grants. I should also like to note that Mr. Arnett acted responsibly to my request for a special review of some 30 new grantees in which there were indications of possible substantive and/or procedural improprieties. As a result, almost all of these applications were either rejected or modified; thus saving several million dollars of taxpayer money.

In response to an appeal by committee members, Mr. Arnett extended the life of existing backup research centers, which provide vital input into the delivery of legal services to the Nation's poor and disadvantaged.

In addition, Mr. Arnett showed a singular quality of political courage when he decided to override the Governor of Mississippi's veto of that State's legal services program.

It is my understanding that all OEO grantees have been currently funded at least through the first quarter of this fiscal year. And I have been given assurances that such funding shall continue when appropriations are made available.

Let me be frank to say that there are areas in which I disagree with Mr. Arnett; one such area being the delegation of the Agency functions to the old-line departments. While the enabling statute does indeed permit such transfers for the purpose of operating the Agency's programs, it must be remembered that OEO in no way waives its responsibility for such programs. OEO still retains the complete responsibility for both oversight and evaluation of its statutory functions. In addition, the Agency retains the right to modify and revoke any delegation upon the failure of any departmental delegate to fulfill its pledged obligations.

However, if his deeds manifest his words, Mr. Arnett should make a worthwhile contribution toward the goals sought by the Economic Opportunity Act. In his opening remarks to the committee, the nominee stated:

> I honestly and openly state that I stand ready to comply with the law in every respect as determined by the Congress and the President and to carry on the remaining OEO functions during fiscal year 1974 to the very best of my ability. I make my personal commitment to that purpose. . . .
>
> I come to you with no private agenda, but rather to continue to do my part in helping to alleviate poverty. I come to you in the spirit of cooperation, knowing full well the prospects of confrontation.

And in a private communication to me as the committee's chairman, Mr. Arnett said:

> If the Congress chooses that this agency's work should continue in full or in part, then I would hope that we could do that work better than it has ever been done before. I firmly believe and my life has been so dedicated that this Nation's commitment to its disadvantaged and economically disfranchised is a responsibility of the highest order and one we neglect at our peril as a people.

Therefore, it is rather ironic that some of my colleagues intend to oppose the nomination for the very reason that Mr. Arnett has chosen not to follow the footsteps of his ill-fated predecessor, Howard Phillips; and indeed because he has instead declared his desire to follow the clear dictates of congressional intent, and not impound funds or stifle programs destined to help the Nation's poor and disadvantaged.

Mindful of the important issues at stake, and of its responsibility to safeguard the interests and needs of those who look toward the Office of Economic Opportunity as their voice in Government, the committee voted in favor of Mr. Alvin J. Arnett to be the Agency's Director.

Therefore, Mr. President, I am pleased to say that the committee is enthusiastic about this nominee. I strongly support him.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. WILLIAMS. I yield.

Mr. JAVITS. Mr. President, I, too, support the nomination; and after Senator CURTIS has spoken, I will state my reasons.

Mr. GRIFFIN. Mr. President, because of the unanimous consent agreement, the control of time in opposition to the nomination, ironically, is under the control of the minority leader, who favors the nomination, and so does the assistant minority leader. There really are no problems in terms of time available.

I ask unanimous consent that the time under the control of the minority leader be under the control of the distinguished Senator from Nebraska and that if he is required to leave the floor, he be able to redelegate the time to someone else.

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

Mr. CURTIS. Mr. President, I yield myself such time as I desire.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska may proceed.

Mr. CURTIS. Mr. President, the significance of the vote which we are about to take today is much greater than to resolve the question of the directorship of the Office of Economic Opportunity. At stake are much larger issues, including the future course of policy concerning some of this country's most controversial social programs. Ultimately, the question is whether that course will be determined by Congress and the President, who are the elected officials of the legislative and executive branches of our Federal Government, or by nameless and faceless members of a burgeoning bureaucracy who have constituted themselves an independent "branch" of government and whose inscrutable will may be questioned only by Federal judges. In order to place today's vote in its proper perspective some recent historical background will be helpful.

Less than 1 year ago the voters had an opportunity to choose between a candidate for President who openly favored the accelerated expansion of all manner of wasteful and ineffective social programs and a President who said that creative and constructive means, such as revenue sharing must be found to return to the people the power to make de revenue sharing, must be found to reverse the flow of power from the States and localities to Washington which has proceeded unchecked for several decades. The American people responded by reelecting President Nixon by a resounding landslide, and just after the first of this year the President made it clear that he interpreted the election as a mandate for him to reorganize the Federal bureaucracy to make it responsive to the policies of his administration.

In January of this year the President appointed Howard Phillips Acting Director of OEO. The agency had been created in 1964 to centralize and coordinate Federal efforts on behalf of the poor. During the intervening years OEO became the means by which millions of dollars of Federal funds were spent to support the pet projects and indulgences of an army of bureaucrats and professional poverty fighters. The scandals associated with OEO in general, and with the community action and legal services programs in particular, have filled hundreds of pages in the RECORD. Mr. Phillips was assigned the task of dismantling OEO by June 30, discontinuing some programs, transferring some programs to other agencies, and placing the legal services program under an independent Legal Services Corporation which the President asked Congress to create. Because of the uncertainty of the fate of legal services at the hands of a Congress which was skeptical in view of the program's excesses and because of the central importance of this self-styled "advocate for the poor" in the poverty warriors' scheme of things, the debate concerning this program quickly became the focal point of the larger struggle over the future of OEO.

Amazingly, the legal services program had operated since its inception in 1965 without any stated goals or objectives by which to measure the performance of the program and hold its administrators accountable for its success or failure. Mr. Phillips and Director of Legal Services J. Laurence McCarty proceeded to remedy this situation in May by issuing a detailed set of regulations to govern the program. The most important of these stated—

> The only . . . overriding objective for line attorneys employed in the program: To provide quality legal services in noncriminal matters to individuals who meet the eligibility criteria established by the Office of Legal Services and who are otherwise unable to afford counsel.[1]

The regulation went on to say that—

> Law reform will no longer be a primary or chief criterion in evaluation or refunding projects.[2]

The entire set of regulations was designed to prevent legal services attorneys from taking advantage of the policy vacuum in Washington to pursue their own agenda for "law reform" at the expense of the welfare of individual needy clients.

Approximately 1 month later, on June 21, the House of Representatives passed H.R. 7824, the Legal Services Corporation bill, but not before it added some two dozen amendments to the committee bill, all of which were designed to curb the excesses of the program. Singled out for special attention were the 12 national backup centers, which were supposed to provide research assistance to staff attorneys but whose involvement in such cases as the Detroit busing case had made them obnoxious to a broad spectrum of Congressmen. A pair of amendments sponsored by the distinguished Congresswoman from Oregon, Mrs. EDITH GREEN, and passed overwhelmingly by the House, would effectively abolish these backup centers. Other amendments were designed to prevent involvement of legal services attorneys in suits involving busing, abortion, and draft evasion and to restrict such activities as the representation of political pressure groups.

In late June Judge Jones, of the Federal District Court for the District of Columbia, ruled that Mr. Phillips could not continue as Acting Director and nullified his actions in office for the technical reason that his name had not been submitted to the Senate for confirmation within 60 days of his initial appointment. However, by this time, the electorate, the President, and the House of Representatives had spoken, and there was every reason to expect that the new Acting Director, Alvin J. Arnett, who seeks confirmation today, would continue to implement the clearly stated policies of this administration with respect to OEO. This seemed to be confirmed when Mr. Arnett appeared before the Senate Committee on Labor and Public Welfare and asked that no further funding be provided for OEO. Then a bizarre series of events took place. Under further questioning by the committee Mr. Arnett stated that his personal views, as opposed to those of the administration which appointed him, were that the agency should continue to exist as an advocate for the poor and as a federally funded poverty "think tank."

One such episode was Mr. Arnett's decision to engulf the sparsely populated Trust Territory of Micronesia in a veritable tidal wave of legal services funds. Micronesia has only the bare beginnings of a legal system, yet the Acting Director has approved a grant of $600,000 over the protest of the High Commissioner and despite the recommendation of his staff that the grant be drastically cut or terminated.

Mr. Arnett also approved a technical assistance grant of $298,000 for the National Legal Aid and Defender Association—NLADA—with the substantial likelihood of further funding in the face of staff recommendations that the organization be given a contract, rather than a grant, of $220,000. The contract approach to funding would have provided a much larger measure of control by the agency than does a grant, which permits a recipient to do essentially what it pleases with Federal money. Further funding would have been contingent upon NLADA's performance under the terms of the contract. Mr. Arnett's action here suggests that he is, in effect, ceding to create Federal social policy which rightfully belongs to responsible public officials.

Mr. Arnett has attempted several times to fill the vacant position of Director of Legal Services, a position which is of pivotal importance in this period of transition from an OEO program to a corporation, with individuals such as Mr. Dan Bradley who are identified with the discredited militant law reformist approach to legal services. The program badly needs responsible direction, but Mr. Arnett has passed up several opportunities to appoint a moderate conservative who would administer the program in a manner which would be consistent with the policies of this administration rather than with the radical doctrines, which have been soundly rejected at the polls. Mr. Arnett's persistent attempts to install the likes of Mr. Bradley at the helm of Legal Services, whether by direct appointment or by appointment as a Special Assistant to the Director with responsibilities in the area of legal services, raise the question whether the radical elements may be able to win through the good offices of Mr. Arnett what they lost last November and thereby effec-

[1] 45 C.F.R. Sec. 1061.5–6(a)
[2] 45 C.F.R. Sec. 1061.5–6(b)

tively subvert the electoral process in this country.

Equally alarming are the reports I have been receiving concerning negotiations which Mr. Arnett has been conducting with the employees union at OEO. Mr. Arnett has apparently agreed in principle, among other things, to testify favorably on the question of continued funding of OEO, to take no adverse action against any employee without approval by an arbitrator, to consult with the union on all major policy actions, to permit the election of supervisors, to impose union shop conditions on appointments and promotions within the agency, and to permit the union to conduct its ongoing program of agitation on Government time with the use of Government facilities and equipment. The list of concessions goes on and on, and I understand that Mr. Arnett may sign a contract this very day which would give the union virtual control over this agency—signed, sealed, and delivered.

All I can say is that I tried to hold up this unfortunate nomination long enough for both Mr. Arnett and the administration to consider whether or not Mr. Arnett could administer the agency in good faith in view of the apparently irreconcilable conflicts between Mr. Arnett's actions and announced administration policies. From now on I, along with millions of others who are disturbed at the direction which some of the Federal social programs appear to be taking, will be watching every move Mr. Arnett makes. We will be anxious to see whether or not the Director approves the funding requests of several grantees whose projects should never have been funded in the first place but who have made a record which leaves a responsible official no choice but to terminate or phase out their grants. We will be watching to see whether or not Mr. Arnett will now appoint a Director of Legal Services who will place concern for the needs of poor clients ahead of service to radical movements whose objectives are completely at odds with those of the citizens whose taxes support the program. Finally, we will peer over Mr. Arnett's shoulder as he prepares to turn virtual control of the agency over to a union which cynically believes that Federal agencies exist for the benefit of the defiantly entrenched employees rather than the taxpayers, an action which would bring to a bitter conclusion the efforts over a period of many months of those dedicated public servants who sought to carry out the President's mandate on behalf of the vast majority of Americans.

In short, Mr. Arnett, we will, indeed, "judge you by your stewardship" and will be prepared to respond in accordance with the record which you establish as Director of OEO.

I yield the floor.

Mr. WILLIAMS. Mr. President, I wonder if the Senator would yield for just a clarifying question.

Mr. CURTIS. I am happy to yield.

Mr. WILLIAMS. As I understand the Senator's opening remarks, he associated himself favorably, as I interpreted the beginning remarks, with the procedures that were undertaken by Mr. Phillips, who was never nominated to this position, but was in a position to direct the agency until removed from that position by court order. Mr. Phillips, a very honest man, said that he was in the position to dismantle the agency.

I got the impression that the Senator from Nebraska, my good friend, looked favorably back to that period and agreed with that approach—that the Presidential election of last year somehow indicated a mandate for this kind of activity.

Mr. CURTIS. The Senator is correct. I believe that was the case. I believe that Mr. Phillips in general was carrying out administration policy. My hope is that Mr. Arnett will continue with that, but, for the reasons that I recited, I am disturbed about it.

Mr. WILLIAMS. Hearing that disturbs this Senator, because it places executive policy above the Constitution and above the law of the land.

Mr. CURTIS. No; I think it conforms with that.

Mr. WILLIAMS. It was on September 19, 1972, that the President signed into law Public Law 92–424, wherein the economic opportunity amendments were continued for 2 years. In other words, the Office of Economic Opportunity was authorized to continue through fiscal year 1974. That is the law of the land, and the Constitution clearly states that the President shall take care that the laws are faithfully executed.

I am certain that the Senator from Nebraska is an ardent supporter of these constitutional provisions and of the constitutional powers of the Congress, the legislative branch, and of the Presidential branch. That is what those court cases were all about. Howard Phillips defied both the law and the Constitution.

Mr. CURTIS. I do not follow the distinguished Senator's reasoning on the constitutional principles involved. There is no principle in our Constitution that requires any offical to continue a program that is wasteful, that is creating problems, and that needs reform.

Just as clearly as that the Congress passed an extension of the OEO Act, it also passed the Reorganization Act, and there is no statutory or constitutional obligation on anyone to continue a program or the manner of conducting a program if it clearly is in trouble, if it is wasteful, if it is proceeding against the interests of the established government; and I believe that to be the case.

The power of the President to reorganize has at least equal standing with, perhaps greater standing than, the mere extension of the program.

Mr. WILLIAMS. Reorganization was never the issue, but rather the dismantling, discontinuing, and killing of programs enacted under law.

Mr. CURTIS. I do not believe that a majority of the Congress intended, for instance, when they voted for a program that would provide legal services to the poor, to have that money used for political purposes or in the area of controversial policy determination.

I think Congress was voting for a program which provided that if a distressed and needy individual required legal counsel in his personal situation, it would be there for him. So I do not concede that those matters that were being discontinued by Mr. Phillips—and I believe at the direction of the administration—constituted the will of the Congress.

Mr. WILLIAMS. It certainly was viewed otherwise by a majority of the Congress—I can assure the Senator of that—and that is why these questions went to the courts—a most extraordinary step, but made necessary by the actions of Mr. Phillips. The courts upheld the proposition that I am now advancing; that the Office of Economic Opportunity was validly enacted into law and that continued it in law. The President's duty under the Constitution is to execute the law of the land, and this was not done, and, therefore, the impoundments were stopped and Phillips was ordered to vacate his position.

Mr. CURTIS. I believe the controlling and main element of the judges' decision revolved around the lack of confirmation and was not a direct challenge of the wisdom or lack of wisdom of Mr. Phillips' actions.

Mr. WILLIAMS. If the Senator from Nebraska (Mr. CURTIS) had fully read the text of Judge Jones' decisions, he would have seen that they clearly rejected the substantive actions of Mr. Phillips as being contrary to the intent of Congress. I can say the end result was a wise result, in my judgment. I dislike to put so much of this debate as a burden on Mr. Arnett when we talk about Mr. Phillips' actions some time back. So let me thank the Senator from Nebraska for his conscientious attention to expressing his views here.

Mr. CURTIS. Mr. President, may I say that the distinguished Senator from New Jersey (Mr. WILLIAMS) has helped to put the issue in a correct perspective. I believe that the President acted wisely in his directions to Mr. Phillips, and I have great misgivings as to whether Mr. Arnett would so act.

I also feel that the court decision, regardless of what dictum may or may not have been involved in the decision, to be one that was determined on the basis of the Senate confirmation.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. WILLIAMS. Mr. President, I yield 5 minutes to the Senator from Maryland.

Mr. BEALL. Mr. President, I thank the Senator from New Jersey for yielding me time.

Mr. President, I rise in support of the nomination of Mr. Alvin J. Arnett to be Director of the Office of Economic Opportunity for several reasons.

First of all, Mr. Arnett is a resident of the State of Maryland. And I am naturally happy that a resident of our State has been selected to head an agency of such significance in our Government bureaucracy.

Second, I have more than a passing acquaintance with Mr. Arnett, extending beyond my election to office in January 1971. Mr. Arnett was a member of my staff for 10 or 11 months, as executive assistant, after I took office.

Third, and most importantly, I am happy to rise in support of the nomination of Mr. Arnett to be Director of the Office of Economic Opportunity because I think he is eminently qualified to hold the office. As I have said, Mr. Arnett was

my executive assistant when I first came to the Senate.

More than that, Mr. President, for 3 years before joining me in the Senate, he had been with the Appalachian Regional Commission and had moved up through the ranks in that agency. We are all aware of the fine work that commission has done over the 14-State region under its jurisdiction. We are aware of the fact that this agency has given new hope to many people and many local governments in the 14-State area in which it has jurisdiction.

Through this agency, we have been able to build a kind of base on which private agencies can go in and help them improve their ways of life. Mr. Arnett had very valuable experience there, and after being with me for 10 or 11 months, the Governors of the States covered by the Appalachian Region, called him back to that agency and selected him to be executive director of the agency. He has served with distinction in that capacity.

Mr. President, I think that these are, indeed, difficult times for the Office of Economic Opportunity. Its future, of course, is not set. But while the future is not set, I think it is important that Mr. Arnett head the agency because of his experience, his personality, and his understanding of the people and their problems. He could deal effectively with the matters coming before the agency and could deal effectively with the programs facing the people.

Mr. Arnett can be of great help to this agency by virtue of his experience in the Appalachian Commission and by virtue of his own personality and his knowledge of the people's problems and his great sensitivity and experience. He will be able to deal with these problems in an efficient way.

I think the President has made a good choice. I hope that the Senate will look with favor upon this nomination.

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

The ACTING PRESIDENT pro tempore. On whose time?

Mr. BEALL. Mr. President, I ask unanimous consent that the time be equally divided between the proponents and the opponents.

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

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

Mr. JAVITS. Mr. President, I yield whatever time he desires to the Senator from Maine.

Mr. HATHAWAY. Mr. President, I am going to vote no on this nomination and feel an obligation to my colleagues to explain why I am taking this position.

As a preface to my remarks, I should state my conviction that the Office of Economic Opportunity is an important agency and that its directorship, particularly now, is an important job. The 25 million people who lead lives of poverty in this country need a strong advocate in the councils of the Federal Government. They do not need special privileges, but they do need protection from arbitrary action which can diminish their resources and, ultimately, their self-respect. Whether we like it or not, government at all levels in this country has tremendous power to affect the daily lives of all our citizens. Being able to afford neither lawyer nor lobbyist, having no representative in the seats of the mighty, weighed with the pressure of simple survival, these people deserve, at least, that their case be made. The OEO offers a vehicle, albeit an imperfect one, for this purpose.

It is for these reasons that the director of this agency holds a vitally important job, particularly so when the administration in power has expressed hostility to the agency and the intention to end its very existence. Although I believe that this nominee feels a genuine commitment to the poor, his recent appearances in these halls have raised doubts in my mind about his ability to translate that commitment into effective action.

Because of the special mission of the OEO, its director must have two special qualities in addition to a basic commitment to the poor. One of these is candor—a kind of straightforwardness that can engender confidence in those we are endeavoring to serve. The second is political toughness—the ability to make and stick to difficult decisions in the best interests of the poor despite strong conflicting pressures from Governors, Senators, or even Presidents.

Based upon my investigations of the nomination and observations during committee hearings and private meetings, it is the requisite degree of these two characteristics that I find lacking. Because my conclusions are obviously subjective, it is with some reluctance that I take this position. But my strong feelings about the OEO and the people it serves permit me no other course.

Mr. JAVITS. Mr. President, with the permission of the Senator from New Jersey, I yield myself such time as I may desire.

Mr. President, I strongly urge that the Senate confirm Alvin J. Arnett as Director of the Office of Economic Opportunity.

It is well known that this Office in the past fiscal year has had a very rough time under the former Acting Director, Howard Phillips. And I have no criticism of him whatever as a person. We are talking about his actions in an official capacity. He attempted to dismantle the agency. I am sure that he did this upon the instructions of the administration.

These efforts failed primarily because of the actions of the judicial branch, and in that respect, my colleague, the Senator from New Jersey (Mr. WILLIAMS), with whom I worked closely, joined in the litigation, together with other Members of the Senate. It was a very great privilege of these Members to join in the litigation insisting that the law enacted by the Congress be carried out during the fiscal year 1973.

This same situation will pertain during this fiscal year, 1974, under the court decisions—that is, the program must be carried out—so long as appropriations are made available by the Congress and the Executive for those purposes; such is now the case under a continuing resolution, House Joint Resolution 636, which expires September 30, and it is likely that the Senate will soon follow the action of the House in providing funds for the remainder of this fiscal year, which will take us to June 30, 1974.

In light of this history and these prospects it is all the more important that the Office of Economic Opportunity have as Director a person who has the experience, moral commitment to the poor, and personal commitment to carry out the programs for whatever period the Congress, the Executive, and the courts determine that they should be continued under law.

In my opinion, the administration's nominee, Mr. Arnett, meets these qualifications.

First, with respect to experience, Mr. Arnett comes to OEO with a very firm background in dealing with the problems of the poor. Between 1971 and 1973, he served as Executive Director of the Appalachian Regional Commission and prior to that held a number of other positions with the Commission, which as we know grapples daily with the problems of poverty in the Appalachian region with many of the same tools utilized by the Office of Economic Opportunity—preschool education, child care, economic development, legal services, programs for senior citizens.

It should be noted that the Appalachian Regional Commission adopted on March 27, 1973, a resolution in appreciation of services rendered by Mr. Arnett, citing his "unique imaginative, and fruitful services to the Appalachian program," and noting that—

> Many, who have worked in this program for the development of the Region, have shared a deep commitment to its objectives, but few have approached and none have surpassed, Al Arnett in depth and sincerity of feeling for the people of Appalachia.

Already, as Acting Deputy Director of the Office of Economic Opportunity, he was assigned by the courts late in fiscal year 1973, the responsibility of carrying out the law, and by all accounts, he did so with great intelligence and skill.

Accordingly I share the views of Senator BEALL, a member of the Committee on Labor and Public Welfare and a former employer of Mr. Arnett, to the effect that Mr. Arnett is "eminently qualified to hold the job for which he has been nominated" and that "over the past 5 months he has professionally gone about his task; quietly, humanely, thoroughly."

Second, with respect to moral commitment, I believe that Mr. Arnett's words, as well as his experience, speak of a very high commitment to the elimination of poverty.

During his appearance before the committee, he stated quite frankly that—

> There are those who have told me that I am but a piece of meat in a vise today. Rather than receiving congratulations of the last 24 days, I have been in receipt of condolences. But I am more than willing to be that piece of meat in the vice if it can help bring sense and order to our difficulties, and I commit to you my dedication to work with you in seeking the answers that we all want.

Senator BEALL noted in his statement before the hearing on confirmation, held July 20, 1973, that—

> Mr. Arnett . . . is the kind of person that is not only knowledgeable of people's prob-

lems, but has the sensitivity and the experience with which to deal with those problems.

Third and importantly, Mr. Arnett has made it clear that he will carry out the law, which includes the court's orders and the determinations of Congress. During his confirmation hearing, he stated:

I honestly and openly state that I stand ready to comply with the law in every respect as determined by the Congress and the President and to carry on the remaining OEO functions during fiscal year 1974 to the very best of my ability. I make my personal commitment to that purpose.

I come to you with no private agenda, but rather to continue to do my part in helping to alleviate poverty. I come to you in the spirit of cooperation, knowing full well the prospects of confrontation.

In that regard, it was very important to me that he answered so very properly the question put to him by the Senator from Pennsylvania (Mr. SCHWEIKER) at the confirmation hearing on my account as well as on Senator SCHWEIKER's, Senator SCHWEIKER having explained that I was engaged on the Senate floor in connection with the war powers bill, which I managed on the floor with the Senator from Maine (Mr. MUSKIE).

During the hearing of July 20, in response to questions proposed by Senator SCHWEIKER and myself, Mr. Arnett testified:

(1) That he sees the value of having an agency whose special concern is the poor and that he would see himself not only as a person required to carry out the programs but as an "advocate" for the poor—an aspect, incidentally, which the President himself has emphasized on numerous occasions;

(2) That in his personal view, after this fiscal year (1974) we will continue to need some agency, whether or not it is called OEO, whose concern is the poor;

(3) That if he felt it was necessary, he would advise the President to submit a budget request for continuation of the program beyond this fiscal year 1974;

(4) That in his opinion, many community action agencies would not survive if they were dependent solely on state or local funding;

(5) That he will try to establish an atmosphere in which funding can be handled more smoothly and equitably;

(6) That until a legal services corporation is established, he will refrain from any major changes in the goals of the current legal services program or in the manner in which it is conducted; that he will consult closely with members of the organized bar; and that if for any reason a new corporation is not ongoing by January 1, 1974, he will give consideration to continuation of the legal services back-up centers beyond that date, having already provided for their funding for the first half of this fiscal year.

Mr. President, I ask unanimous consent that pages 23 through 26, inclusive, of the transcript of Senator SCHWEIKER's questions and Mr. Arnett's answers be printed in the RECORD at this point as a part of my remarks.

There being no objection, the excerpt from the hearings record was ordered to be printed in the RECORD, as follows:

QUESTIONS AND ANSWERS

The CHAIRMAN. Senator Schweiker.

Senator SCHWEIKER. Thank you, Mr. Chairman.

Mr. Arnett, yesterday before the Appropriations Committee you are quoted in the paper as saying that you feel that OEO should be lean and mean, rather than an amorphous institution. I wonder if you would explain a little bit what you mean by that.

Mr. ARNETT. I will be happy to.

Senator SCHWEIKER. Maybe it was a misquote.

Mr. ARNETT. No. The context was such that it needs to be explained. My personal view is that OEO should be the prod, should be at the spearpoint, punching larger operating agencies to do things for poor people. OEO, or whatever agency it is that carries the burden for poor people, should serve as the burr under the saddle, rather than being burdened down as a packhorse.

What is represented in these delegation agreements is the maturation of OEO initiated programs that have simply gone operational. For example, operating educational programs have been moved to HEW, an agency that deals with educational programs.

My view of OEO as lean and mean comes from Coach Bear Bryant's old line—somebody asked him about his small linemen, and he said that size does not really matter, so long as they are mobile, agile, and hostile. I think that is exactly what OEO should be with other agencies: agile, mobile, and hostile.

Senator SCHWEIKER. Who would you be hostile to again?

Mr. ARNETT. Not poor people.

Senator SCHWEIKER. I was not quite sure for a minute.

Mr. Arnett, this goes without saying that community action in poverty programs have been taken on a very rough ride by the administration over the past fiscal year, ending up of course with action by the courts. Now the Economic Opportunity Act of 1964 continued just only last October for 2 years provides that the Director shall carry out the program.

If you are confirmed as head, do you intend to do just that without any personal agenda to the contrary or any anticipation that they are to be phased out after fiscal year 1974 or what is your position?

Mr. ARNETT. I intend to do just that. I will tell you what I have done over these past 24 days so that I can do just that. All CAPS have been forward funded with fiscal year 1973 moneys. Half of them are funded through the first quarter of fiscal year 1974 and another half funded through the second quarter of fiscal year 1974 or to December 31. That was as far as I could take them before the money ran out last night.

The $185 million that you see in the House appropriations for community action, given that forward funding will be a sufficient amount to keep the program level in fiscal year 1974 for CAPS at the level it was in fiscal year 1973. I am mandated by law to obligate that money.

Senator SCHWEIKER. President Nixon said on February 19, 1969, in an antipoverty message, and I am quoting now from the President:

"From the experience of OEO we have learned the value of having in the Federal Government an agency whose special concern is the poor."

Do you agree with that statement, and if you do, would you see yourself not only as one required to carry out the program, but as an advocate for the poor?

Mr. ARNETT. Yes, on both points.

Senator SCHWEIKER. Would you also agree that even after this fiscal year we will continue to need, whether it is called OEO or not, some agency in the Federal Government whose concern is the poor?

Mr. ARNETT. In my personal view, yes.

Senator SCHWEIKER. Would you advise the President to submit a budget request if you felt it was necessary to carry out the obligations and the objectives that you have been answering affirmatively to?

Mr. ARNETT. Yes, I would.

Senator SCHWEIKER. The administration budget, as we know, for fiscal year 1974 contains no request for funds for OEO or community action operations and contains the following statement:

"After more than 7 years of existence, community action has had an adequate opportunity to demonstrate its value. In addition to private funds, State and local governments of course use general and special revenue sharing funds for these purposes."

This is in contrast to the report of the committee on appropriations of the House, in providing funds for continuation of these programs, and I quote from the House committee report:

"The committee action in continuing Federal support for community action agencies for an additional year is based on its belief that a majority of these agencies are performing important functions and that in many cases there will be no other local agency capable of assuming those functions if the community action agencies are terminated."

Now do you agree that many community action agencies would not survive if they were dependent solely on State or local funding?

Mr. ARNETT. With my limited knowledge, I would agree with that statement.

Senator SCHWEIKER. During the past year a number of community action agencies and other grantees have been subjected to rather rough treatment in terms of discontinuation of funding and being charged with violation of the law without adequate notice.

In short, many have felt harassed by the Office of Economic Opportunity. Do you personally pledge to make every effort to comply with the provisions of the law with respect to the notice of discontinuation of funding, and even beyond that will you try to establish an atmosphere in which these matters can be handled more smoothly and equitably?

Mr. ARNETT. It is going to sound like a wedding, but I will.

Senator SCHWEIKER. And you know this committee will soon consider legislation to establish a new legal services corporation. In the interim, it is absolutely essential that the existing program maintain its spirit and services so that there is the momentum obtained in transition into a new corporation, whatever that corporation might be, and I am not asking you where you stand on the various issues arising in connection with the legislation because even now Congress is in the process of adjudicating those differences.

But in respect to the present program, in the interim, No. 1, will you refrain from any major changes in the goals of the program or the manner in which it is conducted?

Mr. ARNETT. Yes.

Senator SCHWEIKER. Would you consult closely with the members of the organized bar and others who are interested in the program so that their views are continually taken into account?

Mr. ARNETT. I already have and will.

Senator SCHWEIKER. Third, will you tend toward continuation of existing projects that they are operating? In this connection I am pleased with the commitment you made to me and other members of this committee to continue at least through December.

Would you also agree that if for any reason the new corporation is not ongoing by that time that you will give consideration to continuation of the centers beyond that date?

Mr. ARNETT. Yes.

Senator SCHWEIKER. I would like to submit some questions for the record, Mr. Chairman, on behalf of Senator Stafford and would like answers in writing.

Senator Stafford would like one question answered in writing and he would like for me to ask two at this point.

The Vermont Legal Aid has received a 3-month grant extension to October 1, 1973. Is that grant going to be extended further and what is the status of the grant periods pending final action on the legal services corporation?

Mr. ARNETT. Senator, on a particular project I would have to simply come back to you. I would hope that I could supply that.

Senator SCHWEIKER. Under the broad provisions for disaster aid as a result of the June 30 flooding, Vermont has applied for a relief grant through the Office of Economic Opportunity, most of the grants are designed to go to community action agencies, but legal aid has been designated for some relief funds, primarily in anticipation of the needs to advise—defend Vermonters in regard to home improvement frauds, racketeering, following disasters, and I wonder if you could provide for the record a response to that statement?

Mr. ARNETT. Yes.

[The following information was subsequently supplied:]

VERMONT LEGAL AID FUNDING

Vermont Legal Aid Service, located in Burlington, Vermont, was funded in Fiscal Year 1971 at a level of $325,266 to operate a statewide legal services program for 14 months. This grant is due to expire on July 31. Accordingly, the grantee received an additional grant for $108,820 on June 30 to provide continued support through October 31 of this year.

OEO DISASTER RELIEF EFFORTS IN VERMONT

In response to the recent flooding in Vermont, OEO participated in a federal disaster assistance team effort coordinated by the FDAA. The regional office in Boston highlighted the disaster relief efforts of community action agencies in the State, including home repair activities, emergency feeding programs and general community outreach. Moreover, the regional office has received numerous requests from stricken communities for additional OEO emergency funds. OEO is currently funding a $30,000 grant to provide a lawyer and three paraprofessionals in Vermont to provide assistance over the next 9 to 12 months.

Senator SCHWEIKER. I might say that Senator Javits had hoped to be here and some of these questions are on his behalf as well. Unfortunately he is performing a very commendable service on the floor in shepherding through the war powers bill, so I would like to make record of the fact that he is sorry he could not be here and is involved with that.

Also, Senator Stafford is in the highway conference. Hopefully they are going to confer and have a final report.

That is all I have.

The CHAIRMAN. Thank you, Senator Schweiker. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Arnett, you come here today, one day after you appeared before the Senate Appropriations Committee, asking for zero funding for the OEO headquarter in Washington, zero funding for the 10 regional offices, zero funding for community action programs which are operated at the local level, and asking for the transfer or destruction of every OEO program on the books, and ask us to confirm you as OEO Director.

Why should we?

Mr. ARNETT. I think it goes——

Senator KENNEDY. Could you speak up a little bit.

Mr. ARNETT. I think it goes to continuum.

Senator KENNEDY. What do you mean by continuum?

Mr. ARNETT. Well, we are in a situation where the budget request, the money that is not coming, the programs that are spinning off, simply are not fitting together. Events have overtaken us.

Senator KENNEDY. I do not understand "events have overtaken us" or "continuum."

Could you be somewhat more specific about these programs? People are benefiting from many of these programs, obviously there are some inefficiencies, some inequities, some programs ought to be streamlined. I think you will find every member of this committee interested in working with the administration and trying to eliminate inefficiencies, inequities, duplications, overlapping, but I do not understand the words "continuum" or "events that overcome us," to indicate that is your intention.

Could you be more specific, please?

Mr. ARNETT. OEO is in existence on the 20th of July. The budget that was presented on the 29th of January asked that there be no OEO in existence on the 20th of July.

Senator Williams referred earlier to a February 1969 meeting at the White House on Appalachia. In February 1969 Appalachia in the administration's view was in absolute nadir, it was going out of existence. In the 1974 budget Appalachia received what it asked for and has now become a favorite of the administration.

I think we are precisely in that same place today. I think that the confusion, the difficulties that we are in are caused by the conflict that arises out of the budget that has not been accepted. You asked why do I want this job under those circumstances. The answer is that I expect there will be a program for poor people that will and must continue regardless of what it is called.

This I think is where we are on the 20th of July.

Senator KENNEDY. Well, the program not accepted by who? Not accepted by the administration? Not accepted by the Congress? Not accepted by who?

I don't understand. You come up and ask us, to get back to the original question, you ask us to confirm you as Director the day after you asked for absolutely zero funding for these programs.

Mr. JAVITS. Mr. President, for all of these reasons, I believe we at last have a worthy nominee for Director of OEO, and I shall vote for and support, and urge the Senate to support, his confirmation.

Before I sit down, Mr. President, I wish to make it clear that the administration came through in this matter in deference to the court's decision. Some may say that it had no choice. But there is always some choice, some way of trying to get around a court order or a law.

The administration chose—and I am glad it did and I compliment it for it—to forthrightly accept the court's order, and to give us a nominee whom we could accept and who deserves and I hope will have today a resounding mandate from the Senate. I hope very much that this particular instance of working with the court may be a model for the President, and I hope very much that he will give the American people the same assurances in other court proceedings which affect the President so deeply, and which are now pending.

Mr. MONDALE. Mr. President, I rise to support the confirmation of Alvin J. Arnett, as Director of the Office of Economic Opportunity.

Over the past 8 months, OEO has been rocked by a series of events which have attracted widespread attention and comment. Beginning with the appointment of Howard Phillips as Acting OEO Director, and the failure to send his name to the Senate for confirmation, the Nixon administration attempted to accomplish through subterfuge what it could not accomplish openly with the Congress—the elimination of OEO, and in particular, the strangulation of its most valuable programs, such as the OEO Legal Services program.

As a result of court action in which I was proud to join with the distinguished Senator from New Jersey (Mr. WILLIAMS), the distinguished Senator from Rhode Island (Mr. PELL), and the distinguished Senator from Maine (Mr. HATHAWAY), Mr. Phillips was ousted from office, and the name of Mr. Arnett was submitted to the Senate.

I have been pleased with many of Mr. Arnett's actions in the period since his appointment. In particular, his response to me—and to other members of the Labor and Public Welfare Committee—at the hearings held on his nomination on July 20 were most encouraging.

On the basis of those responses, I was and am convinced that Mr. Arnett will exercise his responsibilities within the law, and that he will do everything possible to carry out the will of the Congress on the future of the Office of Economic Opportunity.

In particular, I was pleased with his responses on the question of legal services for the poor. His support of an independent legal services corporation, and of the need for a full range of alternatives available to legal services lawyers; his support of legal services back-up centers and his disavowal of the unconscionable legal services bill which passed the House of Representatives all give me hope that he will depart from the destructive actions of his predecessor on this vital program.

Hopefully, we in the Senate, in the coming weeks, will be able to consider and enact meaningful legal services legislation without encountering the type of harassment and obstructionism which marked the activities of Howard Phillips during House consideration of a Legal Services Corporation bill.

I commend Mr. Arnett for his forthrightness, and look forward to his tenure as Director of OEO.

Mr. DOLE. Mr. President, the future course of our Federal efforts to fight poverty in America have been at issue between the Congress and the Executive for some time now.

Those questions of substance about methods and approaches in the anti-poverty effort, however, are incidental to the question before us today.

There is presently a Federal Antipoverty Agency. It exists in fact and in law, and it is in need of a director.

The President has sent us his nomination of a man—Alvin Arnett—to serve in that post. The only question now before us is whether the Senate shall confirm that nomination.

In Arnett's qualifications, reputation and experience, I find nothing but good reason for the Senate to act favorably on the nomination.

He knows the agency he is asked to direct. He has served it since February as a deputy to the previous Director. Before that, he served the staff of the Appalachian Regional Commission, most recently as its executive director.

His administrative skills are well tested.

His appreciation not only of the needs of the poor, but of their dignity, is widely and highly regarded.

Alvin Arnett's qualifications dictate an affirmative response by the Senate on the question of his nomination.

His experience merits our consideration. His reputation merits our attention.

And so his nomination merits our consent.

Mr. TAFT. Mr. President, I am pleased to support the nomination of Mr. Alvin Arnett to be the Director of the Office of Economic Opportunity. Mr. Arnett's qualifications are excellent to assume the Directorship of this challenging office. His background includes a term as Executive Director of the Appalachian Regional Commission and service as an Executive Assistant to Senator J. GLENN BEALL.

I am extremely hopeful that Mr. Arnett will be able to provide strong leadership, as Director of OEO, and work to revitalize this agency as innovator and tester of methods to alleviate poverty and create social reform. Further, I am hopeful that Mr. Arnett will be able to provide positive and strong leadership in the creation of an independent Legal Services Corporation.

Beyond these considerations, I am especially hopeful that Mr. Arnett will draw upon his experience, from working in the legislative branch, to keep the Congress fully informed of the developments with regard to the future of OEO. As ranking minority member of the Employment, Manpower and Migratory Labor Subcommittee, the subcommittee with direct jurisdiction over OEO matters, I have been somewhat disappointed with the lack of information and input to Congress regarding the future of OEO, and I am certain Mr. Arnett will correct this problem. I also have been assured by Mr. Arnett that he will not encourage or authorize authorship of foolish and naive memoranda regarding Members of Congress similar to one which surfaced last year from OEO.

With these understandings, and assurances I received from Mr. Arnett in confirmation hearings before the committee, I shall support his nomination.

LEADERSHIP FOR OEO

Mr. CRANSTON. Mr. President, President Nixon's fiscal year 1974 budget represents what I consider to be a callous disregard for the poor of America—and for the longstanding Federal commitment to help the poor to help themselves. Nowhere is this administration policy more clearly reflected than in the effort to destroy the Office of Economic Opportunity, which has served within the Federal System as a focal point of advocacy for meeting the needs of the poor.

We all recognize the wisdom of redesigning, or even ending, programs that do not live up to their promise. But the modestly funded antipoverty programs under the Economic Opportunity Act—representing only one-tenth of 1 percent of the Federal budget—could not be expected to close the multibillion dollar poverty income gap. They were not designed to do so. Rather, antipoverty programs reflect an attempt to begin to attack the causes of poverty—an attempt to regain for our Nation the resource represented by 25 million Americans locked without hope in the cycle of poverty.

In his effort to discontinue the community action programs—the very heart of the war on poverty—the President has asked us to give up on a deep and honorable commitment made by his predecessor 9 years ago. A commitment reaffirmed by the Congress only last fall.

I deplored the President's decision to seek no new funding for the Office of Economic Opportunity—a decision made in direct defiance of specific legislation passed by the Congress. I have joined with many other Senators in urging the Senate Labor-HEW and Related Agencies Subcommittee of the Appropriations Committee—the Appropriations Subcommittee having jurisdiction over OEO funding—to continue OEO funding for fiscal year 1974 at levels at least equal to those adopted in the House, and thereby reaffirm the Congress intent to continue its commitment to the least fortunate among us.

The courts have halted the actions which the now defrocked Acting Director of OEO, Mr. Phillips, had said were in anticipation of congressional agreement on the President's budget message. These court decisions—particularly the decision which determined that the President's refusal to submit the nomination of Mr. Phillips to the Senate for confirmation was unlawful—have reaffirmed congressional authority—and more importantly, reaffirmed the rule of law.

Today we have before us for consideration the nomination of Alvin J. Arnett to be Director of the Office of Economic Opportunity. Mr. Arnett's performance as Director-designate has been the subject of most intensive scrutiny by the Senate Labor and Public Welfare Committee—an opportunity, a right, not afforded the committee in the case of his predecessor, Mr. Phillips.

Mr. President, I considered the Labor and Public Welfare Committee's hearing on Mr. Arnett's nomination to be of utmost importance, not only because of my great concern about the future of the Office of Economic Opportunity as a whole, but because of my particular and long-standing concern about OEO National's continued refunding of the California State Office of Economic Opportunity—CSEOO. This State agency has been performing one principal function for several years; hostile reviews and investigations—investigations which are of highly questionable validity—of other OEO grantees in California. The agency has been in repeated violation of State and Federal contract and grant requirements, has used inappropriate and improper accounting and personnel procedures, expended Federal funds for unauthorized activities, and, at best, generally followed unorthodox and highly irregular practices which I very strongly feel have not been in the best interest of the poverty community.

In June 1972, 21 members of the California congressional delegation joined with me in requesting that the Comptroller General conduct an investigation of numerous charges and allegations about the State agency, which had come to our attention. These charges included using technical assistance resources to conduct investigations hostile to OEO grantees; filling professional staff positions with persons lacking proper qualifications; paying staff to carry out functions not authorized within grant provisions; contracting for consultant services in violation of maximum fee regulations; using grant funds in connection with partisan political campaigns; and failing to comply with non-Federal share requirements.

On June 14, 1973, after a year-long investigation of CSEOO, the General Accounting Office issued its report, "Activities of the California State Economic Opportunity Office." I then wrote to the Comptroller General regarding several matters which I felt had been left unresolved in the initial GAO June 14 report.

Mr. President, I ask unanimous consent that this letter and the GAO response be printed at this point in the RECORD.

The PRESIDING OFFICER. Without objection it is so ordered.

U.S. SENATE,
COMMITTEE ON
LABOR AND PUBLIC WELFARE,
Washington, D.C., June 12, 1973.

HON. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Thank you very much for your June 11, 1973, letter transmitting to me an advance copy of GAO report B–130515, "Activities of the California State Economic Opportunity Office".

A preliminary examination of the report reveals a matter of grave concern to me. This relates to chapter 6, "Non-Federal Contribution", which states on page 33 that of $482,500 in recorded CSEOO claims for non-Federal contribution "about $376,649 of the total was questionable because of inappropriate claims or improper valuation". Included in this latter figure was a claim for $276,700 which the table on page 33 shows as "questionable" and which is described as "Migrant program 'excess'" representing "the State's required contribution under another OEO grant not involving CSEOO . . . [which was] required . . . so the State could qualify for Federal funding under the migrant program." *

Despite the fact that our request for a report from you has been pending for almost one year (since June 30, 1972), and despite the fact that your questioning of the permissibility and legality of this non-Federal contribution claim was communicated to OEO eight months ago in an October 11, 1972, letter, your report reaches no conclusion on this matter, noting instead: "The OEO regional director advised us on April 12, 1973, that the OEO Office of General Counsel had not yet determined whether the questioned costs should be allowed."

The report further states:

"CSEOO officials also stated that the non-Federal contribution was not a statutory requirement but rather an OEO administrative requirement and that, therefore, OEO could waive the requirement."

In this connection, I have reason to believe that numerous opinions on the legal issue involved have been issued by the OEO Office of the General Counsel with respect to other OEO grants.

I am most concerned about several additional aspects of your attempted disposition of this questionable claim which are raised by the quoted sentence. First, I specifically request a legal opinion from you as to the permissibility under the law and applicable Government-wide and OEO regula-

* The double counting question is not restricted to this item, although it is by far, the largest example in dollar terms. Two other items in your list of "questionable claims" entail non-Federal contributions in connection with grants from two other agencies, HUD—$14,649 "for donated services unrelated to CSEOO"—and the Labor Department—$20,000 for "State expenditures under the Emergency Employment Act". Thus, my subsequent comments and questions related to these items as well.

tions of counting a State expenditure twice for the purposes of receiving two separate Federal grants each requiring a particular non-Federal share.

Second, I am very concerned about your apparent condonation of a retroactive waiver of a regulatory requirement with respect to a non-Federal contribution in connection with a grant under section 231(a) of the Economic Opportunity Act of 1964, as amended. One question that immediately presents itself in this connection is, is the regulation involved a "statutory" regulation (see the direction to "establish procedures, . . . rules and regulations" in section 602(n) of the Economic Opportunity Act of 1964, as amended), as that term is used in longstanding interpretations by the Comptroller General? A second question is whether or not there is provision in OEO's own regulations, or anywhere in applicable Government-wide regulations, permitting retroactive waivers. If not, would such waivers be legal on a completely *ad hoc* basis? If there is a basis for retroactive waivers in appropriate regulations, then I ask by what provision of law are such retroactive waivers authorized and is such an authorization generally in accordance with holdings of the Comptroller General in connection with interpretation of Federal grant and contract statutory authorities? Finally, in this regard, what is the status of a regulatory requirement—such as the non-Federal contribution requirement in question—which has existed for many years and about which the Congress has been informed and has raised no objections? I often see it contended by Federal agencies that such regulations, in which it is said the Congress has "acquiesced", cannot be altered without Congressional approval.

I request your urgent attention to these matters, which I feel should have been addressed in your original report. I cannot believe that it is your position that the Congress of the United States and its duly authorized investigative and fiscal accounting arm—the General Accounting Office—is without recourse to render judgment on questionable claims by virtue of the directly responsible agency's delaying indefinitely the issuance of its interpretation and legal decision on such a matter.

Sincerely,

ALAN CRANSTON.

COMPTROLLER GENERAL OF
THE UNITED STATES,
Washington, D.C., July 20, 1973.

The Hon. ALAN CRANSTON,
U.S. Senate.

DEAR SENATOR CRANSTON: Your letter of June 12, 1973, raises certain questions concerning matters discussed in an advance copy of our report, B-130515, entitled "Activities of the California State Economic Opportunity Office." This report was formally issued on June 14, 1973.

The activities of the California State Economic Opportunity Office (CSEOO) are funded in part by an Office of Economic Opportunity (OEO) grant under section 231 of the Economic Opportunity Act of 1964, as amended. Our report concerns various aspects of CSEOO's operation for its program year 1972 (fiscal year 1972).

Chapter 6 of our report examines charges that CSEOO failed to comply with non-Federal contribution requirements for program year 1972. Chapter 6 states in part, at page 33:

"OEO requires State agencies to provide either cash or in-kind contributions of at least 20 percent of program costs.

"CSEOO's non-Federal contribution requirement for program year 1972 amounted to $249,436, including $78,436 of mostly non-Federal contributions which had been questioned by OEO audits in previous years. We found that CSEOO's non-Federal contribution for program year 1972 may have been deficient by $143,585 because of questionable claims.

"CSEOO recorded claims for non-Federal contributions of $482,500 for the year, $233,064 more than actually required. Our examination of CSEOO's documentation, however, showed that about $376,649 of the total was questionable because of inappropriate claims or improper valuation. The balance, $105,851, was either not examined or not questioned. * * *"

The report lists the following categories and amounts of non-Federal contributions which we questioned:

Description	Non-Federal contributions		
	Claimed	Examined	Questioned
Migrant program "excess"—The amount claimed represents the State's required contributions under another OEO grant not involving CSEOO. OEO required this contribution so the State could qualify for Federal funding under the migrant program.	$267,700	$276,700	$276,700
Volunteer services—About $38,800 of the amount questioned consists of Federal and matching non-Federal expenditures by a county under a Department of Housing and Urban Development grant. The remaining $14,649 consists of claims for donated services unrelated to CSEOO, unidentified, or unfairly valued.	$95,200	$95,200	$53,449
State supportive services—The amount claimed consists of difference between what the State charged CSEOO for services rendered and what CSEOO estimates the actual cost would be outside the State system. For example, CSEOO estimates it would have cost $3,600 more to rent private space rather than use State-owned space. In another instance, CSEOO claimed $8,700 as the difference between what the State charged it for duplicating services and what it estimated such services actually should cost.	30,200	30,200	26,500
State expenditures under Emergency Employment Act—The amount claimed is actually the State's required in-kind contribution under another Federal (Department of Labor) grant.	20,000	20,000	20,000
Total			376,649

On October 11, 1972, we wrote to CSEOO and the OEO regional director for Western Region IX (San Francisco) to inform them of these questioned costs and to obtain their comments. On April 4, 1973, CSEOO officials advised us that they were awaiting a decision from OEO headquarters regarding the allowability of the questioned migrant program excess. CSEOO officials also stated that the non-Federal contribution is not a "statutory" requirement but rather an OEO "administrative" requirement and, therefore, that OEO could waive this requirement. The OEO regional director advised us on April 12, 1973, that OEO Office of General Counsel had not yet determined whether the questioned costs should be allowed. By letter dated May 21, 1973, in commenting upon our report, the Acting Director of OEO indicated that this matter is still under review by the Office of General Counsel.

Your letter of June 12 refers to the alleged non-Federal contributions for migrant program excesses ($276,700), county expenditures in connection with a Department of Housing and Urban Development grant ($38,800), and State expenditures in connection with a Department of Labor grant ($20,000). You specifically request our opinion as to:

The permissibility under the law and applicable Government-wide and OEO regulations of counting a State expenditure twice for the purposes of two separate Federal grants, each requiring a particular non-Federal share; and

The permissibility of retroactive and ad hoc waiver of a regulatory requirement with respect to non-Federal contributions in connection with a grant under section 231(a) of the Economic Opportunity Act.

Subsequent to receipt of your letter, we attempted without success to obtain from OEO's Office of General Counsel some indication as to the status of their consideration of these issues, as well as any tentative conclusions which they might be able to offer. We are not, of course, precluded from passing upon the issues which you raise in the absence of an opinion or submission by OEO. As a general practice, we prefer to obtain the views of the agency having primary expertise and initial responsibility with respect to such issues in order to arrive at the most thorough determination possible and as a matter of fairness to parties who may be affected by our determinations. However, in accordance with your request and in view of our inability to obtain a response from OEO, we will proceed to consider the issues raised on the basis of the information now before us.

Section 231(a) of the Economic Opportunity Act of 1964, as amended, 42 U.S.C. 2824(a), authorizes grants to State agencies for the provision of technical assistance, coordination, and other advice and assistance in connection with community action programs under title II of the act. We are not aware of any provision in the act which specifically requires a non-Federal contribution for State agency grants under section 231. Compare, for example, section 225(c) of the act, 42 U.S.C. 2812(c), as amended by Public Law 92-424, 86 Stat. 692, which does impose specific non-Federal matching requirements with respect to certain other title II grants. However, OEO Instruction 7501-1 (Role of State Economic Opportunity Offices), dated March 25, 1970, states in paragraph 9(b):

"The state's share for funding under section 231 shall be a minimum of 20 percent of the total cost of the operation in cash and/or in kind."

The text of this instruction, including the non-Federal contribution requirement, is also set forth at 45 CFR §§ 1075.1-1, 1075.1-11(b) (1973). The OEO instruction does not specify any qualifications or exceptions to the 20 percent non-Federal contribution for section 231 grantees. On the contrary, paragraph 9(i), 45 CFR § 1075.1-11(i), states in part: "As OEO grantees, the SEOO's [State economic opportunity offices] shall comply with all applicable OEO Instructions. * * *"

The preamble to the text of OEO Instruction 7501-1 in the Code of Federal Regulations states that it is issued under the authority of section 602 of the act, as amended, 42 U.S.C. 2942. Section 602 provides in part, quoting from the United States Code:

"In addition to the authority conferred upon him by other sections of this chapter [the act], the Director [of OEO] is authorized, in carrying out his functions under this chapter, to—

* * * * *

"(n) * * * establish such policies, standards, criteria, and procedures, describe such rules and regulations * * * and generally perform such functions and take such steps as he may deem necessary and appropriate to carry out the provisions of this chapter."

Also relevant are the following excerpts from OEO Instruction 6000-2 (Applicability of Directives), dated May 10, 1971, page 1:

"1. POLICY

"The general conditions of all OEO administered grants made under the authority of Titles I-D, II and III-B of the Economic Opportunity Act, as amended, provide that pro-

gram funds expended under the grant are subject to OEO directives. * * *

"2. BACKGROUND

"OEO's present issuance system is made up of the following types of issuances which either set forth policy and procedures to be followed by a grantee or offer advice as to how a grantee may better accomplish its objectives: OEO Instructions, OEO Notices, OEO Guidelines, and OEO Handbooks. * * *

"a. *OEO Instructions:* These issuances set forth policies and procedures and are binding on the grantees to which they are applicable as shown in the Appendix to this instruction."

It is clear that OEO Instruction 7501–1, having been issued and promulgated by the Director pursuant to express statutory authority, constitutes a "statutory" regulation in the sense employed in numerous decisions of our Office. As such it has the force and effect of law; and the agency has no authority to waive its requirements on a retroactive and *ad hoc* basis. *See, e.g.*, B–158553, July 6, 1966; 43 Comp. Gen. 31, 33 (1963); 37 *id.* 820 (1958); 31 *id.* 193 (1951); 22 *id.* 895, 899–900 (1943); 21 Comp. Dec. 482, 484 (1915). Compare 21 Comp. Gen. 550, 555 (1941). To hold otherwise would undermine the uniformity which such regulations are designed to insure, and would be manifestly unfair to other grantees which have complied with applicable requirements. Moreover, once provision of a non-Federal contribution has been undertaken by acceptance of a grant which incorporates this requirement, it becomes in effect an obligation owing to the United States which cannot be waived or given away. See 51 Comp. Gen. 162, 164–165 (1971); 47 *id.* 81, 83–84 (1967) and authorities cited therein.

It remains to consider whether the three CSEOO claims referred to in your letter may be applied to the non-Federal contribution requirement. As noted previously, we determined that these three claims actually constituted required contributions under grants other than CSEOO's section 231 grant. None of the three claims bears any relationship to CSEOO. The $38,800 and $20,000 items, relating respectively to grants by the Department of Housing and Urban Development and the Department of Labor, require no further explanation. The $276,700 item represents an expenditure by the State of California in satisfaction of a special condition imposed under an OEO migrant program grant, which required off-season maintenance of migrant housing facilities. Accordingly, even if this expenditure could somehow be related to the CSEOO grant, it does not appear to be "excess" with respect to the migrant program.

OEO Instruction 7501–1 merely imposes a 20 percent cash and/or in kind non-Federal contribution requirement for section 231 grants, without further elaboration in terms of the acceptability of particular claims. We believe it is obvious, however, that a grantee cannot apply a single claim in satisfaction of more than one non-Federal contribution requirement. *Cf.*, 47 Comp. Gen. 81 (1967); 32 *id.* 561 (1953); *id.* 141 (1952). Such double credit would, of course, effectively nullify one of these requirements. In any event, it appears that OEO Instruction 6802–08 (Non-Federal Share), dated May 10, 1971, expressly prohibits such double credit. This instruction states in part:

"The non-Federal share may be provided by any public or private agency, but may not include assistance provided through other Federal programs, *nor may any portion of the non-Federal share under any other Federal program be used to meet matching recruitments for community action programs.* * * * (Italics supplied.)

Section 231 grants are part of community action programs under title II of the act. The preface to OEO Instruction 6802–08 states that it applies to all grants under title II; and OEO Instruction 6000–2, *supra*, Appendix A, page 8, specifically indicates that Instruction 6802–08 applies to section 231 grantees.

For the reasons stated above, we conclude (1) that the 20 percent non-Federal contribution requirement set forth in OEO Instruction 7501–1 constitutes a statutory regulation which is binding upon CSEOO and cannot be waived; and (2) that the purported non-Federal contributions discussed herein do not constitute valid claims against this requirement. We have today transmitted a letter to the Acting Director of OEO advising him of the foregoing conclusions, and requesting that OEO take appropriate action in accordance therewith.

We are forwarding a copy of this response to your June 12 letter to the Honorable Chet Holifield.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

Mr. CRANSTON. Mr. President, the GAO report validated virtually every allegation made to the congressional delegation the previous year. Subsequent to receipt of the GAO report, on June 30 and July 11, National OEO announced two new grants to the CSEOO totaling $683,000. On July 11, Senator TUNNEY and I wrote to Acting Director Arnett requesting a full explanation of the rationale behind these two new grants, which I felt, and still do feel, were ill advised, urging that strictly monitored special conditions be imposed on CSEOO to insure that the recommendations of the GAO report were carried out by the CSEOO and OEO, and to insure that the findings contained in the report were not repeated. On July 10, 1973, I wrote to the Comptroller General requesting his review of these two grants, as well, in order to determine whether appropriate steps had been taken by OEO to insure that the findings reflected in the GAO report did not reoccur.

Mr. President, I ask unanimous consent that these two letters, along with Mr. Arnett's response, be printed at this point in the RECORD.

U.S. SENATE,
COMMITTEE ON LABOR
AND PUBLIC WELFARE,
Washington, D.C., July 10, 1973.

Hon. ELMER B. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: As you may know, subsequent to the June 14, 1973, General Accounting Office report B–130515, "Activities of the California State Economic Opportunity Office"—the findings of which noted use of Federal funds for unauthorized activities, substantial violation of State and Federal contracting, accounting and personnel requirements, and highly irregular procedures—the Office of Economic Opportunity announced, on June 30, 1973, a new $382,000 grant to CSEOO.

To say the least, I have the gravest reservations about OEO National's decision to refund a grantee with such a history of irregularities and lack of contract compliance.

I, therefore, request that the G.A.O. immediately review this new contract to determine if the conditions of the grant will ensure that the June 14 G.A.O. report recommendations are carried out and that the apparent violations and irregularities noted in that report will not be repeated.

Additionally, your recommendations 7, 8, and 9, in the April 4, 1973, G.A.O. report B–130515, "Need for More Effective Audit Activities, Office of Economic Opportunity," would clearly indicate that such a review of this grant by G.A.O. is appropriate in order to determine how and to what extent these recommendations in that report are being implemented by OEO.

In this regard, I trust that you will agree that assurances from OEO National that "corrective actions have begun" is hardly satisfactory evidence. Rather, given the repeated violations of grant conditions by CSEOO and the subsequent retroactive waiver or condonation of those conditions by OEO National (a procedure about which I raised serious questions in my June 12, 1973, letter to you), I feel close scrutiny by the G.A.O. of the conditions of the June 30, 1973, grant is essential to ensure that such "corrective actions" are indeed taken.

In closing, I note that a month ago, on June 12, 1973, I wrote you regarding several matters which I felt should have been addressed in your original report, which you were kind enough to provide me in advance of release. I very much regret not having yet received a response from you or any communication from any member of your staff. I am deeply concerned about the continued funding of CSEOO by OEO National in the face of your report findings, and ask that you personally undertake the review of the June 30 OEO grant to CSEOO and the findings of your June 14 report. I look forward to your early reply to this letter and my June 12 letter.

Sincerely,

ALAN CRANSTON.

U.S. SENATE,
COMMITTEE ON LABOR
AND PUBLIC WELFARE,
Washington, D.C., July 11, 1973.

Mr. ALVIN J. ARNETT,
Acting Director,
Office of Economic Opportunity,
Washington, D.C.

DEAR MR. ACTING DIRECTOR: We regret that the first matter about which we write to you in your new capacity as Acting Director of the Office of Economic Opportunity is with regard to our very serious and long standing concern about OEO's funding of the California State Economic Opportunity Office (CSEOO).

Before turning to that subject, we want to express our strong support for your actions since assuming leadership of OEO to override the veto of the Mississippi Legal Services Program, and your decision to extend funding for legal services back-up centers through the conclusion of this calendar year.

However, we have the gravest reservations about the justification for the eleventh-hour new $382,000 grant to CSEOO announced June 30, 1973.

We are sure you are familiar with the findings of the June 14, 1973, G.A.O. report No. B–130515, "Activities of the California State Economic Opportunity Office," which indicate substantial violation of grant provision and other applicable Federal and State procedures and requirements, inappropriate and improper accounting and personnel procedures, use of Federal funds for unauthorized activities, and, at best, highly irregular practices by the State agency. We have long felt that the CSEOO has not acted in the best interests of the poverty community, and feel that the findings in the G.A.O. report require a radical reorganization and personnel turnover in the state agency before further Federal funding is even considered. At the very least, the G.A.O. report requires a careful review and continuing very close monitoring of the State agency by National OEO if further Federal funds are to be reinvested in this sorry venture.

As you are undoubtedly aware, the G.A.O. recommendation stated:

". . . that the Acting Director, OEO, see that the corrective action proposed by CSEOO and the OEO San Francisco regional office is taken."

It is our understanding, that although the grant was announced on June 30, negotia-

tions between CSEOO and OEO National regarding the special conditions of the grant are not yet completed. We would urge that in any such negotiations OEO National insist upon conditions which will ensure that the irregularities found in the G.A.O. report and which have been so characteristic of this grantee will not again be repeated, and that careful monitoring by OEO National of the grantee's compliance with such conditions be provided for and carried out throughout this program year. (Such action by OEO National would be consistent with the April 4, 1973, G.A.O. report, "Need for More Effective Audit Activities—Office of Economic Opportunity" recommendations 7, 8, and 9—with which the Agency generally agreed—regarding the necessity for verification of correction action by grantees.)

We also request that you forward us immediately a copy of the entire CSEOO grant package as announced June 30, and copies of any subsequent amendments to the grant conditions which may occur.

Finally, we thought you should be aware that Senator Cranston has asked the Comptroller General to review this new CSEOO contract with a view toward ensuring that the irregularities noted in the June 14 G.A.O. report are not continued or repeated.

Thank you in advance for your attention to this very serious matter. We look forward to your early reply.

Sincerely,

ALAN CRANSTON,
JOHN V. TUNNEY.

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C., July 17, 1973.

Memorandum to: Alvin Arnett, Director Designate.

From: Alan Freeman, Deputy Director, Division of State & Local Government.

Subject: Status of California State Economic Opportunity Office.

This is in response to the statements made in the July 11 letter from Senators Alan Cranston and John Tunney of California.

First, the lateness of the $382,000 refunding grant was attributable to the lack of grant making authority. The announcement was the same date as all other SEOOs in Region IX and within days of other regions. Consistent with our refunding of SEOOs, the amount is a reduction by 40% of the prior year funding level for a duration of seven months starting July 1, 1973, Region IX has, however, applied some special conditions (see attached correspondence from Regional Office to Sal Espana dated June 30, 1973) that bars grantee from expenditure of $140,000 grant funds until resolution of the excess federal participation. On July 14, 1973, after meeting of grantee and regional office, the CSEOO agreed to accept audit disallowance in their letter to you of that date. (Attached herewith)

Pending final acceptance in Regional Office of that proposal, CSEOO appears to have met needs of special conditions. Rest assured that the Division of State and Local Government, who has the prime responsibility to oversee activities of the SEOOs, is careful and alert to the need for special monitoring of this grantee.

The GAO Report "Activities of the California SEOO" covers a long period of time (1966–1972) and many changes have been made to date and others are in the process. The Executive Director has held his job only a few months and is attempting to comply fully with OEO guidance procedures.

I have requested from the Regional Director a copy of the 1973 CSEOO grant package for the Senators and will forward it when it arrives. Amendments to grant conditions are attached.

JUNE 30, 1973.

SAL ESPANA,
Executive Director, California State Office of Economic Opportunity, Sacramento, Calif.

GENTLEMEN: I am pleased to inform you that a grant action has been approved to assist you to finance the program referred to in the enclosed Statement of OEO Grant and attachments. This grant action, however, is subject to your acceptance of the conditions described in the grant and attachments and to the action of the Governor of your State. You will be advised of the Governor's action.

If you accept the grant, funds will be available to finance allowable costs incurred beginning with the date shown in Block 3 of the Statement of OEO Grant. You are cautioned, however, that if the Governor should disapprove the proposed program within 30 days afer receiving a copy of the grant action, any expenses incurred by you (even though after the date in Block 3) cannot be charged to grant funds, if the grant is not favorably reconsidered by OEO.

The enclosed instruction set forth procedures to be followed in the interim period to expedite the release of funds if the grant becomes effective.

We wish you success in your program.

Sincerely,

THOMAS H. MERCER,
Regional Director.

Enclosures:

Original and one copy of the Statement of OEO Grant (OEO Form 314) including —— attached pages of modifications/conditions.

OFFICE OF ECONOMIC OPPORTUNITY,
STATEMENT OF OEO GRANT,
July 1, 1973.

1. Name and address of grantee: California State Office of Economic Opportunity, 555 Capitol Mall, Room 325, Sacramento, California.

2. Grantee No. 90455, fund source code S, fiscal year 1973, action No. 04.

3. Effective date, July 1, 1973.

4. Obligation date (*Date mailed to Governor or Grantee*).

5. Program year: from July 1 to June 30.

6. P.A. No. 77.

7. Program activity code GN1.

8. Program account name, State Agency Assistance.

9. Federal funds awarded this action, 382,000.

10. Required non-Federal share:

11. Amount, 276,694*.

12. Termination date (*If applicable*).

13. Planned minimum No. months funding provided, 7.

14. Total, 382,000.

*This grant action includes a non-Federal share charge to resolve audit adjustment per audit No. 9–73–156 (ST).

STATEMENT OF OEO APPROVAL

Federal funds as shown in Column 9 are hereby obligated for the program proposed by the grantee as noted above and in the attachments to this statement. Program account budgets may be modified by the grantee only under general flexibility guidelines or in accordance with written OEO approval. The non-Federal Share may be met by pooling as allowed by OEO Instructions.

Approved by: Thomas H. Mercer, Regional Director.

Signature, E. Gonzales.

Date, June 26, 1973.

GRANTEE ACCEPTANCE OF GRANT

On behalf of the grantee, I accept the grant and all medications, general conditions, special conditions 1 through ——, and requirements attached hereto. There are —— pages attached to this form.

OFFICE OF ECONOMIC OPPORTUNITY,
COMMUNITY ACTION PROGRAM.

SPECIAL CONDITION

1. Name of grantee: California SEOO.

2. Grant No. 90455; program year—1973; Action No. 04.

3. Special condition applies to all program accounts in grant action.

This grant is subject to the Special Condition below, in addition to the applicable General Conditions governing grants under Title II or III–B of the Economic Opportunity Act of 1964 as amended.

I. Grantee shall expend not more than $242,000 of the federal funds awarded in this grant action pending resolution of the apparent excess federal participation of $138,335 in Audit No. 9–73–156 (ST). The remaining sum of $140,000 shall not be expended until a resolution of the excess federal participation is reduced to writing by OEO and transmitted to the grantee.

II. A non-federal share amount of $276,694 has been required on this grant action pending resolution by OEO in writing of the acceptability of $276,694 in claimed non-federal share earned by Migrant Services as reported in Audit No. 9–73–156. Pending receipt by the grantee of written resolution by OEO of this non-federal claim, grantee shall provide said non-federal share during the course of its program operations funded by this grant action.

(See attached audit letter).

OFFICE OF ECONOMIC OPPORTUNITY,
San Francisco, Calif.

Mr. SALVADOR J. ESPANA,
Director, State of California Office of Economic Opportunity,
Sacramento, Calif.

Re: Audit No. 9–73–156–(ST); Grant No. CG–0364–F

DEAR MR. ESPANA: In accordance with our audit review procedures, we have reviewed your response to the above-referenced audit and the following is our determination:

A. *Accounting System and Internal Controls.*

In your response you did not comment on the auditor's findings relative to this item nor did you indicate the action taken to correct the deficiencies noted. You are advised to insure that corrective action is, in fact, taken. The results will be evaluated during a subsequent audit.

B. *Questioned Costs—$399,552.*

1. *Federal Share—$7,464.*

a. *Salary Paid in Excess of OEO Regulations—$7,464.*

In your response you stated that you accepted the disallowance for this item and that you would reimburse your current Federal grant from State funds.

We accept your response and $7,464 is disallowed. In addition, we accept your method of settlement and will expect your unexpended Federal funds balance for the funding period ending June 30, 1973 to reflect the $7,464 being replaced by State funds.

2. *Non-Federal Share—$392,088.*

The auditor questioned the non-Federal share expenditures, totaling $392,088, because they were unallowable and excessively valued.

In your response you indicated that you have withdrawn your claim for non-Federal share, totaling $115,394. In addition, you stated that you have requested a ruling from headquarters OEO as to the acceptability of $276,694 in non-Federal share credits earned by Migrant Services. You further asked OEO to defer settlement until a decision has been reached.

We accept your withdrawal of the non-Federal share claim; however, we cannot grant you the requested deferment. This results in excess Federal share participation of

$138,335, as computed below, which must be remitted to OEO.

COMPUTATION OF REQUIRED NON-FEDERAL SHARE

Total Federal budget (including reprograming)		$854,682
Less F/2 which did not require non-Federal share		$105,400
Federal budget subject to non-Federal share		$749,282
Non-Federal share required (25 percent of Federal share)		$187,296
Total grant budget:		
Federal	$854,682	
Required non-Federal	$187,296	
Total	$1,041,978	

Note: Maximum Federal share $854,682÷$1,041,978=82 percent.

COMPUTATION OF EXCESS FEDERAL PARTICIPATION

Federal expenditures per this audit report		$838,764	
Less audit disallowances (SEOO stated will be reimbursed to grant)		$7,464	$831,300
Non-Federal contributions per this report		$484,303	
Less:			
Non-Federal contributions by SEOO withdrawn	$115,394		
Unauthoriced transfers from migrant program	$276,694		
Contributions required to settle prior audit disallowances per Grant Action 72/04	$78,436	$470,524	$13,779
Total expenditures			$845,079
Maximum Federal rate (percent)			82
Maximum Federal expenditures			$692,965
Actual Federal expenditures			$831,300
Excess Federal participation			$138,335

Although we have disallowed the above, if the OEO General Counsel renders a decision in your favor regarding the acceptability of the non-Federal share credits generated by the Migrant Program, OEO will make the necessary adjustments resulting from this disallowance.

SUMMARY

We have disallowed $7,464 in Federal share expenditures, which you are to reimburse your current grant from State funds.

We have also disallowed $138,335 in excess Federal participation, as the result of your withdrawal of $115,394 in non-Federal share claims and the unacceptability of $276,694 in non-Federal share credits earned by the Migrant Services, pending an OEO ruling.

Unless you appeal the above determination within thirty (30) days from the date of this letter, this determination shall become final. Any appeal within thirty (30) days should be in accordance with OEO Instruction 6801–1, "Grantee Fiscal Responsibility and Auditing," dated August 5, 1970, as amended. Should you decide to appeal, please mail your appeal to the Regional Director, Office of Economic Opportunity, 100 McAllister Street, San Francisco, California 94102.

Sincerely,

CARL W. SHAW,
Chief, Administration & Finance Division.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. CRANSTON. Mr. President, I did not find Mr. Arnett's memorandum in response to my July 11 letter to be at all satisfactory and questioned him extensively during his confirmation hearing with regard to OEO National's responses to the GAO report, and also submitted additional questions to him following the hearing on this same matter. Mr. President, I ask unanimous consent that the relevant passages from the hearing transcript, along with my subsequent written questions submitted to Mr. Arnett and his August 2 written answers and the accompanying backup materials to which he refers in his response, be printed in the RECORD at this point.

The PRESIDING OFFICER. Without objection it is so ordered.

SENATOR CRANSTON QUESTIONS OF ALVIN J. ARNETT, SENATE LABOR AND PUBLIC WELFARE COMMITTEE NOMINATION HEARINGS

Senator CRANSTON. Thank you very much, Mr. Chairman.

Mr. Arnett, as you know, I have had a long-standing concern about OEO Nationals continued funding of the California State Office of Economic Opportunity. The state agency has come to the attention of this Committee on several occasions, perhaps most clearly during the consideration of the nomination of one of your predecessors and the entire controversy which surrounded the C.S.E.O.O.'s evaluation of California Rural Legal Assistance (C.R.L.A.), one of the most effective legal services programs in the nation. At that time, then OEO Director Carlucci ordered an evaluation of the charges made by the Commission on C.R.L.A., a panel made up of three justices of State Supreme Courts—very, very eminent, highly qualified people.

I would like to cite for you some of the comments made by the C.R.L.A. Commission regarding C.S.E.O.O.'s evaluation of California Rural Legal Assistance:

"Following a most careful consideration of the many and various matters set forth in the California Evaluation"—this refers, of course, to the C.S.E.O.O. evaluation of C.R.-L.A.—"the Commission is of the opinion that, except to the very limited extent mentioned elsewhere herein, the charges of wrongdoing on the part of C.R.L.A. set forth in the California evaluation are unfounded and without merit."

"The evidence in the Uhler Report"—again this refers to the C.R.L.A. evaluation by C.S.E.O.O.—"and the evidence adduced thereon, do not, either taken separately or as a whole, furnish any justification whatsoever for any findings of improper activities by C.R.L.A."

"The evidence adduced completely exonerates C.R.L.A. as an organization of any wrongdoing."

"The Commission finds that these charges by C.S.E.O.O. were totally irresponsible and without foundation."

This, Mr. Arnett, is the result of a study which cost the taxpayers an estimated half-million dollars—$500,000 to decide that C.S.E.O.O. had conducted an evaluation that was "totally irresponsible and without foundation."

I suppose we would call that water under the bridge or money under the bridge, except it is a pattern that has been repeated consistently by this state agency. In fact, the new Director of the C.S.E.O.O. was one of the investigators that compiled the original, totally discredited, C.R.L.A. evaluation.

I am particularly concerned about your recent June 30 grant of $382,000 and the July 11 grant of $301,000 to C.S.E.O.O. I have long felt that C.S.E.O.O. has not acted in the best interest of the poverty community. I am at a loss to determine the justification for these most recent grants. The grants seem particularly unjustifiable in light of the findings of the June 14, 1973, GAO report, called "Activities of the California State Economic Opportunity Office," which indicates, substantial violation of grant and contract procedures, and use of federal funds for unauthorized and, at best, highly irregular practices by the state agency.

As you know, on June 11, 1973, Senator Tunney and I wrote you regarding this very important matter and I appreciate the copy of the preliminary O.E.O. memorandum on this matter which you have provided me.

Mr. Chairman, I ask that my July 11 letter to Mr. Arnett and his response which I understand is on the way to me today, and OEO memorandum, along with the July 10 letter on the same matter which I wrote to the Comptroller General be placed in the hearing record at this point.

The CHAIRMAN. They will be.

Senator CRANSTON. After reviewing the preliminary O.E.O. memorandum and the two special grant conditions which were attached to the $382,000 grant, I must say that I do not feel it answers the issues raised in my June 11 letter, and I would like to give you a more precise statement of my concerns and get your responses now for the record.

So, first, it is true, is it not, that you are familiar with the June 14 GAO report which we discussed on Tuesday?

Mr. ARNETT. I have seen it. I have not absorbed it, Senator.

Senator CRANSTON. Secondly, the OEO National Deputy Director for the Division of State and Local Governments has advised me that the two grant conditions listed in the document you forwarded to me are the only two conditions of the June 30 grant.

They relate to some $414,000 in questioned, non-federal share claims arising out of prior C.S.E.O.O. grants. I believe this issue should be resolved before any more funds go forward to C.S.E.O.O., particularly in light of the GAO June 14 report, which raises serious questions about this entire matter, by pointing out that most of this amount relates to C.S.E.O.O.'s attempt to double count as its local contribution funds required to be put up as the non-federal contribution to receive other grants. The O.E.O. response to this finding of the GAO report was perhaps its most evasive of many evasive answers:

"The matter is under review by the O.E.O. Office of the General Counsel."

This morning I was advised that the second condition regarding $277,000 double counting of a non-federal share contributed under a migrant grant was deleted. What is the status of that matter? Has the General Counsel issued a ruling? If not, why was the condition deleted?

Mr. ARNETT. I have no idea as to either question.

Senator CRANSTON. Would you find out?

Mr. ARNETT. Yes, indeed. After the visit with you, you queried me on both of these grants. I am headed out to California in August on the hearing on Southern Alameda. I have asked that I be fully brought up to date on these C.S.E.O.O. grants, as well as, just as soon as I can get to bottoming out the answers.

Senator CRANSTON. I presume we do not have to wait for you to go to California in August to learn answers to these questions?

Mr. ARNETT. No, I am gathering a California package as it were.

Senator CRANSTON. I have written the Comptroller General requesting his legal opinion on the matter and ask that that letter along with a response which I understand is on its way to me be entered into the record at this point.

The CHAIRMAN. They will be.

Senator CRANSTON. Why should the funding go forward, and indeed need it go forward while there is a legal review under way of the legality of these actions?

Mr. ARNETT. Senator, I think it need not go forward.

Senator CRANSTON. Fine. Does that mean it will not go forward?

Mr. ARNETT. It will not go forward.

Senator CRANSTON. Thank you. I would like to ask you several questions regarding National OEO's response to GAO conclusions which began on page 57 of the report and which relate in a very real way to the need for special conditions on the new C.S.E.O.O. grants.

In GAO conclusion No. 1 it is pointed out that:

"C.S.E.O.O. did not comply with the special conditions of the 1972 grant which prohibited the conduct of investigations and unilateral evaluations. The OEO San Francisco Regional Office was aware that C.S.E.O.O. was conducting unilateral evaluations and found them useful for assessing grantee performance. OEO made no effort to prevent C.S.E.O.O. from conducting evaluations or to modify the restrictions in the grant. OEO apparently was not aware of C.S.E.O.O.'s investigative activities."

The OEO response reads as follows:

"The special conditions of the 1971–1972 grant which prohibited investigations and unilateral evaluations were not met. It must be understood, however, that the work program could easily have been construed as contrary to review rights secured all Governors through the Economic Opportunity Act. Normally, evaluations are an appropriate and expected function to be performed by a State Economic Opportunity Office. The conditions promulgated in that work program have been deleted from subsequent C.S.E.O.O. work programs. The evaluations and investigations were performed with full knowledge on the part of O.E.O. Hence, it may be said that these restrictions were implicitly waived by the Agency."

As you may have noticed, in reviewing the report, the San Francisco Regional Office and OEO National differ in that Regional OEO disclaims knowledge of any of the "investigations," whereas OEO National's response indicates full knowledge of the "investigations." What is the basis for the conflict reflected here? Do you know?

Mr. ARNETT. No, I do not.

Senator CRANSTON. Would you try to find out and advise us on that?

Mr. ARNETT. Yes, indeed.

Senator CRANSTON. What is your view on implicit waivers of OEO grant conditions?

Mr. ARNETT. I have no idea that there is such a thing, as an implicit waiver. It would seem to me on any waiver it must be an explicit act.

Senator CRANSTON. Can we assume you will halt that practice.?

Mr. ARNETT. Yes, indeed.

Senator CRANSTON. OEO Regulations, titled "General Conditions Governing Grants" state:

"Requirements found in grant conditions or OEO directives may be waived only by a written notification signed by an authorized OEO official. Any such waiver must be explicit, no waiver may be inferred. . . ."

So, there are current regulations backing up what you say you will do?

Mr. ARNETT. Yes.

Senator CRANSTON. Could you explain why there is no special conditions regarding this matter of investigations and unilateral evaluations attached to the present grant—since it is an area dating back to the C.R.L.A. Commission Report, in which C.S.E.O.O. has been particularly recalcitrant and has seemed to have wasted a great deal of money?

Mr. ARNETT. At this particular time I cannot respond.

Senator CRANSTON. We would appreciate your explaining as soon as you can.

Mr. ARNETT. The California package is growing larger.

Senator CRANSTON. Would you not think that perhaps some very concise and tight special conditions would be in order in a relationship to any grant that might be made in the light of this sort of history?

Mr. ARNETT. A general response to that, a special condition is only as good as the enforcement.

Senator CRANSTON. Nonetheless, special conditions set ground rules, and you can see whether they will be lived up to.

Mr. ARNETT. That is true.

Senator CRANSTON. In response to GAO conclusion No. 2 regarding unqualified personnel, OEO stated that a "cursory review" of C.S.E.O.O.'s staff qualifications demonstrated a respectable degree of "suitability."

Now, in light of the GAO finding that "it was questionable as to whether 13 of the 27 professionals employed as of August 1972 met specific job qualifications," and that 10 of 27 employees received salaries in excess of OEO limitations, do you not think that more than a "cursory review" is appropriate?

Mr. ARNETT. Yes, I do.

Senator CRANSTON. Could you provide us with some specific idea of what OEO National intends to do to see that the situation with regard to C.S.E.O.O. personnel hiring practices is corrected?

Mr. ARNETT. Senator, if I could have as much as a week, I think I could have some full answers to you on each of these inquiries.

Senator CRANSTON. It is understood that as I understand it, at least during that week there will be no grant funding going forward, unless all these matters are cleared up?

Mr. ARNETT. That is right.

Senator CRANSTON. In response to GAO Conclusion Number 3—regarding the unauthorized utilization of consultant fees—which equaled more than $67,600 and included such occurrences as one contract in which the C.S.E.O.O. could not even produce one copy for GAO investigators of a report on legal services done by one of its consultants, OEO stated that:

"An expenditure for consultant services is normally allowed under the general funding for 'technical assistance.' The C.S.E.O.O.'s internal controls over contracting were inadequate in the past, but have now been corrected. The procedures adopted are consistent with GAO's recommendations."

Could you please tell the Committee precisely what those C.S.E.O.O. contracts are?

Mr. ARNETT. I will have them for you, yes, sir.

Senator CRANSTON. You can submit that for the record.

Mr. ARNETT. Yes.

Senator CRANSTON. How does OEO intend to monitor the grants for that particular purpose?

Mr. ARNETT. Well, that is why it will take me a week. The mechanism for monitoring that I would like to have in place, simply is not in place at this moment. Part of the problem arising here comes from internal headquarters, a weakness that I am simply going to have to harden up.

Senator CRANSTON. You will strictly monitor whatever grants go forward to C.S.E.O.O.?

Mr. ARNETT. Yes, sir.

Senator CRANSTON. GAO Conclusion Number 4 states: "Although OEO established a policy in April, 1970, of requiring grantees to return prior years unexpended funds to the U.S. Treasury, the policy was not required by law and the C.S.E.O.O. was permitted to retain its prior years unexpended funds." OEO's response was:

"It is correct that C.S.E.O.O.'s in California and a number of other states as well as other OEO grantees, have been permitted to use carryover balances."

I would like to say, Mr. Arnett, that that response rather obviously ducks the question. Could you elaborate on the OEO policy as it will be under your direction, should you be confirmed with regard to carryover balances and unexpended funds?

Mr. ARNETT. Yes, sir.

Senator CRANSTON. Do you have any comment on that generally today—without a specific statement?

Mr. ARNETT. I would rather respond to you when I can be much more sure of the facts.

Senator CRANSTON. All right, GAO Conclusion Number 6 states:

"In addition, CSEOO did not fully comply with the 1972 grant concerning the establishment of an advisory committee and the preparation and implementation of an affirmative action plan."

The OEO response says the situation has been corrected.

Prescisely what steps have been taken by C.S.E.O.O. in that regard?

Mr. ARNETT. I will get the answers on that for you, Senator.

Senator CRANSTON. How many members of the advisory committee have been selected? I presume you will answer that also in writing?

Mr. ARNETT. Yes, sir.

Senator CRANSTON. How many meetings have the advisory committee held in the last six months? And what steps have been taken to implement the required affirmative action plan; and finally, could you provide the Committee with a specific listing of the employees who have been hired in keeping with the plan and how they meet plan goals?

Mr. ARNETT. I will.

Senator CRANSTON. The State Agency has been performing one function, and one function only for several years. Reviews and investigations—investigations which are of highly questionable validity—of grantees. No technical assistance has been provided of any measurable quality. The relations of the C.S.E.O.O. with the poverty community have been shown by the G.A.O. investigation to be negligible at best. I simply cannot understand this notion of funding the California Governor's Office to carry on its own private war on anti-poverty programs.

I could sit here all day and cite reviews of that agency—but I imagine even Mr. Arnett will concede that C.S.E.O.O.'s function as an anti-poverty agency is somewhat dubious.

To my knowledge, we have not yet initiated a no-strings, revenue sharing to Governors for their own version of anti-poverty activities. Yet this grantee, repeatedly in violation of OEO regulations, OEO guidelines, state procedures and regulations, and its own grant conditions—and apparently with OEO's silent, if not actual, consent—keeps getting federal funds.

In view of all of this, Mr. Arnett, can you explain why there are fewer special conditions on this latest grant than on last year's grant?

Mr. ARNETT. Not at this time.

Senator CRANSTON. Why do regional OEO employees advise us that, contrary to National OEO claims, they have not done new monitoring of the grantee?

Mr. ARNETT. Again, I have no knowledge, Senator.

Senator CRANSTON. I trust you understand, Mr. Arnett, that all I have said regarding the June 30 $382,000 grant applies fully to the July 11 $301,000 grant, as well?

Mr. ARNETT. Yes.

Senator CRANSTON. In regard to the monitors that you will be employing, what sort of people do you have in mind, what sort of background, what sort of qualifications?

Mr. ARNETT. Just better than they are now, is all I can say at this point in time.

Senator CRANSTON. Are there any now?

Mr. ARNETT. There may be. I have got to search out the headquarters operator, just simply find the very best people. I do have personnel problems, and all sorts of reorganization problems that is next on my agenda.

Senator CRANSTON. Part of the personnel problems obviously relate to OEO consultants recently brought on board of the consultants and other temporary employees retained by Mr. Phillips, how many now remain on the payroll?

Mr. ARNETT. I have 16 consultants remaining.

Senator CRANSTON. What are your intentions with respect to those?

Mr. ARNETT. Well, you know, I really do not know who they are at this point in time. I am not adverse to using consultants. As a matter of fact, they are very handy fellows from time to time. I would like to make an assessment as to just exactly who these 16 are, what they do, and if indeed they are brought in for phase out purposes, they will be phased out. It is my understanding we are down now to 16 people who were here, who antedated Phillips, as a matter of fact. Sixteen consultants at OEO is a miniscule amount.

Seantor CRANSTON. Would you submit to the Committee a list of these who are now there, their resumes and their assignments?

Mr. ARNETT. Yes.

ADDITIONAL QUESTIONS OF SENATOR ALAN CRANSTON FOR ALVIN J. ARNETT—NOMINATED TO BE DIRECTOR OF THE OFFICE OF ECONOMIC OPPORTUNITY

Mr. Arnett, it has come to my attention that your predecessor, Mr. Phillips, took some action to order the repeal of OEO Instruction 7501–1 (Role of State Economic Opportunity Offices), which had been issued March 25, 1970. This Instruction, in paragraph 9(b) stated:

"The state's share for funding under section 231 shall be a minimum of 20 percent of the total cost of the operation in cash and/or kind."

It is my understanding that while the new policy did not go into effect during Mr. Phillips' tenure, this longstanding non-Federal share requirement has now been eliminated for all grants to State Economic Opportunity Offices (SEOOs)—effective with the FY 1974 grant period.

I have enclosed a copy of the July 20, 1973 response of the Comptroller General—a comparable letter has already been forwarded directly to you—to my June 12, 1973, letter to him requesting an opinion on the entire non-Federal share issue raised in the G.A.O. June 14, 1973, Report, "Activities of the California State Economic Opportunity Office." The Comptroller General's letter concludes that O.E.O. Instruction 7501–1 is a statutory regulation with the force of law, which cannot be waived selectively.

I have now asked the Comptroller General whether it can be revoked across the board retroactively in view of the following three questions (and several others):

1. It is my understanding that, as part of the U.S. District Court Judge Jones' decision with regard to the continued operation of the Office of Economic Opportunity—consistent with Congressional intent—the Judge found that all policy issuances, directives or instructions, or the repeal of same, which were not published in the Federal Register for the 30 day advance period required under section 623 of the Economic Opportunity Act of 1964, were invalid. I should like to know how under this Court ruling the 20 percent non-Federal share requirement for SEOOs set forth in OEO Instruction 7501–1 was repealed without prior publication in the Federal Register. As a corollary, since all actions of Mr. Phillips have been invalidated by the Senators' suit, what actions have you taken in compliance with section 623 to repeal the instruction?

2. This non-Federal share request has existed for many years with Congressional acquiescence through several extensions of the Economic Opportunity Act of 1964. Has not it become, to use the Comptroller General's words, a regulation "with the force and effect of law" which now would require, as part of its legislative history, some expression of Congressional approval in order for its repeal to be effective? I might cite you to numerous holdings by the Veterans Administration to exactly this effect with regard to G.I. Bill interpretations and regulations.

3. In light of SEOOs substantial access to non-Federal share resources, particularly in comparison to other OEO grantees, do you think the elimination of this requirement would be good policy in view of OEO's admittedly limited funds? Further, is it an equitable or appropriate policy for an anti-poverty agency to continue to require the poorest grantees to provide local shares, but not to require governments to do so?

CONSUMER PROGRAMS

4. Mr. Arnett, the October 1972 amendments to the Economic Opportunity Act added a new section 228 which I authored, authorizing an annual expenditure of $7.5 million for Consumer Action and Cooperative Programs. No funds were spent under this authority in FY 1973. I think it is evident that no other agency deals with the unique problems of poor consumers, such as availability of credit, higher cost and poor quality of goods and services, and the inability of the poor person to enforce his rights through an expensive and often slow judicial system. Do you plan to develop and carry out a program in the coming year that will address itself to the problems of the poor consumer?

5. Mr. Arnett, there are some 250 low-income credit unions started with the help of OEO, with over 100,000 members and $11 million in savings, that desperately need help if they are to survive and grow to become meaningful resources for their communities. Have you planned or do you plan any program of support for these credit unions that will help them achieve self-sufficiency?

RESPONSE OF DIRECTOR-DESIGNATE ALVIN J. ARNETT TO SENATOR CRANSTON'S ADDITIONAL QUESTIONS

[U.S. District Court of the District of Columbia—Civil Action No. 1295–73]

NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, PLAINTIFF, V. ALVIN J. ARNETT, INDIVIDUALLY, AND AS DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY, DEFENDANT

ORDER

Pursuant to the consent of the parties, it is Ordered, Adjudged and Decreed that the Temporary Restraining Order entered on July 18th, 1973, is hereby extended until the Defendant takes the proper action to grant the $298,574 to the Plaintiff, but no later than 5:00 P.M. on Friday, August 3, 1973.

Dated this 27th day of July, 1973.

W. B. JONES,
Judge.

OFFICE OF ECONOMIC OPPORTUNITY,
August 2, 1973.

Hon. HARRISON A. WILLIAMS, Jr.,
Chairman, Senate Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: This letter is in reply to questions raised by Senator Cranston at the July 20 hearing of the Committee on Labor and Public Welfare and in a subsequent memorandum to the Committee regarding the California State Economic Opportunity Office.

As I indicated at the hearing, I am giving heavy priority to a range of OEO-related problem areas in California. To expedite resolution of some of them following the hearing, I called the parties to Washington. Progress has been made and continues to be made, so please view this response by way of a progress report and an indication of my earnestness in attempting to solve some of these problems.

The Office fo Economic Opportunity will be making a comprehensive reply to the Comptroller General with respect to the issues raised in his report, B–13015, entitled "Activities of the California State Economic Opportunity Office," as well as in his letter of July 20. In addition, Senator Cranston's memorandum raises new questions for analysis by the Comptroller General; and, we expect to have the opportunity to furnish our viewpoints in comprehensive form for use by the Comptroller General in reaching a final determination.

Secondly, we are forwarding copies of the GAO report to the CSEOO, with a request that the CSEOO, as grantee, assume the primary responsibility for furnishing detailed responses to specific questions or criticisms. Upon receipt of a written report from the grantee, the Office of Economic Opportunity will furnish additional comments, as appropriate.

Beyond that, permit me to respond on the following matters:

1. The two grant actions previously approved by OEO officials (T. 106—Transcript of Proceedings, July 20, 1973, Page 106) are under an administrative hold, whereby no funds can be released to the CSEOO. However, I would anticipate ultimately releasing those monies, if and when the OEO San Francisco Regional Office successfully renegotiates its grant to the CSEOO.

2. That renegotiation is based upon several changes of the CSEOO position which are more fully described in paragraph 3 below, and upon the grantee's acceptance of adequate special conditions, to include a requirement that the grantee satisfactorily respond to the GAO Report. Upon completion of these steps, I would probably be satisfied that this agency can continue to provide federal financial assistance to the California State Office in the same manner as assistance is supplied to similar offices in all of the other states.

3. With respect to the questioned non-Federal share, (T. 107–108) please know these recent developments:

(a) CSEOO has withdrawn its request for a credit of $276,694 under the 1972 OEO grant.

(b) CSEOO has accepted the audit disallowance of $138,335.

(c) The State of California is contributing $131,500 and an additional amount approximating $28,000, towards the costs of conducting current OEO approved programs.

Attached are copies of relevant letters, dated July 18 and July 27, from the SEOO Director.

4. With respect to the reported conflict between OEO headquarters staff and OEO regional staff on the grantee's operations, it appears that the problem is primarily one of interpretation of events. I have not yet reached a complete understanding of these events, and I am still pursuing a full explanation. In any event, I intend that similar problems will be avoided in the future with closer communication and coordination among OEO offices dealing with the same grantee.

5. With respect to the matter of implied waivers of grant conditions (T. 111), I fully concur that all grant conditions should have been met. However, General Counsel advises me that the fact of knowledge, coupled with lack of appropriate action on the part of an authorized OEO official, constitutes a barrier to any retroactive administrative sanction in matters not covered by statute. I intend that in the future all OEO requirements will be fully enforced.

6. With respect to the lack of special conditions prohibiting any evaluations, (T. 111–112) such a prohibition would be inconsistent with the authorities generally provided to state economic opportunity offices by virtue of OEO Instruction 7501–1 (copy attached). We will hold this grantee to the activities described in the instruction.

7. With respect to the establishment by the grantee of controls (T. 112–113), the grantee has furnished the OEO Regional Office with a copy of its internal instruction setting forth these matters in detail.

8. With respect to the matter of carry-over funds (T. 115) it is regrettable that the OEO official who responded informally to the Comptroller General's representative did not take into account a letter dated December 26, 1972 to Mr. Benedetto Quattrochiocchi signed by Wesley L. Hjornevik, then OEO Deputy Director (copy attached). As set forth in that letter, the facts and circumstances discussed in Chapter 5 of the report were fully examined at the request of the Comptroller General by relevant officials within the Office of Economic Opportunity. In my opinion, that letter adequately discusses the issues.

With respect to the substantive problem, I presently intend to continue the following OEO policies:

(a) For program years that are consecutive, grantees will be permitted to retain and utilize, as carry-over balances, funds which were provided but not used in the first program year.

(b) Grantees will be required to return to the Treasury such monies that are found in later (i.e. non-consecutive) years, by audit or otherwise.

(c) The OEO Director will retain the discretion to allow the retention of such monies, depending upon the facts and circumstances of any particular case.

9. With respect to the matters raised on the SEOO's Board (T. 115) I have been assured by staff of the following recent developments:

(a) The California SEOO's Advisory Board was established on March 1, 1972 and is complying with grant special conditions regarding meeting four times a year and proper composition.

(b) During the last six months three meetings have been held and another is scheduled for August 20.

(c) The Advisory Board is well-balanced ethnically.

(d) Special committees have been established by the Board: one to work on housing problems, the other to coordinate with SEOO staff.

(e) The full Board reviews and comments on the California SEOO work program. I have taken steps to fully document these developments.

10. With respect to the matter of OEO's discontinuing the non-Federal share requirement for SEOOs, I am not in a position to make a final determination. The litigation initiated by Senators Williams, Pell, Mondale and Hathaway (Civil Action No. 490–73), United States District Court for the District of Columbia) is a matter which is still pending before the Courts. Discussions are under way with appropriate officials within the Department of Justice regarding the prosecution of an appeal.

In addition, I am advised by the OEO General Counsel that the relaxation of a previous administrative requirement, provided it is both prospective and non-discriminatory as to members of the class, is not subject to the requirements of Section 623 of the Economic Opportunity Act of 1964. As you know, all grants to all State Economic Opportunity Offices which were approved during the period January 29 through June 11, 1973 were processed and approved, and funds were released, without regard to any requirement for non-Federal share.

Finally, a review is currently under way with respect to all OEO guidelines, instructions, etc. promulgated during the period in question, so that I may determine which, if any are appropriate for continued effect.

11. In regard to Senator Cranston's second written question, the issue he raises is a difficult and complex legal one that I cannot deal with summarily. It is being evaluated by our General Counsel. I respectfully request additional time to review this matter.

12. Without making a final determination, or personal commitment, it is my present belief that it is not inappropriate or inadvisable for the Office of Economic Opportunity to exempt State Economic Opportunity offices from any non-Federal share requirement. With respect to community action agencies and certain other organizations receiving Federal financial assistance under title II of the Act, the requirement of non-Federal share has been imposed by statute.

I hope this letter represents not just a progress report but a demonstration of my personal commitment to addressing and dealing with problems of Congressional concern.

Sincerely yours,

ALVIN J. ARNETT,
Director-Designate.

OFFICE OF ECONOMIC OPPORTUNITY,
Sacramento, Calif., July 27, 1973.

Mr. ALAN MACKAY,
Acting General Counsel, Office of Economic Opportunity, Washington, D.C.

DEAR MR. MACKAY: On July 26, 1972 former CSEOO Director, Robert Hawkins submitted to you a request for program account amendment (CAP Form 25b) relative to a $276,694 State of California General Fund appropriation to HRD, Migrant Services which this office wished to claim as matching monies to its OEO grant #CB0364.

We hereby officially withdraw that request.

Sincerely,

SAL ESPANA, *Director.*

[CAP Form 25b]

REQUEST FOR PROGRAM ACCOUNT AMENDMENT

From: State of California Department of Human Resources Development.
To: State Office of Economic Opportunity.
Re change in either Federal or non-Federal share.

JULY 26, 1972.

The California State Department of Human Resources Development is the grantee for both Title II and Title III OEO grants. Section 225(d) of the Economic Opportunity Act, as amended, provides that if a community (in this instance the State of California) provides non-Federal share under this title exceeding its requirements, said excess may be used to meet its requirements under another title. OEO Instruction 6806–02 provides that pooling of non-Federal share effort provided to a community may be permitted.

The State of California General Fund appropriation for fiscal year 1971–72 amounted to $276,694 to H.R.D. Migrant Services.

These funds were expended for off-season maintenance of migrant housing projects during the period ending June 30, 1972. These funds were not required to match any other program funds expended for the Migrant Program. These non-Federal share credits bay be transferred from H.R.D. Migrant Services to H.R.D. State Office of Economic Opportunity Division.

Under the Economic Opportunity Act, as amended, there is no requirement for a non-Federal share contribution for grantees funded under Part C of Title II, including sections 230 and 231; however, OEO Instruction 7501–1 does require a 20 percent non-Federal share contribution for grants funded under section 231 of the Act. The non-Federal share requirement for SEOOs is administrative rather than statutory which would allow OEO greater flexibility.

We request authorization to transfer this $276,694 non-Federal share credit from program account 92, Migrant Temporary Housing, to program account 77, State Agency Assistance.

ROBERT B. HAWKINS, Jr.,
Director.

JULY 18, 1973.

Dr. EUGENE GONZALES,
Deputy Regional Director, Office of Economic Opportunity, Western Region IX, San Francisco, Calif.

DEAR GENE: This is in response to the July 2, 1973, letter from your office signed by Carl Shaw, Chief Administration and Finance Division, concerning Audit # 9–73–156 (ST).

This is to advise you that this office is waiving its right to appeal the determination made in said letter and its acceptance of the disallowance of $138,335. We request that the amount of the disallowance be added to the non-Federal share requirement for the current program year, Grant #90455, as provided by Section 243C of the Economic Opportunity Act.

An amount in excess of the audit disallowance has been appropriated by the California State Legislature and approved by Governor Ronald Reagan as matching funds for this office. $131,500 is a direct maching fund contribution by the State for our Federal Grant, and approximately $28,000 will be contributed by the State to cover SEOO's cost of salary increases approved by the legislature to take effect July 1, 1973.

On the question concerning the deficiencies in the internal controls, I am submitting to you two documents which show the new procedures established in this office which should provide much tighter control in the areas of establishing salaries for new employees and executing contracts. Regarding the auditor's notation on the need for better procedures for recording non-Federal share contributions: since there is no non-Federal share requirement on the current grant, the proper recording of in-kind contribution will not be a factor in the current program year.

I trust this communication will resolve the questions raised in your letter of July and clear the audit disallowance which is now pending.

Sincerely,

SALVADOR ESPANA,
Director.

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT,
Sacramento, Calif.

EXCERPT FROM POLICY ON HIRING PERSONNEL

"One of the basic steps in checking an applicant's references shall be to confirm the prior salary of applicant with his former employer.

The processing of employment documents will not begin nor will the salary be established until such time as the previous salary has been confirmed. Upon confirmation, a salary consistent with the 20% maximum salary increase limitation (OEO Instruction 6900–01, Part A, Section 2) shall be established."

[Retype of letter dated Dec. 26, 1972]

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C.

Mr. BENEDETTO QUATTROCHIOCCHI,
Assistant Director, Manpower and Welfare Division, U.S. General Accounting Office, Washington, D.C.

DEAR MR. QUATTROCHIOCCHI: This is in response to your letter of November 7, 1972 requesting clarification on four points involving certain elements of the funding of the California State Office of Economic Opportunity (SEOO) for the conduct of the Legal Services Experiment.

Before commenting on the specific aspects of your request in the interest of assisting you in resolving this audit I would like to observe that there may be too great an emphasis placed by your staff on the April 1970 telegram instructing funding offices to deobligate FY '65 and '66 funds. While the telegram represented sound fiscal policy at

the time it was issued, its issuance was not required by law nor was the Agency legally obligated to engage in the process of recovering funds which the telegram and subsequent instructions called for. Moreover, in the instant case, deviation from this policy was approved by me after a full justification was presented at a meeting held in my office. In addition, the Agency presently is involved in the development of an instruction which, in effect, represents a general revision of the policy recited in my April 1970 telegram, and thereby allows for reprogramming or equivalent utilization without reprogramming of already obligated funds much in the same manner as was accomplished in the California SEOO funding.

In the light of the foregoing, I offer the following in response to the numbered items contained in your letter.

1. Basis for issuing the April 1970 telegram. With the new Administration of the Agency only one year old, it became apparent to responsible officials, that greater fiscal responsibility was needed among OEO grantees. The presence of excess carry over funds resulting from errors in reporting expenditures of funds in FY 65 and 66 on the books of OEO grantees represented a fertile area for bringing to bear on this Administration a resolve to improve grantee bookkeeping and financial reporting. This challenge was buttressed by the knowledge that it would be broadly beneficial to cover into Miscellaneous Receipts of the Treasury, such carry over funds. As stated earlier, however, this decision was predicated upon policy and not because such funds could not have been reprogrammed legally had an appropriate situation warranted that action.

A further basis for the policy related to the fact that program spin offs to other agencies accomplished or to be announced represented complicated decisions as to the application of carry over balances as between OEO and the gaining agency. It was thought that an effort to wipe the slate clean might eliminate some intricate decisions on the sharing of carry over balances between sister agencies.

A final and less important reason was that the program year concept which permits carry over funds from one program year to be used in a subsequent program year, was not in effect until after January 1966. Therefore, grantees were not operating under this concept during much of fiscal year 1966 and, because of this, it seemed reasonable to declare that unexpended funds for this year be returned to the Treasury. In any event, however, our records indicate that the FY 66 grants were made after January, 1966.

2. National OEO action to recover $56,002. The records do not indicate precisely what, if any, action was taken by Headquarters to collect the $56,002. It would be reasonable to assume that collection action was undertaken only by the Regional Office in view of the fact that the SEOO did not submit a final CAP 28 (Unexpended Federal Funds Report) and the responsible collection office (Finance and Grants Management Division) did not receive a final audit report which would have enabled that office to render a collection action determination.

3. The OEO system for follow up of similar collection actions. The OEO System for following up similar collection actions during the period in question was governed by CAP Staff Instruction 6710–1 (May 1969) (at pages 10, 11 and 12). Analyst notebook #90 (at page 21), my telegram of April 1970 and memorandum of May 19, 1970 which included collection action procedures as an attachment. The responsibility for collection was assigned to the regional or headquarters office which funded the particular grant involved. Without a considerable effort in inquiries of our regional offices, we would not be aware of the echelons of personnel responsible for collection action in the regional offices. As to Headquarters collections besides involvement of the program officials, the Chief, Finance and Grants Management Division, actively engaged in making such collections but did not do so in this case because, as noted earlier, neither the final CAP Form 28 nor the final audit report had been received by this office.

4. Basis for reprogramming funds rather than to deobligate such funds. The SEOO was asked to undertake the planning of an experimental Legal Services project on behalf of the national emphasis program. Although this was within the general charter of authority of the SEOO it was not the kind of activity that would normally have been conducted by the SEOO but was undertaken at the request of OEO in connection with the resolution of very difficult problems concerning the Legal Services Program in California. If successful, the project was expected to benefit the entire Legal Services Program.

In connection with this undertaking which was approved in a number of meetings between high officials of OEO and of the California State Government, there arose a misunderstanding with respect to certain preliminary activities. The California officials incurred substantial planning expenses for the Experiment apparently in good faith, which the OEO officials did not believe had been duly authorized in advance. We have information to indicate that the services were performed at considerable expense, and that they related to the overall project which the SEOO had undertaken at OEO request. There is some evidence and correspondence which tends to support the view of the SEOO that it was reasonable to believe that the SEOO had the authority to begin the planning phase. On the other hand, OEO officials involved were not entirely satisfied that specific authorization had indeed been given.

The issue was one that turned on a factual dispute which could have been difficult to resolve and contrary to the interest of effective relations between OEO and the State officials and contrary to the interests of carrying out the Experiment. It could have been solved by the making of a fresh grant to the SEOO retroactive to July 1.

Having determined that the SEOO should be reimbursed, OEO had the alternative of funding for the planning phase out of current funds reserved for the Experiment or to permit reprogramming of the carry over funds in question. The fomer alternative would take away from funds otherwise available for actually carrying out the Experiment. On the other hand, the latter and selected choice represented a method of payment to the SEOO for services received on behalf of National OEO without enhancing the SEOO's funding guidelines as far as authorized funding of State programs were concerned.

Under these circumstances, it was found possible to resolve both disputes at once without any net cost to the Government by allowing to the SEOO the benefit of the carry over funds but only for the restricted purpose of making them available to cover the disputed claim for services in connection with the Legal Services Program.

OEO was satisfied, and at all times has been that funds in these circumstances are legally available for reprogramming (or under present procedures, equivalent utilization without reprogramming) but had made for policy reasons a policy decision not to reprogram under certain circumstances. Although I made that decision as a general rule, I was satisfied that on the facts of this particular case the policy grounds that led to it were not controlling and that the possibility of settling at one, without cost to the Government, this difficult problem made an exception to the rule appropriate and I accordingly authorized it.

The earlier policy decision was reflected in the telegram referred to above. While it reflects a policy decision which OEO General Counsel believed to be within the legal authority of OEO, it was not expressed in a manner that OEO General Counsel believed legally accurate and has some misleading implications. The telegram represents, moreover, an approach to the problem that was found in practice not productive of the results that had been hoped for. Accordingly, as I stated earlier in this letter, the entire policy decision and the accurate statement of it has been under review.

In conclusion and upon reflection, we believe a sound funding decision was made in permitting the exception to my April 1970 telegram and subsequent issuances.

STATE OF CALIFORNIA,
OFFICE OF ECONOMIC OPPORTUNITY,
Sacramento, Calif., July 14, 1973.

MR. ALVIN ARNETT,
Director, Office of Economic Opportunity, Washington, D.C.

DEAR MR. ARNETT: On this date I am informing the Western Regional Director, Dr. Eugene Gonzales, that we are accepting the audit disallowance of $138,335 reflected in Audit No. 9–73–156, which represents a deficit of the California SEOO's required non-Federal share for Fiscal Year 1971–72.

At the same time, we are requesting that the required non-federal share for Grant No. 90455—73/04 be increased by an amount commensurate with the disallowance. Our request is based on the provisions of Section 243(c) of the Economic Opportunity Act, which states that "the Director may seek recovery of (disallowed) sums involved by . . . a commensurate increase in the required non-federal share of the costs of any grant or contract with the same agency or organization which is then in effect, or which is entered into within 12 months of the date of disallowance."

It is our intention to meet the audit disallowance with funds which have been recently appropriated to this office by the California State Legislature and approved by Governor Ronald Reagan. $131,500 is a direct matching fund contribution by the State for our federal grant, and approximately $28,000 will be contributed to this office by the State to cover SEOO's cost of salary increases approved by the Legislature. Since there is no requirement for non-federal share on the 1973–74 program year grant, the full amount of the State contributions is available to offset the audit disallowance.

Please let us know if you need additional information on this matter.

Sincerely,

SAL ESPANA,
Director.

EXCERPTS FROM CALIFORNIA STATE BUDGET

(e) For family planning services in accordance with Sections 10053.2 and 10053.3 of the Welfare and Institutions Code, Health Protection System: $2,780,096.

(f) Reimbursements: $2,352,188.

(g) Federal grants: $7,664,115.

(h) Estimated family repayments: $1,764,000—provided, that upon order of the Director of Finance, funds may be transferred to Item 243 as necessary to accomplish unallocated savings in the budget of the Department of Health, provided that such transfers for this purpose shall not exceed $6,257,500. Provided further, that such transfers shall be reported quarterly to the Joint Legislative Budget Committee.

Item 266—For support of Department of Human Resources Development, for transfer by the State Controller to the Manpower Development Fund for expenditure for the work incentive program as specified in Section 5400 of the Unemployment Insurance Code (Chapter 1369, Statutes of 1968): $5,674,191—provided, that the State Controller shall transfer these funds only at such time as

federal funds are deposited in the Manpower Development Fund and no transfer so made shall exceed twenty-five (25) percent of the amount of federal funds so deposited; provided further, the amount available for transfer to the Manpower Development Fund shall be reduced by the amounts in cash or in kind available from other sources as the state's share of the work incentive program as determined by the State Department of Human Resources Development and certified to the State Controller.

Item 267—For support of Department of Human Resources Development, for transfer by the State Controller to the Manpower Development Fund, for expenditure for the purposes of the Human Resources Development Act of 1968 commencing with Section 9000 of the Unemployment Insurance Code: $4,154,773.

Item 268—For support of Department of Human Resources Development: $131,500—and, in addition, any amounts received from federal grants or other sources shall be available for expenditure in accordance with the provisions of this item.

Schedule:

(a) Office of Economic Opportunity: $1,338,314.

(b) Federal grants: —$1,206,814.

Item 269—For support of Department of Human Resources Development: $510,657—and, in addition, any amounts received from federal grants or other sources shall be available for expenditure in accordance with the provisions of this item.

Schedule:

(a) Commission on Aging: $29,668,910.

(b) Federal grants: —$29,158,253.

Item 270—For payment to various local jurisdictions and state agencies for support of the Migrant Master Plan in cooperation with the federal government programs, resulting from the Economic Opportunity Act, Department of Human Resources Development: $409,298.

Schedule:

(a) Operations: $2,345,556.

(b) Federal grants: —$1,936,258.

Item 270.5—In augmentation of the migrant day care component of the Migrant Master Plan, Department of Human Resources Development: $124,500—provided, that the Department of Human Resources Development shall allocate these funds only to replace any loss of federal funds caused by revision of federal regulations covering the eligibility of participants or the limitation or termination or restriction of the use of funds for social services under the Federal Social Services Act.

Provided further, that the Department of Finance may, by executive order, transfer these funds shown above, for and in augmentation of the amount contained in schedule (a) of Item 270 of this act for the purpose of providing additional funds for migrant day care.

Item 271—For support of Department of Human Resources Development, payable from the Department of Human Resources Development Contingent Fund: $1,181,351—and in addition thereto, any grants made available by the federal government, provided, that all or any portion of this appropriation may be transferred to the Unemployment Administration * * * Finance.

Item 83—For providing reimbursement to local taxing authorities for revenue lost by reason of the assessment of open-space lands under Sections 423 and 423.5 of the Revenue and Taxation Code, and in accordance with the provisions of Chapter 3 (commencing with Section 16140) of Part I of Division 4 of Title 2 of the Government Code, State Controller: $18,000,000—The appropriation made by this item shall be in lieu of the appropriation for the same purpose contained in Section 16109 or 16140 of the Government Code, and may not be augmented.

Item 84—For reimbursement to local taxing authorities for revenue lost by reason of the homeowners' property tax exemption granted pursuant to Section 1d of Article XIII of the Constitution: $647,250,000.

Item 85—For transfer as needed to the Personal Income Tax Fund by the State Controller for the purpose of providing refunds to renters are required by Section 17053.5 of the Revenue and Taxation Code as added by Section 25 of Chapter 1406, Statutes of 1972, Franchise Tax Board: $40,000,000. The appropriation from the General Fund made by this item shall be in lieu of any appropriation for the same purpose from the Personal Income Tax Fund pursuant to Section 32 of Chapter 1406 of the Statutes of the 1972 Regular Session of the Legislature.

Item 88—For salary Increase Fund, for state officers and employees whose compensation including staff benefits, or portion thereof, is payable from nongovernmental cost funds, there is hereby appropriated from each nongovernmental cost fund from which such officers and employees are paid (a) an amount sufficient to provide the increase in compensation provided for in any increased salary range or rate including staff benefits established on or after July 1, 1973, by the State Personnel Board or other salary-fixing authority; and, (b) with respect to state officers whose salaries are specified by statute, an amount sufficient to augment by 15.9 percent the amount of salaries received by such officers as of June 30, 1973, during the 1973–74 fiscal year; pursuant to Section 11569 of the Government Code: $32,844,000 which amounts is to be made available by executive order of the Department of Finance in augmentation of their respective appropriations for support or for other purposes.

Provided, that increases in compensation provided by this item for increased salary ranges for positions established for the 1973–74 fiscal year shall not result in total annual salary increases, including staff benefits, of more than $32,844,000.

SENATOR CRANSTON—WRITTEN QUESTION NO. 4

Q. Mr. Arnett, the October 1972 amendments to the Economic Opportunity Act added a new section 228 which I authored, authorizing an annual expenditure of $7.5 million for Consumer Action and Cooperative Programs. No funds were spent under this authority in FY 1973. I think it is evident that no other agency deals with the unique problems of poor consumers, such as availability of credit, higher cost and poor quality of goods and services, and the inability of the poor person to enforce his rights through an expensive and often slow judicial system. Do you plan to develop and carry out a program in the coming year that will address itself to the problems of the poor consumer?

A. The $7.5 million for section 228 to which you refer is the Authorization level. Since only $790.2 million was actually appropriated in FY 1973, which only covered the existing programs, it was not possible for OEO to make any new starts. In spite of this, some Consumer Action type programs were funded under section 232 of EOA. As to FY 1974, organizational and funding uncertainties have made it difficult to formulate a firm program of consumer protection, but discussions are being held on OEO's role in this activity.

WRITTEN QUESTION NO. 5

Q. Mr. Arnett, there are some 250 low-income credit unions started with the help of OEO, with over 100,000 members and $11 million in savings, that desperately need help if they are to survive and grow to become meaningful resources for their communities. Have you planned or do you plan any program of support for these credit unions that will help them achieve self-sufficiency?

A. The same thing is true in regard to OEO's Credit Union Programs as is true with the Consumer Programs in terms of funding levels. In Fiscal 1973 we did provide credit union funding through Section 221 of the Act where local Community Action Agencies gave them high priority. The number and amount of credit union funding was therefore geared to the importance attached to them locally by the CAAs.

Mr. CRANSTON. Mr. President, I was particularly distressed by point No. 10 in Mr. Arnett's August 2 response. Section 623 of the Economic Opportunity Act of 1964, as amended, states:

All rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this Act shall be published in the Federal Register at least thirty days prior to their effective date.

OEO Instruction No. 7501–1, issued on March 25, 1970, states in section 9(b):

The state's share for funding under Section 231 shall be a minimum of 20 percent of the total cost of the operation in cash and/or kind.

Section 231 of the EOA, the section referred to, authorizes the Director to provide financial assistance to State Economic Opportunity Offices.

In his response to my questions on the elimination of the required 20-percent non-Federal share requirement, without compliance with the 30 days' prior notice requirement of section 623.

Mr. Arnett basically said in his reply, on advice of counsel, that OEO does not deem section 623 to apply with regard to the elimination of the SEOO non-Federal share. Mr. Arnett further stated in the August 2 reply, again on the advice of the OEO General Counsel, that the new policy was a "relaxation," and thus "is not subject to the requirement of section 623 of the Economic Opportunity Act of 1964."

Mr. President, according to my legal counsel and my own reading of the law, this response is a totally inaccurate interpretation of the law. After reviewing it, I feared that we were again about to witness more of this administration's lawlessness—a disregard for the law which had so characterized OEO's actions during the first 6 months of this year and which culminated in the U.S. District Court decisions halting the dismantling of OEO.

I immediately contacted the Acting Director and told him of my concern about the ramifications of this matter. Shortly before the Labor and Public Welfare Committee vote on Mr. Arnett's nomination, I spoke with Mr. Arnett personally about this and gained his assurance that the statement in his August 2 response was an inaccurate characterization of OEO's interpretation of section 623 as he would administer that provision.

Mr. President, I ask unanimous consent that Mr. Arnett's subsequent August 3 letter to me, further clarifying our discussion prior to the full committee vote, be printed at this point in the RECORD.

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

OFFICE OF ECONOMIC OPPORTUNITY,
August 3, 1973.

HON. ALAN CRANSTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CRANSTON: This further responds to your inquiries regarding the matter of non-Federal share.

First, as Director, I will view Section 623 as *both* a publication and notice requirement. Henceforth, OEO regulations will not be valid unless there has been publication in the Federal Register at least 30 days before the effective date.

I am advised, however, that the Department of Justice is making the legal argument on appeal that Section 623 only requires publication and that failure to publish does not invalidate the Agency's action. The Court of Appeals will decide this issue and I take no position on the legal merits.

Second, I was faced with the results of the unusual circumstances for the period January 30 to June 26. In the interest of administrative integrity, I affirmed the authority of subordinate officials to make grants. I could not individually review each and every grant made, so I authorized a general approval of prior grant actions signed by OEO officials. By this action, grants to state economic opportunity offices of fiscal year 1973 funds were allowed to stand without any matching share from non-Federal sources.

Third, I have not made a decision on non-Federal share for state economic opportunity offices for FY '74 but I am inclined to reinstate the requirement. In any event, any change to the regulation on the matter of non-Federal share will be published in the Federal Register.

And lastly, as I noted at the hearing, implicit waivers of regulations will have no place in my administration.

Sincerely yours,

ALVIN J. ARNETT,
Director-Designate.

Mr. CRANSTON. Mr. President, I should point out that while Mr. Arnett's August 3 clarification is reassuring, I felt that the entire question had most serious ramifications, and, after a meeting of members of my staff and the GAO, requested a legal interpretation from the Comptroller General on this issue along with other matters. Although some of Mr. Arnett's responses to my extensive questioning of him during and since his confirmation hearings are not altogether satisfactory, I believe that taken as a whole—and when coupled with the assurances he provided to other committee members about his intentions as Director of OEO—they are acceptable and reflect a sincere desire to carry out his duties in a manner consistent with the purposes of the Economic Opportunity Act of 1964, as amended, and to work in cooperation with the Congress in fulfilling those purposes. The Findings and Declaration of Purpose clause of the EOA says in part:

It is therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity.

Based on the information and assurances which I have received from Mr. Arnett, I voted for the favorable recommendation of his nomination from the Labor and Public Welfare Committee and believe that he will uphold the law and try to carry out the purposes of the Economic Opportunity Act. I join with the committee in urging my colleagues in the Senate to confirm his nomination to be Director of the Office of Economic Opportunity.

Mr. President, I ask unanimous consent that my August 24 letter be printed in the RECORD.

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

U.S. SENATE,
Washington, D.C., August 24, 1973.

Hon. ELMER B. STAATS,
Comptroller General of the United States, Washington, D.C.

DEAR MR. COMPTROLLER GENERAL: Pursuant to discussion with G.A.O. staff, I am writing in further regard to the June 14, 1973, General Accounting Office report B–130515, "Activities of the California State Economic Opportunity Office", and the questions I raised regarding that report in my June 12, 1973, letter to you and my subsequent July 10, 1973, letter requesting that the G.A.O. immediately review the $382,000 June 30, 1973, grant to C.S.E.O.O. by the Office of Economic Opportunity.

At the outset, I want to thank you for the ruling in your July 20 letter in partial reply to my June 12 letter.

Several additional matters have come to my attention which I hereby request be included in the investigations to be conducted pursuant to my June and July letters.

First, on July 11, 1973, the Office of Economic Opportunity announced an additional grant in the amount of $302,053 to C.S.E.O.O. I request that the contract review I requested on July 10 be carried out with regard to this second grant to C.S.E.O.O. as well.

Second, O.E.O. National's response to G.A.O. conclusion #1 in the June 14 report agrees that C.S.E.O.O. did fail to meet the special conditions of the 1971–1972 grant which prohibited investigations and unilateral evaluations. O.E.O. National makes two contentions in that regard: that the special conditions could be construed as "contrary to the review rights secured all Governors through the Economic Opportuntiy Act"; and that the "evaluations and investigations were performed with full knowledge on the part of O.E.O. Hence, it may be said that restrictions were implicitly waived by the Agency." Such implicit waivers would appear to be in direct violation of the O.E.O. regulations titled "General Conditions Governing Grants" which state:

"Requirements found in grant conditions or O.E.O. directives may be waived only by a written notification signed by an authorized O.E.O. official. Any such waiver must be explicit, no waiver may be inferred. . . ."

As you are aware, these special grant conditions were imposed on C.S.E.O.O. as a result of extensive Congressional inquiry into the State agency, including a July 20, 1971, hearing held by a Special Subcommittee of the House Committee on Education and Labor. During the course of those hearings, commitments were made to the Congress that special grant conditions would be imposed designed to ensure that the unilateral, highly irregular investigations and evaluations by C.S.E.O.O. would be halted. O.E.O. officials (including the then Director, Frank Carlucci, future Director Phillip Sanchez, and the then Regional O.E.O. Director, H. Rodger Betts), repeatedly committed O.E.O. to reforming the State agency and assured the Subcommittee that the grantee would function correctly in the future. The findings of the June 14 G.A.O. report make it clear that C.S.E.O.O. has repeatedly been in violation of the grant conditions imposed pursuant to the Congressional hearing.

The nature of the imposition of the special conditions on the 1972 C.S.E.O.O. grant and the special role of the Congress in seeking those special conditions appears to place Congress in the posture of a third-party beneficiary to the 1972 contract. Consequently, O.E.O. National's contention that an "implicit waiver" released C.S.E.O.O. from its commitments to comply with the 1972 grant conditions not only violates O.E.O. National's own regulations, but could be viewed as violating the rights of the Congress as a third-party beneficiary of that contract.

Therefore, I request your opinion regarding any rights Congress may have had with respect to the 1972 contract—particularly with regard to such implicit waivers—and an opinion regarding the validity, or lack thereof, of O.E.O. National's contention that the grant conditions may have been contrary to the review "rights" of the Governor under the Economic Opportunity Act of 1964, as amended.

I would also like your opinion on the validity of O.E.O. violating its own regulation against implicit waivers, both in terms of general Government-wide standards and the 30-day advance publication requirement of section 623 of the Economic Opportunity Act of 1964, as amended.

In another, but related matter, it has come to my attention that O.E.O. National sometime this spring repealed section 9(b) of O.E.O. Instruction 7501–1 (Role of the State Economic Opportunity Offices) which had been issued on March 25, 1970, with respect to the FY 1974 grant period for S.E.O.O.'s. In your July 20, 1973, letter to me you held that O.E.O. Instruction 7501–1 is a statutory regulation with the force of law, which cannot be waived "on a retroactive and *ad hoc* basis". In response to questions I raised about the repeal—without prior notification as required under section 623 of the Economic Opportunity Act of 1964, as amended—of section 9(b) of Instruction 7501–1, O.E.O. Director-Designate Alvin J. Arnett at first responded—on August 2—that the "O.E.O. General Counsel [advises] that the relaxation of a previous administrative requirement, provided it is both prospective and non-discriminatory as to members of the class, is not subject to the requirements of section 623 of the Economic Opportunity Act of 1964".

It is my understanding that, as part of U.S. District Court Judge Jones' decision with regard to the continued operation of the Office of Economic Opportunity—consistent with Congressional intent—the Judge found that all policy issuances, directives or instructions, or the repeal of same, which were not published in the *Federal Register* for the 30-day advance period required under section 623 of the Economic Opportunity Act of 1964, were invalid. Consequently, I request your opinion as to how, under section 623 and the Court ruling, the 20 percent non-Federal share requirement for S.E.O.O.'s set forth in O.E.O. Instruction 7501–1 could be effectively repealed without prior publication in the *Federal Register* or by implication in view of the above discussion.

Finally, in this regard, what is the status of a regulatory requirement—such as the non-Federal contribution requirement in question—which has existed for many years and about which the Congress has been informed and has raised no objections? I often see it contended by Federal agencies—particularly the Veterans Administration—that such regulations, in which it is said the Congress has "acquiesced", cannot be altered without Congressional approval. I raised this question in my June 12 letter to you with regard to the elimination of the non-Federal share requirement for S.E.O.O.'s, and the question was not answered in your July 20, 1973, letter.

During the course of Director-Designate Arnett's July 20 confirmation hearing before the Senate Labor and Public Welfare Committee, I stated that, in light of the numerous unresolved questions concerning C.S.E.O.O. which had arisen as the result of the June 14 G.A.O. report findings, and in light of the legal questions—still pending a G.A.O. response—raised in my June 12 letter to you, I saw no justification for the two new C.S.E.O.O. grants to go forward until such time as these questions were resolved. My staff has provided a member of the G.A.O. General Counsel's staff, Mr. Henry R. Wray, with a copy of the relevant portion of the July 20 hearing transcript in which I was assured by Mr. Arnett that the two C.S.E.O.O. grants would indeed not go

forward. I have enclosed a copy of the additional questions which I submitted to Mr. Arnett following the July 20 hearing and a copy of his August 2 response to those questions which was followed by his August 3 clarification thereof, in which he commented on several of the matters I have discussed above and which I believe you will find of interest.

I am deeply concerned not only about National O.E.O.'s continued refunding of the C.S.E.O.O. but also about the much larger legal issues raised which I have discussed above. I look forward to your early reply to this and my July 10 letter.

Sincerely,

ALAN CRANSTON.

Mr. CRANSTON. Mr. President, in closing I would like to express my appreciation for the effort Mr. Arnett has made to provide satisfactory answers to the questions and concerns of the committee—a task not readily accomplished—and for his cooperation with me and the members of my staff throughout the committee's consideration of his nomination.

SENATOR RANDOLPH SUPPORTS ALVIN J. ARNETT FOR OEO DIRECTOR

Mr. RANDOLPH. Mr. President, I support the nomination of Alvin J. Arnett to be Director of the Office of Economic Opportunity. Hearings before the Senate Committee on Labor and Public Welfare confirmed my personal opinion—that Al Arnett will administer his high office with compassion, with fairness, and in accordance with the law.

Al Arnett is a native of our State of West Virginia. His early life was characterized by accomplishment. In high school in Charleston, he was a member of the National Honor Society. As an honor student at Marshall College in Huntington, he was selected for inclusion in "Who's Who Among Students in American Colleges and Universities," the National Leadership Honor Society, and the National Political Science Honor Society.

Prior to going to OEO, Mr. Arnett served as Executive Director of the Appalachian Regional Commission. When he left the Commission, he was honored with a resolution of appreciation from the Federal and State officials of the Commission.

Mr. President, I believe the Senate should know what this resolution has to say about Alvin Arnett:

The Appalachian Region Commission wishes to express its appreciation to Alvin J. Arnett for his unique, imaginative and fruitful services to the Appalachian Program over the years he has been associated with the Commission . . . .

. . . Many, who have worked in this Program for the development of the Region, have shared a deep commitment to its objectives, but *few have approached, and none have surpassed,* Al Arnett in depth and sincerity of feeling for the people of Appalachia.

As the nominee of the President to head this beleaguered and bruised agency, Mr. Arnett is especially qualified to serve during this period of confrontation between the President and the Congress over OEO. He has testified before the Senate Labor and Public Welfare Committee that he has been and will continue to be a voice within the administration for OEO.

He said:

I'm very strong on advocacy for the poor.

Mr. President, let me read, if I may, the concluding paragraph in Mr. Arnett's opening statement to the Senate Committee on Labor and Public Welfare confirmation hearings held on July 20, 1973:

I honestly and openly state that I stand ready to comply with the law in every respect as determined by the Congress and the President and to carry on the remaining OEO functions during Fiscal Year 1974 to the very best of my ability. I make my personal commitment to that purpose.

The Economic Opportunity Act of 1964, places on OEO the heavy responsibility—

To stimulate a better focusing of all available local, State, private and Federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas, to attain the skills, knowledge, and motivations and secure the opportunities needed for them to become self-sufficient.

This mandate is contained in the law of the land. To head the Agency of the Federal Government charged with this high responsibility requires one who not only has a deep commitment to its objectives, as well as an abiding respect for the law, but just as importantly, one who possesses a deep and a sincere feeling for people. For when the tumult and shouting have died, the Economic Opportunity Act and OEO are basically and fundamentally concerned with people.

Alvin Arnett respects the law. It has been said of him that none have surpassed him in depth and sincerity of feeling for people. He is uniquely qualified to be the Director of the Office of Economic Opportunity.

I know that Alvin J. Arnett will bring to his high office a dedication to helping the poor, the competence to meet the challenges inherent in the job; and a creativity and aggressiveness which will prove him worthy of the honor.

I support his nomination, Mr. President, and urge Senators to vote in the affirmative.

LEGISLATIVE SESSION—TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate now return to legislative session and that there be a period for the transaction of routine morning business for not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

Is there further morning business?

REPORTS OF COMMITTEES

The following reports of committees were submitted:

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

S. 2408. An original bill to authorize certain construction at military installations, and for other purposes (Rept. No. 93-389).

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

H.R. 8916. An act making appropriations for the Departments of State, Justice, and Commerce, the Judiciary, and related agencies for the fiscal year ending June 30, 1974, and for other purposes (Rept. No. 93-390).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

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

By Mr. MONDALE:

S. 2404. A bill relating to the mortgage insurance premiums applicable to home mortgages insured by the Secretary of Housing and Urban Development, and requiring certain reports to the Congress by the Secretary with respect to the funds used by the Secretary in carrying out the various home mortgage insurance programs, and the premium levels necessary to sustain such funds. Referred to the Committee on Banking, Housing and Urban Affairs.

S. 2405. A bill to amend title II of the Social Security Act to extend the time within which certain Federal-State agreements may be modified to give noncovered State and local employees under the divided retirement system procedure an additional opportunity to elect coverage. Referred to the Committee on Finance.

By Mr. BROCK:

S. 2406. A bill for the relief of Doctor Jesus Fernandez Tirao and his wife, Benylin-Lynda Obiena Tirao. Referred to the Committee on the Judiciary.

By Mr. CRANSTON:

S. 2407. A bill to establish the Federal Audio-Visual Coordination Board, regulate production by Federal agencies of audio-visual materials, and provide certain labor standards in connection therewith. Referred to the Committee on Government Operations.

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

S. 2408. An original bill to authorize certain construction at military installations, and for other purposes. Placed on the calendar

By Mr. McGOVERN (for himself, Mr. CASE, Mr. HART, Mr. KENNEDY, Mr. HUMPHREY, Mr. CRANSTON, and Mr. NELSON):

S. 2409. A bill to amend the National School Lunch and Child Nutrition Acts for the purpose of providing additional Federal financial assistance to the school lunch and school breakfast programs. Referred to the Committee on Agriculture and Forestry.

By Mr. TOWER (for himself and Mr. SPARKMAN):

S.J. Res. 152. Joint Resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MONDALE:

S. 2404. A bill relating to the mortgage insurance premiums applicable to home mortgages insured by the Secretary of Housing and Urban Development, and requiring certain reports to the Congress by the Secretary with respect to the funds used by the Secretary in carrying out the various home mortgage insurance programs, and the premium levels necessary to sustain such funds. Referred to the Committee on Banking, Housing, and Urban Affairs.

PROPOSAL TO REDUCE FHA MORTGAGE INSURANCE RATES

Mr. MONDALE. Mr. President, the bill I am introducing today could cut home-

buyers' costs for FHA insurance by 50 percent.

My proposal will do this by cutting the FHA insurance premium from one-half of 1 percent to one-fourth of 1 percent. This would save a Minnesota family with an average of $19,000 mortgage as much as $943. A family with a $25,000 mortgage could save $1,280.

If my proposal is accepted, it would lower the present inflated cost of buying a house appreciably. Mortgage interest rates for FHA-insured mortgages have been above 7 percent for the past 4 years. During 1969 and 1970, when President Nixon was making his disastrous effort to control inflation by depressing the housing industry, mortgage rates soared to 8.26 percent and 9.05 percent respectively. And they never came down to normal levels. In fact, they are now rising again. This is bad news for the homebuyer. A rise from 7 to 7¾ percent in the maximum FHA interest rate has already been announced.

A reduction in mortgage insurance premium levels has the same effect as a reduction in mortgage interest rates. Homebuyers pay a one-half of 1 percent insurance charge on their outstanding mortgage balance every month. This payment usually goes in with the check for the mortgage payment. Cutting the insurance fee in half is exactly like lowering the mortgage interest rate by one-fourth of 1 percent.

There is little doubt that a reduction of 50 percent in the premium is actuarially conservative and sound. The current one-half of 1 percent has been charged homebuyers since 1934. It is designed to cover a long-term default rate almost as severe as was experienced during the worst year of the Great Depression.

This overly pessimistic assumption has led to an enormous and unnecessary accumulation of reserves. From 1934 through June 1972, the FHA collected about $4.8 billion in premiums while paying out only about $1.3 billion to cover defaults.

TABLE I

Cumulative net losses through June 30, 1972 on acquired properties and assigned mortgages:

	Million
Mutual mortgage insurance fund	$873
General insurance fund	430
Cooperative management housing insurance fund [1]	
Special risk insurance fund	33
	$1336

[1] A profit of less than $0.7 million.

FHA insurance fund reserves now total about $1.4 billion, more than total defaults since 1934.

Actually, the reserves in the Mutual Mortgage Insurance Fund are about $1.8 billion. FHA projections suggest these reserves will rise by about $165 million at the end of fiscal year 1974. The other funds include the special risk insurance fund to which appropriations to absorb losses were contemplated. The right to use accumulated Mutual Mortgage Insurance Fund reserves for other losses would be clarified in accordance with my bill.

Instead of accumulating another $165 million of mutual fund reserves in fiscal year 1974, my proposal would lead to some reduction in already excessive reserves in the short run. This is as it should be. Reserves should be brought down in the next few years, and the FHA forced to seek more economy in its operations.

By lowering the rate to one-quarter of 1 percent, my proposal would cut the fat out of the FHA's insurance programs. It will force the FHA to take a careful look at its administrative costs so that it can get by on the lower premium.

Over the years, 38 percent of the insurance premium has been going to pay FHA's expenses. More of the homeowners' premium payments are going to cover FHA expenses than to meet mortgage defaults. FHA administrative costs should be reduced, and I believe that my bill would help accomplish this goal.

Mr. President, the Senate Committee on Banking and Currency has before it S. 2182 which includes legislation revising the National Housing Act. The House Banking and Currency Committee is now working on its version of this legislation.

The Senate bill would consolidate FHA insurance funds into two main funds, one for general insurance, and the other for special risk mortgages. Both bills retain a third fund, which is much smaller, for cooperative housing as well.

My bill would lower the premium for all these funds. For the subsidized mortgages under the special risk program, this makes sense because the high premium for subsidized mortgages simply adds to the Federal housing subsidy payment. Charging the occupant a premium raises the cost of the subsidy. This is so because the occupant's payment is limited to a given percentage of his income. The difference has to be made up by the subsidy voted by the Congress.

My bill, therefore, also requires the Secretary of HUD to consider the cost saving which could be acheived by eliminating the premium altogether for subsidized housing.

To summarize, my bill stipulates that within 30 days of the effective date of legislation, mortgage insurance premium rates on all new FHA-insured mortgage loans would be reduced to no higher than one-fourth of 1 percent per annum on outstanding balances. Rates on older mortgages would drop to this level also within a few months.

Within 90 days after the effective date of the legislation, the Secretary of HUD would be required to provide Congress with recommendations with respect to the transfer of as large a part as possible of FHA insurance reserves accumulated in the past to new insurance funds set up under new housing legislation.

The Secretary will also be required to make recommendations concerning further premium reductions or to justify a higher premium level if this seems to be required after the Congress has determined that all possible economies have been made. The Secretary must also evaluate the administrative savings which might be achieved by eliminating the premiums on subsidized housing.

My bill requires that in the future, the Secretary of HUD make an annual report on the level of the insurance premium so that Congress may be certain that the home buyer is getting the lowest possible premium rate.

Mr. President, the American homebuyer has paid a very high price for ill-conceived economic policies in the past few years. He has paid and continues to pay outrageously high mortgage rates. The Congress needs to attack this problem, and accepting my proposal on insurance premiums is one important way to do so.

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

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

S. 2404

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the insurance premium for any mortgage insured by the Secretary of Housing and Urban Development under the National Housing Act, or any Act supplementary thereto, shall not exceed one-fourth of 1 per centum per annum of the amount of the principal obligation of the mortgage outstanding at any time. With respect to any such mortgage which is outstanding on the effective date of this section, the Secretary shall adjust the insurance premium applicable to such mortgage in conformity with this section at such time (not later than 12 months after such effective date) as the next annual premium amount for such mortgage is determined.

(b) This section takes effect upon the expiration of 30 days after the date of enactment of this Act.

SEC. 2. (a)(1) The Secretary of Housing and Urban Development shall, not later than 90 days after the date of enactment of this Act, report to the Congress his recommendations with respect to transferring as large a part as practicable of the reserves of the Mutual Mortgage Insurance Fund, created by section 202 of the National Housing Act, to the General Insurance Fund and the Special Risk Insurance Fund, created respectively by sections 519 and 238(b) of such Act. In making such recommendations the Secretary shall have regard to (A) the fact that the General Insurance Fund and the Special Risk Insurance Fund are now the principal funds for carrying out the home mortgage insurance programs administered by the Secretary, (B) the fact that the reserves of the Mutual Mortgage Insurance Fund were accumulated in significant part through premium payments by mortgagors whose interests in the properties covered by insured mortgages have been transferred, and (C) the paramount interest of the Government in view of the ultimate underwriting of risk by the United States and the importance of spreading the risk over an extended period of time.

(2) The report required under paragraph (1) shall also include the recommendation of the Secretary with respect to a reduction of the premium for the insurance of any mortgage by the Secretary to a level lower than one-fourth of 1 per centum per annum of the amount of the outstanding principal obligation of the mortgage. If the Secretary determines that it is not practicable to recommend a reduction of the premiums below one-fourth of 1 per centum per annum or if he determines that a premium greater than one-fourth of 1 per centum per annum is necessary then he shall recommend that minimum per centum which he deems to be feasible not to exceed four-tenths of one per centum per annum. In making any such recommendation the Secretary shall have regard to the recommendations made under paragraph (1) and shall indicate the actuarial factors assumed.

(3) The report required under paragraph (1) shall also include the Secretary's recommendation with respect to the feasibility of reducing administrative costs by eliminating mortgage insurance premiums in the case of that class of mortgages for the insurance of which premiums are now collected and deposited in the Special Risk Insurance Fund, and his recommendation for reducing mortgage insurance operating expense in other areas.

(b) In addition to the report specified in subsection (a), the Secretary shall report annually to the Congress (1) his analysis of the financial condition of each of the mortgage insurance funds administered by him in the light of the then current risk experience and actuarial assumption, and (2) his recommendations, on the basis of such analysis, of the appropriate mortgage insurance premium levels. The first such report shall be made not later than one year after the date on which the report required under subsection (a) is submitted, and subsequent reports shall be made at annual intervals thereafter.

By Mr. MONDALE:

S. 2405. A bill to amend title II of the Social Security Act to extend the time within which certain Federal-State agreements may be modified to give noncovered State and local employees under the divided retirement system procedure an additional opportunity to elect coverage. Referred to the Committee on Finance.

SOCIAL SECURITY COVERAGE FOR STATE EMPLOYEES

Mr. MONDALE. Mr. President, I am today introducing legislation to permit additional State employees now covered under State retirement systems to obtain coverage under social security.

Under the so-called "divided retirement systems" now in effect in Minnesota and 19 other States, State employees are given the option of social security coverage under agreements between the State and the Secretary of HEW.

Those who choose not to be covered under social security may, under specified circumstances, be given the opportunity later to change their mind and obtain social security coverage.

This opportunity for a second chance, however, is very limited. Existing law now effectively denies this opportunity to any individual employee, although groups of employees may still switch over if a majority of the group agrees to do so in a referendum.

I believe individual employees should have an opportunity to obtain social security coverage even if a majority of the employment group to which they belong does not.

The legislation I am introducing today would permit this. Under the bill, States like Minnesota would have until the end of 1974 to enter into an agreement with the Secretary of Health, Education, and Welfare giving individual State employees who wish to do so a second chance to obtain social security coverage.

Those who have worked hard all their lives should not be denied a decent retirement income because of one wrong choice. They deserve a second chance. This bill would give it to them.

By Mr. CRANSTON:

S. 2407. A bill to establish the Federal Audio-Visual Coordination Board, regulate production by Federal agencies of audio-visual materials, and provide certain labor standards in connection therewith. Referred to the Committee on Government Operations.

Mr. CRANSTON. Mr. President, for almost 40 years congressional committees have studied various aspects of Government activities that are or may be in competition with private enterprise. The Government relies heavily on contractors to provide goods and services needed to support its missions. Historically, government policy has favored contracting for goods and services rather than providing them in-house. However, only limited expressions of this policy appear in our statutes and executive branch procedures.

I am introducing a bill, the Federal Audio-Visual Act of 1973, that would eliminate needless Government competition with private industry in one of these areas, the making of audiovisual materials.

More than $300 million is spent annually by the Federal Government on audiovisual production. Despite the fact that the movie industry is suffering from major economic problems, the Government is producing an increasing amount of its own material. Instead of utilizing the private sector, the Government has developed its own massive radio-television motion picture producing capability. This makes the Federal Government the Nation's single largest producer of audiovisual material.

In March 1971 officials of the American Federation of Television and Radio Artists presented this problem to Congressman BARRY GOLDWATER, Jr. Last fall, he issued a 66 page report on Federal involvement in audiovisual production based on a comprehensive study of the problem and specific inquiries to agencies to determine their role in this production.

In response to the inquiries, 13 Government agencies declared they had a total of $15 million worth of audiovisual equipment. The investigation showed that the Defense Department alone has more than $289 million dollars worth of audiovisual equipment.

Six of the seven major agencies, including the Department of Health, Education, and Welfare possess separate facilities, equipment, and personnel. Not only is there useless duplication of equipment and personnel, but there is also duplication of products within departments. The Defense Department is one of the biggest offenders. In 1971 and 1972 the DOD produced 12 films on one subject: "How To Brush Your Teeth."

The Goldwater investigation inquired into governmental policy on procurement of audiovisual materials through contracts with private producers, only to find that no agency has an established policy on the amount of audiovisual materials it produces through contract with outside companies.

The following is a list of the percentage of in-house production of material by the agencies themselves. The balance is produced on a contract basis.

Department of Agriculture, 47 percent; Department of Justice, 76 percent; Atomic Energy Commission, 63 percent; Department of Treasury, 54 percent; Department of Interior, 19 percent; Housing and Urban Development, 62 percent; Health, Education, and Welfare, 57 percent.

Department of Defense: U.S. Air Force, 97 percent; U.S. Army, 40 percent; U.S. Navy, 20 percent and U.S. Marine Corps, 62 percent.

This information indicates that the Government is producing an average of 54 percent of its own audiovisual material.

The waste of taxpayers' money through duplication and mismanagement is just part of the inequity and inefficiency created by Government competition with the private film industry. The investigation also found that the Federal Government often does not pay prevailing wages to individuals with which it contracts for radio, television, or film productions. Mr. GOLDWATER's report indicates that the Government on the average pays one-sixth the prevailing wage scale to performers.

My bill addresses these problems by requiring all Federal agencies to pay prevailing wage rates to all persons who are hired to work in or produce audiovisual materials. It further requires all outside contractors who produce audiovisual materials for the Federal Government to pay prevailing wages to their employees. The bill would also limit Federal agencies from producing audiovisual materials except up to 25 percent of materials, which must be solely for the internal use of the agency. Classified material or materials for the purposes of scientific research, crime investigation, or intelligence are exempted from this limitation.

The Federal Audio-Visual Act of 1973 is an attempt to end needless Government in-house audiovisual production. There need be a broadened investigation of Government in-house industrial and commercial competition with the private sector. I hope this bill will trigger this urgently needed inquiry.

Mr. President, I ask unanimous consent that the text on the bill appear at this place in the RECORD.

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

S. 2407

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Audio-Visual Act of 1973."

PURPOSE

SEC. 2. The purpose of this Act is to provide regulation and coordination of the use and production of audiovisual material by Federal agencies.

DEFINITIONS

SEC. 3. Where used in this Act—

(1) the term "audio-visual materials" means motion pictures, television video tapes, radio tapes, slide films, filmstrips, photographs, phonograph records, and transcriptions;

(2) the term "audiovisual supplies and equipment" means unexposed, unprocessed, or unrecorded films, tapes, and recording discs, and cameras, projectors, sound recording devices, and related equipment, but does not include any equipment or supplies which are primarily used for the reproduction (by

photograph or otherwise) of documents, correspondence, and other paperwork;

(3) the term "employees" means actors, announcers, newsmen, singers, musicians, dancers, phonograph recording artists, laborers, mechanics, craftsmen, technicians, and other supporting personnel engaged in the production of audiovisual materials;

(4) the term "production", when used in conjunction with audiovisual materials, means creating, preparing, editing, reediting, or reproducing such materials;

(5) the term "Board" means the Federal Audio-Visual Coordination Board established by this Act; and

(6) the term "Federal agency" means any department, independent establishment, commission, board, bureau, division, office, or subdivision thereof, and any corporation wholly owned by the United States, but does not include the Congress, the courts of the United States, the governments of the territories or possessions of the United States, or the government of the District of Columbia.

FEDERAL AUDIOVISUAL COORDINATION BOARD

SEC. 4 (a) ESTABLISHMENT.—There is established a board to be known as the Federal Audio-Visual Coordination Board.

(b) DUTIES.—The Board shall—

(1) work to achieve a coordinated and cooperative relationship between Federal agencies and the audiovisual industry of the United States;

(2) undertake systematic appraisals of Federal agency procurement, utilization, and production of audiovisual supplies and equipment; and promulgate standards to create uniformity and interchangeability, and increase economies;

(3) organize and supervise the administration of section 5, and prescribe such rules and regulations as are necessary to carry out this Act.

(c) MEMBERSHIP.—The Board shall be composed of eleven members as follows:

(1) the Director of the General Accounting Office

(2) five members appointed by the President from persons who represent the audiovisual units of Federal agencies;

(3) five members appointed by the President who represent the private audiovisual production industry (two of such persons shall represent the organized labor sector of such industry).

(d) TERMS.—Members shall be appointed for terms of three years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made.

(e) CHAIRMAN.—The Chairman of the Board shall be the Director of the General Accounting Office

(f) PAY AND TRAVEL EXPENSES.—(1) Except as provided in paragraph (2) members of the Board shall each be entitled to receive $25 for each day (including travel-time) during which they are engaged in the actual performance of duties vested in the Board.

(2) Members of the Board who are full-time officers or employees of the United States shall receive no additional pay on account of their service on the Board.

(3) While away from their homes or regular places of business in the performance of services for the Board, all members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 4 of the United States Code.

(g) DIRECTOR AND STAFF.—The Board shall have the power to appoint and fix the compensation of a Director and a staff of not more than five persons without regard to the provision of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapters III and IV of chapter 53 of such title relating to classification and General Schedule pay rates. The Director shall be paid compensation at a rate not to exceed the rate prescribed for level IV of the Federal Executive Salary Schedule, and any staff appointed shall be paid compensation at a rate not to exceed the rate of basic pay in effect for grade GS–11 of the General Schedule.

(h) EXPERTS AND CONSULTANTS.—The Board may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5 of the United States Code.

(i) STAFF OF FEDERAL AGENCIES.—Upon request of the Board the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Board to assist it in carrying out its duties under this Act.

(j) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Board on a reimbursable basis such administrative support services as the Board may request.

(k) MAILS.—The Board may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

(l) GOVERNMENT AGENCY COOPERATION.—All Federal agencies are authorized and directed to cooperate with the Board, and shall furnish to the Board, upon its request, any information necessary to enable it to carry out this Act.

AUDIOVISUAL PRODUCTION

SEC. 5. (a) GENERAL RULE.—No Government agency, except as provided in subsection (b), shall produce any audiovisual materials. All such materials shall be obtained from private sources.

(b) EXCEPTION.—Any Government agency may produce up to 25 per centum of the audiovisual materials which are solely for the internal consumption of such agency. Such 25 per centum shall be based upon the monetary value of the materials produced.

(c) ADJUSTMENTS TO STANDARD.—In these instances where the Board finds that a measure which is based entirely upon monetary value is either inequitable or unworkable, it is authorized to require such adjustments, or apply such other types of measure, as it finds necessary.

LABOR STANDARDS

SEC. 6. Amendment to Service Contract Act of 1965 section 8(b) of the Service Contract Act of 1965 (79 Stat. 1034) is amended by inserting the words "laborers, mechanics, craftsmen, technicians, professional employees and related or supporting personnel involved in the production of motion picture films; and" immediately after the word "means".

EXEMPTIONS

SEC. 7. This Act shall not apply—

(1) where the audiovisual materials or production involved include information classified, or likely to be classified, pursuant to Executive Order Numbered 10501 (Safeguarding Official Information);

(2) where the audiovisual materials are used or produced by a Federal agency for the purposes of scientific research, testing, or development; or as part of official surveillance for crime investigation, administration of law enforcement activities, or collecting and compiling intelligence regarding national security;

(3) to restrict a Federal employee or member of the Armed Forces from appearing in any audiovisual material in which he is portrayed in a role which is contained in his job classification, but only if he is regularly employed by the Federal agency for which the audiovisual material is being produced and regularly functions in such role; or

(4) where the Board, by a vote of two-thirds of its members, has found it in the interest of the United States to provide an exemption.

AUTHORIZATION

SEC. 8. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

EFFECTIVE DATE

SEC. 9. This Act shall take effect sixty days after the date of its enactment.

By Mr. TOWER (for himself and Mr. SPARKMAN):

S.J. Res. 152. Joint resolution to extend the authority of the Secretary of Housing and Urban Development with respect to the insurance of loans and mortgages, to extend authorizations under laws relating to housing and urban development, and for other purposes. Referred to the Committee on Banking, Housing and Urban Affairs.

Mr. TOWER. Mr. President, today I am introducing a bill which will hopefully put an end to this on-again, off-again situation of the FHA insurance authority.

To briefly bring us up to date, last May the House passed House Joint Resolution 512. That resolution contained simple 1-year extension of FHA authority, and it extended authorization levels for certain community development programs. House Joint Resolution 512 did not emerge from the Banking, Housing, and Urban Affairs Committee in precisely that form, however.

The resolution was amended to provide for specific dollar authorizations instead of open-ended authorizations. The resolution was also changed to add two other amendments. These changes have proven to be highly controversial. One would make it mandatory that HUD release and spend all funds that had been authorized and appropriated for the federally subsidized urban and rural housing programs. The other provision would expand the HUD section 518(b) program to include houses built under the section 203 and section 221 programs. This program allows HUD to compensate purchasers of homes for defects that existed at the time they purchased the home. These are defects which should have been discovered by the FHA at the time of the appraisal, but were not.

Now we took these provisions to the conference which we had with the House. The House came to the conference with the position that they passed a simple extension bill, under a suspension of the rules, and they did not want to turn this bill into a "Christmas Tree." In fact, I am told that prior to their passing of House Joint Resolution 512, they made every effort and were successful in keeping this a clean bill. Many House Members had a desire to add certain provisions, but they withheld from the temptation to make sure that the bill remained noncontroversial. This was done to make sure that the bill would pass quickly and FHA authority would not die.

Mr. President, we have had many meetings before the House and Senate conferees finally decided on a conference report. There was hard bargaining on both sides of the table. What finally occurred was that, after much debate, the House narrowly agreed to take the two controversial provisions that the Senate added and bring them back to the floor of the House for consideration.

On September 5, just a few days ago, the House voted on the conference report. By a vote of 202 to 172, they voted to recommit the report back to the conference committee. Mr. President, if you will examine the record of the debate on this vote, you will find that the resulting vote was due to the strong opposition in the House to the two controversal amendments to which I have previously referred.

Since the House vote, the conference committee has met again to try to resolve this problem. But again, as in late June, and as was the case immediately prior to the August recess, time is running out. The FHA authority will expire in just a very short time. This stop and go continuation of authority has got to stop. While it is true that high mortgage interest rates are having a disastrous effect on housing production, the month-by-month granting of FHA authority is proving to have a similar effect. Lenders and builders are not going to put all their resources into FHA programs knowing that at the time they are ready to close a deal there might not be any authority in existence. And today, more than ever, this country needs the FHA programs. While the FHA maximum interest is now 8½ percent, that is still a far sight better than 9½ percent or 10 percent conventional mortgage interest rate. For many thousands of potential purchasers, FHA is the only way at this time.

And so, Mr. President, with the conference committee unable to reach a decision as yet, and with the expiration of FHA authority around the corner, I am introducing a joint resolution which will resolve the crisis that is facing us. It is identical to what the conferees on House Joint Resolution 512 have agreed to with one exception. Those provisions which the House objected to so strenuously on the floor, during debate on their motion to recommit, have been deleted. Additionally, it provides an extension of FHA authority to October 1, 1974. If the controversial provisions are worthy and just, then it is my opinion that they should pass the test of both bodies of this Congress as separate legislation. Let us not jeopardize the continuation of the FHA programs any longer.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 1550

At the request of Mr. TOWER, the Senator from Ohio (Mr. TAFT) was added as a cosponsor of S. 1550, to provide tax incentives to encourage physicians, dentists, and optometrists to practice in physician-shortage areas.

S. 1610

At the request of Mr. Moss, the Senator from New York (Mr. JAVITS) was added as a cosponsor of S. 1610, a bill to require the installation of airborne, cooperative collision avoidance systems on certain civil and military aircraft, and for other purposes.

S. 1769

At the request of Mr. MAGNUSON, the Senator from Nevada (Mr. CANNON) was added as a cosponsor of S. 1769, to establish a U.S. Fire Administration and a National Fire Academy in the Department of Housing and Urban Development, to assist State and local governments in reducing the incidence of death, personal injury, and property damage from fire, to increase the effectiveness and coordination of fire prevention and control agencies at all levels of government, and for other purposes.

S. 2217

ANIMALS—NOT ORDINARY AIR CARGO

Mr. DOLE. Mr. President, we have long been a nation of animal lovers. We have devoted more money, more time, and more effort to the care and well-being of our domesticated animals than any other modern society. Our Congress has always been responsive to the need for laws to protect our animals. Today I am joining a growing group of Congressmen and Senators who are asking for a legislative remedy to a serious problem affecting a large number of pet owners, and which troubles those who care about all animals—pets, laboratory animals, and exhibition animals alike. I am referring to the inhumane treatment of animals transported in commercial airlines.

With alarming frequency the news media relate incidents of animals which have suffered or died because of the frightful conditions connected with flying in commercial airlines. According to a recent article in Air Line Pilot, the death, injury and loss of live animals has reached a point where our humane societies consider the problem a major issue. The Air Transport Association of America estimates that about 200,000 dogs and cats are moved by air each year. Add to that the number of animals being shipped to laboratories and pet stores, and the problems connected with air shipment take on mammoth proportions.

The problems are numerous, and there are many differing opinions as to which is the most serious. It would serve no purpose here to rank the points; suffice it to say they are all horrible. And they begin as soon as shipment by air carrier is considered.

CROWDED FLIGHT

There are a number of options to anyone shipping live animals by air. According to the Washington Humane Society, however, none is good or very safe. Animals can be shipped as passenger baggage, air express, air freight, or special air freight. In some cases, when the flight is long and the owner is aboard as a passenger, rules may permit a small pet to ride up front with his owner. Otherwise, most live animals ride in the belly compartment with the other cargo, and they are treated as cargo. Humane societies charge that to a cargo handler a box of white mice or a crated puppy is just another piece of cargo to be moved from one place to another. Never mind the fact that a living creature is involved.

Once headed for the cargo compartment, the animal will encounter inexcusable conditions. First off, it may be some time before the animal is actually loaded onto the plane. Mixed in with suitcases and cartons of nonperishable goods, small animals may sit for hours in the blazing sun, pouring rain, or freezing snow before loading. Once aboard, a whole series of atrocities can, and often do, occur.

Despite the claims of many airlines, few cargo compartments have adequate ventilation or any temperature control devices. During long periods when the craft is sitting on the runway, the temperature within the compartment may fall as low as 0°, and has been reported as high as 130°. To add insult to injury, there may be, accompanying the temperature problem, a ventilation one.

Though cargo compartments are pressurized, on many aircraft they are sealed after loading as a fire prevention measure. In such cases, there is almost no ventilation and animals must survive on the air present at loading. Factors of time and overcrowding may conspire against an animal's chance of survival under these conditions.

We also know about incidents of animal crates being stacked near or directly next to dry ice, placed on board to preserve fresh flowers. I do not deny the worthiness of beautiful flowers, nor would I threaten the income of florists, but small live animals cannot survive in closed compartments with dry ice.

Another danger comes from the thoughtless and careless piling of crates on top of each other, and crowding them in with bulky cartons and luggage. In these circumstances, air supply can be drastically reduced, and it is not unheard of for crates and their occupants to be crushed.

This brings to mind still another problem—that of the crates themselves. Public enemy No. 1, in the opinion of many humane societies, is the slatted fruit crate. This container cannot withstand weight or pressure and it splinters easily, allowing frightened animals to injure themselves severely. Animals are often shipped in boxes which are too small to allow them to lie down and sit comfortably. In some cases, larger wild animals are in crates too large to confine them sufficiently to prevent injury. Shippers frequently fail to provide for adequate ventilation, water, or food. Often crates are so flimsy as to be easily crushed or broken, thereby injuring the animal, or giving him a way to escape. This sin of inadequate crating is often committed by pet owners.

UPON ARRIVAL

Once at their destination, the animals face a new set of dangers. Some can be shipped as special air freight, an arrangement offered by some carriers for packages of a certain size, which allows the animal to be claimed minutes after arrival. For many others, in particular those arriving on weekends, there may be a delay of several days. During that period there is no assurance that the animal will be checked, watered or walked. Sick and injured animals are frequently unattended. In fact, many freight receivers will not go near an animal which appears to be suffering.

Commercial pet stores and laboratories are the worst offenders. Because there is no emotional attachment to the animals,

there is insufficient incentive to be prompt about picking them up. Curiously, some humane society workers report that the Federal agencies are remiss in getting to the terminals when they should. Large and frequent shipments of mice and expensive primates, used by the Government for health research, are often left for several days before someone is dispatched to claim them. It is interesting, and sad in this case, that, along with the reluctance of the recipient to send a truck to the depot, the freight handlers traditionally have not had delivery services.

ANIMAL WELFARE ACT

There have been attempts to alleviate these problems. In 1970 Congress passed the Animal Welfare Act, which does afford some protection for airborne animals. However, its provisions are not adequate, nor are they followed or enforced. Under the 1970 law, exhibitors, dealers, and research facilities are required to meet certain standards for transportation of domestic animals.

Regulations promulgated by the Secretary of Agriculture under the act do provide a base upon which to build new regulations. They require that the transporting vehicles be mechanically sound and that the animal cargo compartments be clean.

The regulations are quite specific as to the transporting cages or crates. They must be well ventilated, yet sufficiently closed to protect the animal from the elements. They must be easily opened in the event of emergency, and they must be so designed that the inner temperature will not exceed the outside temperature. They must be constructed in such a way that the inside temperatures never go above 95 degrees and temperatures between 85 and 95 degrees are not present for more than 4 hours at a time.

The crates must be large enough to allow the animal to sit or lie in a natural position. Further regulation prohibits shipping incompatible animals in the same crate.

Crates without solid floors may not be placed one on top of the other; and all crates must be cleaned and sanitized between shipments.

Special attention is given in the regulations to trips which take more than 12 hours. In those cases, the vehicle must be stopped—this would obviously not apply to airplanes—and potable water made available to the animals for at least one hour. Adult dogs and cats must be fed once every 24 hours, and puppies and kittens every 6 hours. Dogs must be removed from the carrier at least once every 36 hours for water and exercise.

The regulations also name the attendant or driver as the person responsible for checking the animals and determining if any need veterinary care. If so, it is his duty to arrange for a veterinarian to check the animal.

MORE PROTECTION IS NECESSARY

The 1970 act and the regulations are all needed. But they are not enough. They are not specific to the problems of air transportation and they do not cover conditions at the terminals or the air freight warehouses. They do not place restrictions on retail pet dealers, or on those who earn only a small portion of their income from the breeding and raising of dogs and cats and the subsequent sale to dealers or research facilities. Clearly, new, stronger and more complete provisions are needed.

Mr. President, Senator BAKER has introduced legislation, S. 2217, which would lead to substantial improvements in the care and handling of animals transported by air. S. 2217 requires the Secretary of Transportation, in cooperation with the Civil Aeronautics Board, to complete a study of existing conditions in air transportation of animals within 60 days after enactment. Then 60 days thereafter, the Secretary would be required to promulgate regulations, including minimum standards, providing for the humane treatment of all animals in air transportation.

Mr. President, I am pleased to join as a cosponsor to S. 2217.

S. 2328

At the request of Mr. MCINTYRE, the Senator from Colorado (Mr. HASKELL) and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 2328, a bill to require the certain information about gasoline be disclosed to consumers.

SENATE JOINT RESOLUTION 147

At the request of Mr. MCINTYRE, the Senator from Iowa (Mr. CLARK), the Senator from Maine (Mr. MUSKIE), the Senator from California (Mr. TUNNEY), and the Senator from Connecticut (Mr. WEICKER) were added as cosponsors of Senate Joint Resolution 147, calling for a report on the People's Republic of China grain purchase.

REMOVAL OF COSPONSOR OF A BILL

S. 1103

At the request of Mr. HATHAWAY, his name was removed as a cosponsor of S. 1103, to provide for public financing of campaigns for nomination for election, or election, to the Congress of the United States.

SENATE RESOLUTION 168—SUBMISSION OF A RESOLUTION RELATING TO SOVIET TREATMENT OF INTELLECTUAL DISSIDENTS

(Referred to the Committee on Foreign Relations.)

Mr. MONDALE. Mr. President, newspaper reports of the past 10 days have revealed that the Soviet Government is waging new and intensive campaigns against Nobel Laureate Alexander Solzhenitsyn and physicist and civil rights advocate Andrei Sakharov.

Mr. Sakharov, the father of the Soviet hydrogen bomb, but also an outspoken advocate for the nuclear test ban, issued a manifesto in 1968 urging intellectual freedom and humanitarian rights. Since that time, he has become a leading Soviet civil rights activist. On August 25, he invited a group of foreign correspondents to his Moscow apartment and warned that—

Rapproachment without democratization is very dangerous. It might lead to grave consequences inside our country and contaminate the whole world with an anti-democratic character.

He has also stated:

Intellectual freedom is essential to human society—freedom to obtain and distribute information, freedom for open-minded and unfearing debate, and freedom from pressure by officialdom and prejudice.

Alexander Solzhenitsyn, perhaps the greatest Russian writer of this century, has also been subject to a barrage of criticism for his overtures to the West. Mr. Solzhenitsyn, saying that his life has been threatened by the KGB, reports that in the event he is imprisoned or killed, he has made provision for publication of "the main part" of his works, heretofore unpublished.

For the past 10 days, the Soviet Government has orchestrated a widespread campaign against these and other dissidents. Hundreds of letters and articles have been directed against these men in the pages of the Soviet press. Violinists David Oistiakh and Leo Kogan, warned that Sakharov is "stirring up the dying coals of the cold war." Composer Shostakovich accused him of "debasing the honor and dignity of the Soviet intelligensia."

It is feared that this campaign is being waged to prepare public opinion for legal action against Mr. Sakharov with the possibility of throwing him into a mental asylum, which is a common punishment for Soviet dissidents, or into jail.

Indeed, Mr. Sakharov suggested in Moscow Saturday that delegates to an international conference on schizophrenia in the Soviet Union next month demand to see people who, he said, were forcibly confined in psychiatric hospitals for political reasons. The American Psychiatric Association appeared to be taking up his suggestion.

This campaign of the Soviet Government to harass and intimidate those who have demonstrated enormous courage in advocating civil liberties, truth, and human decency, offends the conscience of free peoples everywhere. Indeed, in the First Circle, Solzhenitsyn asks:

Aren't writers supposed to teach, to guide? . . . And for a country to have a great writer—don't be shocked, I'll whisper it—is like having another government. That's why no regime has ever loved great writers, only minor ones.

I am therefore submitting a sense of the Senate resolution today which urges the President, in this period of relaxed international tensions and American-Soviet détente, to impress upon the Soviet Government the deep and growing concern of the American people with the continuing intimidation of these men and women who do not adhere to prevailing ideology.

It also urges the President to call upon the Soviet Government to permit the free expression of ideas by all its citizens in accordance with the Soviet Constitution and the Universal Declaration of Human Rights.

Finally, the resolution urges that the President use the medium of current negotiations with the Soviet Union, as well as informal contacts with Soviet officials, in an effort to secure an end to the repression of dissent.

Yesterday the National Academy of Sciences, in a telegram sent by Dr. Philip Handler, its president, to Dr. Mstislav Keldysh, president of the Soviet Academy of Sciences, warned that American scientists will refuse to participate in joint projects as long as Moscow continues to harass Mr. Sakharov. The cable stated:

Harassment or detention of Sakharov will have severe effects upon the relationships between the scientific communities of the U.S. and the U.S.S.R. and could vitiate our recent efforts toward increasing scientific interchange and cooperation . . .

Were Sakharov to be deprived of his opportunity to serve the Soviet people and humanity, it would be extremely difficult to imagine successful fulfillment of American pledges of binational scientific cooperation, the implementation of which is entirely dependent upon the voluntary effort and goodwill of our individual scientists and scientific institutions.

It would be calamitous indeed if the spirit of the detente were to be damaged by any further action taken against this gifted physicist who has contributed so much to the military security of the Soviet people and who now offers his wisdom and insights to that people and to the entire world in the interests of a better tomorrow for all mankind.

The National Academy of Sciences is to be commended on issuing this bold statement of humanitarian concern and solidarity with its Soviet counterpart.

I was therefore extremely dismayed to learn that HEW Secretary Weinberger, upon his return from a tour of health facilities in the Soviet Union and Poland, sharply criticized the National Academy of Sciences for sending this telegram and for "firing brickbats through the daily press." Secretary Weinberger declared that Soviet-American scientific cooperation must not be affected by what he described as "an internal Soviet affair." I totally reject this callous and shortsighted position which demands that we ignore actions which suppress intellectual freedom and stifle dissent. I would hope that this attitude does not represent the official position of the administration. If it does, there is all the more reason for the Senate to pass this resolution with particular urgency.

I would hope, rather, that this body will follow the lead of the American scientists and approve a resolution which would put the Senate on record as opposing Soviet repression and intimidation.

Mr. President, let me emphasize that these Soviet actions also violate the obligations of the Soviet Union under article 5 of the "International Convention on the Elimination of All Forms of Racial Discrimination," which was ratified by the Soviet Union in 1969. This section guarantees:

The right of everyone . . . to equality before the law, notably in the enjoyment of the following rights . . . the right to freedom of thought, conscience, and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and association . . .

In addition, under article 19 of the "Universal Declaration of Human Rights"—a declaration that was unanimously adopted by the U.N. in 1948—

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of subject.

Last week, in ongoing trials against other Soviet dissidents, Soviet historian Pytor Yakir and economist Viktor Krasin gave chilling public confessions in which they admitted working for anti-Soviet organizations and receiving payment from Western journalists for distributing newsletters critical of the Soviet Union. For many, their memorized statements of guilt conjures up again the public confessions at the Stalinist public trials in the late 1930's and reminds us of the sham trials described by Arthur Koestler in "Darkness at Noon."

Mr. President, the pattern of persecution against dissidents closely parallels the persecution of those Jewish Soviet citizens whose only crime is to want to establish new lives in Israel. It also closely follows new incidents of government-sanctioned anti-Semitism, such as the shameless outbursts at the World University Games against Soviet Jews who voiced support for the Israeli team and against the Israeli basketball players themselves. The press reported that Soviet plainclothesmen roughed up Soviet Jews as they were leaving the games.

These most recent Kremlin crackdowns raise new questions about the importance of humanitarian concerns as détente with the Soviet Union is pursued. Solzhenitsyn's warning of "woe to any nation whose literature is cut off by the interposition of power" might eventually be heeded by the Soviet Union. But for now, this body must express its condemnation of such practices and urge that progress toward détente be accompanied by continued pressure on the Soviet Union for greater respect for human rights.

The resolution reads as follows:

Whereas, physicist Andrei Sakharov, novelist Alexander Solzhenitsyn, historian Pytor Yakir, economist Viktor Krasin, and other citizens of the Soviet Union have demonstrated enormous courage and intellectual honesty in advocating and defending the importance of fundamental civil and political liberty, the necessity for the free and unrepressed dissemination of ideas, and the meaning of basic human decency although faced with increasing harassment and imminent danger of criminal sanction; and

Whereas, the intensive and thorough campaign of the Soviet Government to intimidate and deter those who have spoken out against repression of political and intellectual dissent profoundly offends the conscience of a free people: Now, therefore be it

Resolved by the Senate, That it is the sense of the Senate that the President of the United States of America shall take immediate and determined steps to—

(1) impress upon the Soviet Government the grave concern of the American people with the intimidation of those within the Soviet Union who do not adhere to prevailing ideology; and

(2) call upon the Soviet Government to permit the free expression of ideas by all its citizens in accordance with the Soviet Constitution and the Universal Declaration of Human Rights; and

(3) use the medium of current negotiations with the Soviet Union as well as informal contacts with Soviet officials in an effort to secure an end to repression of dissent.

DEFENSE AUTHORIZATION BILL, 1974—AMENDMENTS

AMENDMENT NO. 475

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

Mr. BAYH. Mr. President, I am today submitting together with the distinguished senior Senator from Ohio, Mr. SAXBE, an amendment to H.R. 9286, the defense authorization bill, to delete continued funding for the Army's SAM–D missile system. The SAM–D's unit cost has escalated 350 percent since it was approved for development in 1967. It is seven times as expensive as the improved HAWK system it is supposed to replace, and the improved HAWK is a substantially new system just now beginning to be deployed. It is essentially a European weapon, justified for the protection of the 7th Army, yet our NATO allies have made it clear that they consider it much too sophisticated and expensive. Senator SAXBE and I have carefully reviewed studies of the SAM–D by the Research and Development Subcommittee and the General Accounting Office and are convinced that the SAM–D is precisely the type of "excessively expensive weapon system" which the Armed Services Committee in its report on this bill called upon the military to "resist."

This morning I testified before the Defense Appropriations Subcommittee setting forth in some detail what we believe to be the case against SAM–D. I ask unanimous consent that my testimony be printed at this point in the RECORD.

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

TESTIMONY OF SENATOR BIRCH BAYH

Mr. Chairman, I very much appreciate the opportunity which you and the members of your Subcommittee are today giving to the other members of the Appropriations Committee and of the Senate to express our views on defense expenditures. A few weeks ago, the United States finally brought to an end its involvement in the Indochina war—the longest and in many ways perhaps the most costly war in our history. This year, therefore, seems to me to be a particularly appropriate time for us to take a serious look at the level of resources we are devoting to national defense and whether these resources are being spent wisely. In spite of the fact that we have ended military operations in Indochina and in spite of the fact that we have taken a significant step with SALT I towards an arms accord with the Soviet Union, the level of defense expenditure continues to grow, this year by $5.6 billion. I do not believe that such continued growth is necessary for the maintenance of a fully adequate defense posture.

As Secretary Packard, one of the most respected experts in this field, noted in 1969: "The most certain way to waste resources is to spend hundreds of millions of dollars on a development and then conclude we will not need what we are developing." Likewise, as the distinguished Chairman of the Armed Services Committee, Senator Stennis noted in 1971: "If we can afford a permanent force structure of only one-fifth as many fighter aircraft or tanks as our potential adversaries—because our systems are about five times more expensive than theirs—then a future crisis may find us at a sharp numerical disadvantage." Although Chairman Stennis was speaking in terms of aircraft and tanks, we clearly face a similar situation with regard to expenditures on air defense. The warnings of responsible defense officials and

members of Congress against excessive complexity and cost in any one weapon system were apparently not heeded in the decision to go ahead with the weapon system I will discuss today.

I have taken the time to examine with some care the programs and projects for which the Defense Department has requested funding for this fiscal year. Included within that request are several weapon programs about which I believe serious questions arise that need to be answered before we in the Congress approve their funding. One such weapon system which I would like to discuss in some detail with the Subcommittee today is the Army's request for continued engineering development funds for its SAM–D air defense missile system. This weapon system could very well become the Army's version of the C–5A. Already its cost is 350% higher than estimated, but it is still seven years from production. Per unit it is more expensive than the F–14. Congress balked when the Main Battle Tank was to cost three times more than the M–60 tank it was to replace. SAM–D costs seven times more than the Improved HAWK now being deployed, according to current estimates.

In my view, the SAM–D program exhibits many of the characteristics identified with questionnaire weapons in the past. These include changing capability requirements, unrealistic threat assessments, persisting technical uncertainties, postponed testing, incomplete cost-effectiveness analysis, escalated costs for fewer units and inadequate justification for the quantities to be procured. I would like to address each one of these problems in turn.

The SAM-D system was originally conceived for defense against tactical or intermediate range nuclear missiles. The interception of such weapons required the development of a new and very rapid type of radar to combine the previously separated tasks of surveillance, target-tracking, and missile guidance as well as a very fast missile. However, after much of the initial development work had been done, both the contractor and the Army apparently concluded that effective interception of such missiles was simply *not* within the current state of the art. They then had a weapon system in search of a mission, and that has now become one of defense against manned aircraft. Yet in spite of this drastic change in mission, none of the technical characteristics were altered. There is good reason to believe that some of the SAM-D's characteristics which would be necessary if it were to be used against tactical ballistic missiles may actually be disadvantageous when directed against manned aircraft. For example, the wingless missile is easy to outmaneuver. SAM-D can be exhausted by decoys, can be destroyed by radar-seeking or infrared missiles, or simply by attack from the side or the rear. Each fire section is, after all, a high value target. The question arises then, are we not putting too many eggs in one basket?

THREAT ASSESSMENTS

The essential justification for any weapon system must lie in our best assessment of what military threats our forces will be faced with in the future—in this case in the 1980's and 1990's. It we are to be able to make any rational judgment at all about how best to spend our defense dollar, it is crucial that we have the best possible estimates of our potential enemy's likely capabilities. Such assessments are the primary responsibility of the Defense Intelligence Agency, and it is my understanding that all the branches of our Armed Forces are expected to base their planning on the estimates that are provided by D.I.A. Yet inexplicably, the threat estimates on which the Army bases its case for the SAM-D are vastly different from those of D.I.A. Although the precise figures are classified, it is possible to speak in terms of rough comparisons.

The documentation supporting the threat which SAM-D will be required to counter is based on estimates made by the Army in 1970. When we compare these 1970 Army data with the D.I.A. estimates for the same period we find that as to aircraft models currently known to exist the Army's estimates are approximately 44% higher than those of D.I.A. As to models of aircraft not now known to exist but postulated for future development (Advanced Tactical Aircraft) the Army's estimates exceed those of D.I.A. by about 270%. In addition, the Army assumed that these future models would have two to six times more damage capability than do presently known models.

Furthermore, the Army assumes that strategic aircraft would be used for attacks against the 7th Army in Central Europe and estimates that the number of such aircraft available to the Soviets for this purpose to be 340% greater than the number postulated by D.I.A. I am, of course, no expert in strategic theory, but I would question whether either the Soviets or the United States would commit their strategic bomber forces for this purpose, particularly since we know that the Soviets have a very limited number of such strategic aircraft.

Moreover, if one looks at the most recent D.I.A. threat estimates (as of 1972) one continues to find essentially the same discrepancy. For example, the number of Advance Tactical Aircraft now postulated by D.I.A. continues to show a difference of over 250%. The major difference between the 1970 and 1972 D.I.A. estimates involves the assumed number of reconnaissance aircraft, as well as the time period for which present models will be retained. Thus, although the Army's and D.I.A. estimates as to current aircraft are basically similar, there remains the very substantial discrepancy as to future models.

Finally, and perhaps most importantly, the Army in its justification studies assumed that Army Air Defense would have to do the job all by itself by ignoring the contribution of United States Air Forces attacks on their airfields and allied air forces and air defense systems. If this is true, we in the Senate should perhaps reconsider authorizing the funds for maintaining the tactical air forces, as well as purchasing new aircraft such as the F–111 and the F–15.

TECHNICAL UNCERTAINTIES

Although under the Department of Defense's own regulations major new weapon systems are not to be moved into engineering development until technical uncertainties are resolved by adequate testing, these requirements have been waived as to two crucial aspects of SAM-D. Most importantly the target-via-missile (TVM) guidance system which has no technical or operational precedent was never flight tested. This in spite of the fact that such a TVM guidance system had twice been rejected by the Navy, once with its Typhon system and later with its Aegis system, as being too risky and not necessary for an anti-aircraft weapon. The Army says that computer simulation testing has insured that the guidance system would operate properly. But by the time that the guidance system's capability is actually demonstrated, and there are those who doubt that it ever will be, we will have spent some $793 million on the program. Secondly, the critical warhead-fusing device which is again without technical precedent will not, under present plans, be flight tested for several years. In addition, there are other technical uncertainties which normally should be resolved before proceeding to engineering development which have not been adequately dealt with. Studies are apparently underway, for example, to determine how to provide SAM-D with a 860 degree radar coverage instead of the substantially more limited coverage of which the present phased-array radar is capable. Furthermore the phased-array radar has never been deployed for field use.

HIGHER COSTS—FEWER UNITS

The most recent cost estimates of the total SAM-D system as of the end of 1972 are $4.377 billion. This compares with initial cost estimates made in 1967 of $4.031 billion. However, although the currently estimated total cost has thus increased by only about 9% since 1967, the planned procurement of SAM-D tactical fire sections has decreased 68% and the total number of missiles to be purchased has decreased 52%. Thus, the unit costs of one tactical fire section is now about three and one-half times the initial estimates, a level of cost escalation which we unfortunately are all too familiar with in other questionable weapon systems.

SAM-D AND U.S. FORCE LEVELS

One technique which the military has used many times in the past in convincing Congress of the cost-effectiveness of a particular weapon system is to maximize the number of such weapons needed to protect U.S. forces in order to reduce the unit costs. In justifying the number of SAM-D units to be procured, the Army made the following assumptions, all of which appear to me to be highly questionable:

(1) That the United States will have more than three times the number of active divisions in Europe, as compared with the present level of four divisions, a number which itself seems likely to be reduced before the SAM-D becomes operational in the early 1980's.

(2) A world-wide force level of 21 and ⅓ active divisions, as compared with a present authorized strength of 11 and ⅔ active divisions.

(3) That the United States will be required to provide SAM-D defense not only for the 7th Army in Europe and related installations, but also for other logistic and port facilities. In other words, that our NATO allies will not be able to provide any such defense themselves.

(4) That a substantial number of SAM–D units will be moving at any one time and therefore be inoperative.

(5) That non-European U.S. forces throughout the rest of the world would be faced with the same threat in quantity and quality and therefore require the same level of SAM–D defenses. No justification is given for the extrapolation of the European threat levels to the rest of the world. Although, I am no expert, it is difficult for me to imagine that the North Koreans or the Chinese for example will possess the same degree of technical sophistication as do the Soviets.

THE IMPROVED HAWK—AN ALTERNATIVE TO THE SAM–D

In 1972 the Army began deployment of a new air defense system for the field army which provided substantially improved effectiveness over the older Nike Hercules and basic HAWK. Although this system, called the Improved HAWK represented a modification of the earlier HAWK, it is in reality a significantly different and more sophisticated weapon. The Army itself acknowledged that "either the Improved HAWK or the SAM–D weapon system is capable of providing an adequate defense" but went on to conclude it would be more expensive to procure enough Improved HAWKS to meet its postulated threat than to develop SAM–D. The problem is that there is substantial reason to believe that the Army used quite different criteria in comparing the cost effectiveness of the two systems. For example, the operating costs of the Improved HAWK were expended over a period of 23 years, while those of the SAM–D for 15 years. More importantly, the Improved HAWK is already in production and deployment has begun. Thus the technical and cost risks associated with any new weapon system have now been minimized. The SAM–D system has, however, just entered engineering development, and as I have previously pointed out, certain critical capabilities of the system have yet to be

demonstrated. If the Army had used identical criteria in simulation and costing for the two air defense systems, their conclusion might well have been that Improved HAWK was more cost effective than the SAM–D. Accordingly, the General Accounting Office in their study concluded that a new, updated cost-effectiveness study may well be warranted in view of the "changes made to the SAM–D performance characteristics, quantities, and additional changes contemplated, as well as the product improvement program on the Improved HAWKS." The significant cost increase that has taken place since the 1970 study by itself may justify a new cost-effectiveness study.

The Army's primary justification for the technical superiority of SAM–D lies in its planned ability to fire at many targets at the same time. Since many ballistic or tactical missiles can be fired at the same time, simultaneous engagement of many incoming warheads is crucial if that is the threat you are attempting to counter. Aircraft attacks, on the other hand, are generally flown in waves with several minutes between flights, for a total attack duration of 15 to 30 minutes. Against attacking aircraft, therefore, sustained firepower is normally more important than instantaneous firepower. In this respect the Improved HAWK has a substantial advantage due to its much shorter reloading time. For example, during a 30 minute attack period, the Improved HAWK with its substantially more rapid reloading capability could fire many more missiles, particularly when deployed in the TRIAD configuration, whereas SAM–D would be limited to the missiles initially on its launchers.

CONCLUSION

In conclusion, Mr. Chairman, the SAM–D is an extremely complex and extremely costly system which demonstrates many of the problems we have seen arise with other weapon systems in the past. Its cost growth has already exceeded in percentage terms what we experienced with the C5–A. It is seven times more expensive than the system that it is designed to replace. The cost per unit is so high that it will become a high value target to the enemy and the level of resources that the enemy will have to expend to defeat SAM–D may well be less than the level of resources we are devoting to its production. Within any reasonable budget projection we will not be able to purchase enough SAM–D's to provide total protection for our forces.

I would seriously question whether devoting a large percentage of the funds available to the Army for research and development of SAM–D is wise in view of the repeatedly stated urgent need for modernization of the basic Army. Weapons such as forward air defense, tanks, anti-tank weapons, guns, and support vehicle, form the backbone of any modern Army. Congress has clearly decided that funds available for defense expenditures are not unlimited. Therefore, it is essential to make careful decisions about how these limited funds are allocated among the Army's needs.

Perhaps most importantly, the question arises of the wisdom of spending $1.1 billion in research and development alone on a weapon system whose justification is based on the Soviet threat to our forces in Europe. As the Subcommittee is aware there is a substantial likelihood that the level of these forces will be reduced (and certainly not increased as the Army has assumed) through discussions currently going on between the NATO countries and those of the Warsaw Pact. Continuation of full scale engineering development of SAM–D would not appear to be warranted since we do not know what, if any, U.S. forces will remain in Europe by the 1980's.

Experience has shown us that the United States has generally been unable to sell systems as expensive and complex as SAM–D either to our allies or to neutral countries. Given the current difficiency in our balance of payments, shouldn't we rather develop systems which can be more readily sold to these countries?

Finally, for almost 25 years the United States has borne the major burden of defending our European allies. Such expenditures were essential in the earlier post World War II period. It is now time, however, for these nations to assume an increasing share of this burden. Since as I have indicated the SAM–D is justified by the Army itself as being necessary for the purposes of European defense, wouldn't it be reasonable to expect those nations to pay for or at least share a major portion of the costs of SAM–D's development? As Senator Stennis indicated in the floor debates on the Defense Authorization bill last year this "system is extremely costly, and I believe that a more simple system can be available. Also, this is a weapon primarily welcomed by NATO to be used by the Army in Europe, although it can be used in the United States against attack from aircraft." (CONGRESSIONAL RECORD, vol. 118, pt. 20, p. 26027.) If our NATO allies are not now willing to participate in its development costs, then I can see no reason why we should bear this burden alone. If the Europeans believe in the end that they cannot afford a system as costly and complex as SAM–D, I would raise the question whether, with so many demands on our limited resources, can we?

NOTICE OF SUBCOMMITTEE HEARINGS RELATING TO LEGAL FEES

Mr. TUNNEY. Mr. President, I wish to announce that the Judiciary Subcommittee on Representation of Citizen Interests will hold 6 days of public hearings on the subject of legal fees. The schedule is as follows:

Wednesday, September 19, 9:30 a.m., room 2228, Dirksen Office Building: Consumer access to attorneys.

Thursday, September 20, 10:00 a.m., room 2228, Dirksen Office Building: Minimum fee schedules.

Monday, October 1, 9:30 a.m., room 2228, Dirksen Office Building: Government regulation and subsidy of legal fees—The Black Lung Benefits Act of 1972.

Tuesday, October 2, 9:30 a.m., room 6226, Dirksen Office Building: Government regulation and subsidy of legal fees—Veterans' benefits under title 38 and the Criminal Justice Act.

Thursday, October 4, 9:30 a.m., room 2228, Dirksen Office Building: Court awards of attorneys' fees.

Friday, October 5, 9:30 a.m., room 2228, Dirksen Office Building: Court awards of attorneys' fees—continued.

The members of the subcommittee, in addition to myself, are Senators ERVIN, BAYH, COOK, and MATHIAS.

ADDITIONAL STATEMENTS

SENATOR MUSKIE DEFENDS SENATE WATERGATE HEARINGS

Mr. MANSFIELD. Mr. President, last evening, in a speech to students at Georgetown here in Washington, our distinguished colleague from Maine (Mr. MUSKIE) put into focus the relationship between the legislative work of the Congress, and the Watergate hearings being conducted by the Senate Select Committee on Presidential Campaign Activities.

His analysis concluded that the Watergate inquiry is "a vital exercise of one of the legislative branch's most important functions: to inquire into all aspects of Government, to expose official impropriety, to inform the Nation and to lay out a record on which we can build new safeguards for the democratic process."

But he also pointed out that the Senate inquiry "does not preclude constructive legislation for a stronger society"—the kind of work we in Congress have been performing throughout this year, and which we expect to continue.

Mr. President, I commend Senator MUSKIE's speech to my colleagues and ask unanimous consent that it be printed in the RECORD.

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

SPEECH BY SENATOR EDMUND S. MUSKIE

The Watergate affair is an essential part of the public business. It is not a wallow for partisans; it is a revelation for all Americans of the danger that unchecked executive authority inevitably poses to individual liberty. And until all its facets have been uncovered and understood, we will not be in a position to correct the damage that has been done to our confidence in ourselves and in our leaders.

The President and the Vice President would like you to believe that the Senate inquiry into the complex of political corruption that goes by the name of Watergate is somehow more damaging than the corruption itself. Their attitude is simple: the fault is not with those who abused power but with those who want that abuse investigated and corrected.

The tactic is an old one—discredit your critics when you can't contest their facts—but it is a hollow evasion of responsibility. It reminds us of the Bourbon Kings of France of whom Talleyrand reputedly said: "They have learned nothing and they have forgotten nothing."

The President's long message to Congress yesterday was part of the same political exercise. His legislative laundry list was apparently meant to remind us of his priorities, but, if that was the purpose, the effort miscarried.

In the year that Watergate has shown us how urgently we need substantive changes in the way we finance political campaigns, the President urges us to establish a commission to study campaign reform.

We know the illness; what we need is a cure, not another diagnosis.

In the year that Watergate has revealed the deception with which government secrecy infects our system, the President urges us to enact new secrecy laws that risk establishing a degree of official censorship never known in the United States. We have seen how officials can cover up their misbehavior; what we need is positive steps for disclosure, not more protection for wrongdoing.

In the year that has given us the highest rate of inflation in our history—because the President mismanaged the wage and price control authority Congress gave him to use—we do not need more pious lectures on economy in government. And we do not need programs that ask the poorest Americans—those worst hit by price increases—to bear an even greater sacrifice.

Finally, in a year that has seen the President treat Congress only as an obstacle, not a responsible partner in government, we do not need any more homilies about "the preservation of the requisite powers of the executive branch." What is at issue is the preservation of the constitutional balance between the branches of government.

A President who refuses to execute the

laws Congress enacts and who questions the authority of the courts to judge the legality of his actions is a President who seeks to place himself above the law. The President can call for cooperation with the Congress as much as he likes, but he will have to understand if we treat his promises with a measure of skepticism.

A long time ago John Mitchell asked observers of the Administration to "watch what we do, not what we say." The President's real willingness to work together with the Congress has yet to be tested. When the test comes, his actions are going to count far more than his words, even if the words now are lightly flavored with honey.

Until he decided that the separation of powers doctrine made a convenient cloak for him to hide behind. President Nixon was far more interested in monopolizing power than separating it. Impounding funds Congress had appropriated—to gut programs he had opposed but failed to stop; sending bombers to devastate Cambodia in secret—because he knew Americans would not tolerate such actions if they were known; withholding information from Congress—in order to paralyze the legislative branch by denying it knowledge; and destroying the Office of Economic Opportunity by putting at its head a man whose name he would not even send to the Senate for confirmation—in all these ways the President attempted to usurp authority. And in all these attempts, the Congress and the courts forestalled him.

The impoundments have been invalidated by court order. The Cambodian bombing has been halted by order of Congress. The illegally appointed head of the OEO has been forced out of office. And the courts are now considering a congressional subpoena against the President for the tape recordings he thinks only he and H. R. Haldeman have the right to hear.

So the system designed in 1789 has proved that it can still respond to crisis. The response comes slowly and many of us may think it comes imperfectly. But compromise has been the genius of American politics since the Constitution was written. Over time, consensus—not confrontation—has been the guarantee of our liberty.

Of course, we are not going to move completely out of our impasse unless the President now undertakes a more responsible course. First of all he must stop blaming Watergate for the collapse of his other policies.

The cost of living is not going to go down by making Watergate go away. Our reservoirs of fuel are not going to fill up by deflating the interest in Watergate. High prices—high interest rates—high pollution levels—high stakes in the Middle East—have nothing to do with the low political practices of the Committee to Re-elect the President or the insistence that those practices be uncovered and punished.

Secondly, the President must see that he can only regain the people's confidence if he moves to restore confidence in the integrity of the institutions his associates perverted. As long as he continues to condemn his critics—instead of the criminal behavior they attack—and to blame them for all his troubles, he will also continue to deny dissent its rightful place in our political tradition.

If he gives only lip service to the notion that campaign practices—particularly campaign financing—must be reformed, he leaves the door open to a future of fraud in our political life.

If he refuses to put new restraints and adequate outside supervision on the agencies which are supposed to enforce the laws, he cannot free the government's power to tax, to investigate and to regulate from the threat of political influence.

His power to harm our system has been curbed by exposure of that power's misuse. But his power to strengthen the system and to redeem his errors is limited only by his ability or willingness to see the need for action.

Without the Senate investigation into the Watergate scandal, we might not know how close we came to tyranny. And we might not have found within the system the strength to resist. But the hearings have educated Americans again to the value of their liberties and to the constant danger that government poses to individual freedom.

For that educational function, if for no other, the Senate hearings must continue. Until we know the full story of the corruption Watergate symbolized in our political process, we will not know enough about how to prevent another near calamity. Until Americans understand fully how their right to vote—their voice in shaping policy—can be stifled by electoral fraud, they will not know how to protect that power from another attack.

The work the Senate committee is doing—and must finish—is not, as President Nixon claims, a partisan scheme to destroy him or a debilitating obsession with minor misconduct. It is, rather, a vital exercise of one of the legislative branch's most important functions: to inquire into all aspects of government, to expose official impropriety, to inform the nation and to lay out a record on which we can build new safeguards for the democratic process.

It is possible, of course, that the committee will hear new and conclusive evidence that either exonerates the President of charges of conspiracy or implicates him so deeply that impeachment becomes necessary. It is possible, as well, that the committee will obtain proof that men in the Democratic Party broke the rules of fair political conduct in the 1972 campaign. Perhaps such evidence will deepen public cynicism about all politicians.

But the committee's work, as I see it, must inevitably strengthen the resolve of citizens to take part in politics, to clean it up if necessary, to monitor the behavior of those who win office, to make the concerns of ordinary men and women heard and felt in government. For the main lesson of Watergate is that remote and isolated rulers become oppressors, that only an open political process can produce a government the people trust.

The overriding job of the Watergate investigation is to make the truth known and by doing so to restore the public's confidence in the institutions of government.

The Senate committee is not a perfect instrument for determining all the truth. Issues of criminal guilt or innocence can only be resolved in court. But the truth about official conduct that is grossly improper—if not technically illegal—can only be made known through a congressional investigation that has captured America's attention.

I do not think the process hurts us; we can stand to know the truth about ourselves because our basic decency is far stronger than our temporary wrongdoing.

While the investigation proceeds, of course, the Congress and the President have every opportunity to work out their other differences and to enact legislation that will help us meet our pressing social needs. Continuing the investigation does not foreclose any other options.

We can tackle our energy problems constructively if the President will recognize that conservation of existing fuel supplies is as important as the development of new ones. We can bring government spending under control if the President will recognize that the defense of our freedom depends as much on sound government programs in our cities as it does on military force abroad.

We can build the schools, the hospitals, the housing and the transportation systems we need if the President will recognize that the Federal Government's obligation to ensure a fair distribution of the revenues it collects is as important as the desire to make that distribution more responsive to varied local conditions.

Energetic investigation of wrongdoing does not preclude constructive legislation for a stronger society. The President poses a contradiction that is not real. If he will drop that pose and implement his promises of cooperation, the Congress will respond to fair treatment, as it will not respond to threats.

I was moved and deeply disturbed when one young man who had worked in the White House told the Senate committee that he would advise others considering careers in Washington to "stay away." I can appreciate his personal despair, but I cannot share it.

I would hope that four years from now when you are ready to graduate, government work will appear to many of you as it does to me—an honorable choice, an opportunity to engage private energies in making public choices, a chance for dedication to translate ideals into practice.

If the Watergate scandal were to contribute only to greater citizen apathy in America, it would have done greater damage to our system than the actual attempt to subvert one political campaign or sidetrack one criminal prosecution. But my reading of the reaction to Watergate is more hopeful.

It has reaffirmed the ability of the Congress, of the courts and of an aroused citizenry to check the abuse of executive power. And it has reconfirmed our duty as Americans—the duty of demanding the truth from those who hold public trust and the duty of participating vigorously and critically in the process of choosing policy and the individuals who make it.

It may even have taught us the patience Emerson urged on his countrymen 125 years ago when he wrote: "Eager, solicitious, hungry, rabid, busy-bodied America: catch thy breath and correct thyself."

SENATOR CHARLES MATHIAS

Mr. SCOTT of Pennsylvania. Mr. President, I was very pleased to note that the distinguished national columnist, Marquis Childs, has recently written about the services that the Senator from Maryland, Senator CHARLES MCC. MATHIAS, has performed and about the respect and trust which he has inspired throughout this body and his home State.

Senator MATHIAS' stature has risen during his 8 years of service in the House of Representatives and his 5 years with us in the Senate. And I am confident in predicting that the best is yet to come.

I would like to ask unanimous consent that Mr. Childs' column be printed in the RECORD.

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

INDEPENDENCE KEEPS MATHIAS CLEAN

(By Marquis Childs)

WASHINGTON.—The late summer smog in this capital is compounded by the miasma of doubt and suspicion that is a heritage of Watergate.

How much President Nixon has done to dispel the fog by his televised address the days ahead will tell. As for his Vice President, Spiro T. Agnew, the cloud hangs heavy over his head growing out of the charges of corruption and fraud in the letter sent him by the United States district attorney of Baltimore, George Beall, notifying him he was under investigation.

Since the Agnew story broke with the charges based in large part on Mr. Agnew's

record as Governor of Maryland, the media have had a field day with the politics of that ancient state. A catalogue of horrors is starred with the conviction of former Senator Daniel B. Brewster for accepting a bribe.

Against the background of gloom and doom, this observer would like to record an example that goes directly contrary to the current cynicism that all politicians are crooked. In Senator Charles McC. Mathias, Jr., Maryland has one of the ablest men in the Congress. A Republican, he defeated Mr. Brewster, a Democrat, in 1968, which means he will be up for re-election next year.

Mr. Mathias is one of perhaps a dozen Republican Senators who on issue after issue have asserted their indepednence. They have been in effect cut off from the Nixon administration almost as completely as though they were of the opposition party.

Asked when he had last visited the White House, Mr. Mathias recently replied: "When I was there the last time the food was good, the wine was good and Lyndon Johnson was a gracious host."

Although the election is a year off, these independents, along with other Republicans of similar outlook in the House, are brooding on their fate as they touch base with the voters. It is not merely the shadow cast by Watergate over their party. As he did in the 1972 campaign, the President has been blithely indifferent to the fate of congressional candidates.

One of the White House lists that surfaced during the Watergate hearings was of 100 Democrats friendly to the administration in whose districts Republican efforts were to be held to a minimum.

Mr. Mathias and likeminded Republicans realize they will be on their own in 1974. Even if the President should decide to give aid and succor to those who have often dissented from his policies, it is doubtful how much his help would count. Last year he went into Rhode Island to boost the former secretary of the Navy, John H. Chaffee, to defeat Senator Claiborne Pell. Mr. Pell won by a comfortable margin.

Voting to cut off all bombing in Cambodia, Mathias opposed the August 15 compromise as a capitulation to the President's war policy. He voted against the President's nominees to the Supreme Court, Clement F. Haynsworth and G. Harold Carswell. The last was the unforgiveable sin, as the President made plain when he excoriated the Senate for turning down the two candidates he had proposed.

Countering the cynical admonition that surfaced in the Watergate hearings—stay out of politics and government—Mr. Mathias came up through the political ranks. After service in the Navy, he was assistant attorney general of Maryland and later was elected to the House of Delegates. He served four terms in the House of Representatives before his election to the Senate.

While it is much too early to indulge in predictions about '74, if able, independent men like Mr. Mathias are knocked off next year the tragedy of Watergate will be multiplied by a geometric ratio.

His roots are deep in his native state and he has moderate independent means, an advantage in these times when the smell of outside money sets the bloodhounds of righteousness to baying.

As in other states, the Democrats in Maryland are in disarray. They are snarled in the same web of campaign contributions and contributions in which Mr. Agnew is caught up.

The Vice President as a Marylander is continuing to make the correct political moves. He went down to the Eastern Shore to speak at a bull roast for Robert E. Bauman, the Republican candidate in a special election to fill the seat of William O. Mills. Accused in a matter involving campaign contributions, Mr. Mills committed suicide, rated a victim of the current atmosphere. Those who knew Mr. Mills were astonished, saying he could easily have refuted the charge.

What happens before the grand jury in Baltimore will determine far more than the fate of the former Governor who was plummetted into national fame in the vice presidency. The outcome can set the stage not only for '74 but for 1976.

RECOVERY OF STOLEN SECURITIES

Mr. JACKSON. Mr. President, confidential information provided by the Senate Permanent Subcommittee on Investigations to the New York district attorney's office has led to the recovery of $1 million in stolen securities and the arrest of three men connected with organized crime.

The New York district attorney's office reported that two suspects—Anthony Vinci and Robert Longo—were arrested Wednesday night in a Manhattan hotel with $500,000 in New York City Housing Agency bonds which had been stolen last month from the brokerage firm of duPont, Walston & Co., Inc.

The suspects, who had planned to fence the stolen securities through organized crime channels, were charged with grand larceny, conspiracy, and other crimes, the district attorney's office said.

The district attorney's office has also recovered in the past few days another $500,000 in bearer bonds which were being smuggled out of the firm of Hornblower & Weeks-Hemphill Noyes through the mails. As chairman of the Investigations Subcommittee, I wish to announce that this recovery also resulted from information provided by the subcommittee. A third suspect, Charles Tuzzolini, was arrested Thursday morning in connection with the thefts from Hornblower & Weeks. He was also charged with grand larceny and conspiracy.

The district attorney's office reported that the three suspects are connected with organized crime.

Both of these recoveries, which total $1 million, came about because of information provided by the Investigations Subcommittee to the New York district attorney's office.

Since 1971, when this subcommittee first began looking into the role of organized crime in the stolen securities racket, Senate investigators have exchanged information with local, State, and Federal law enforcement agencies.

The district attorney's office in New York—with the district attorney himself, Frank Hogan, showing the way—has been especially cooperative with this subcommittee in assisting us. I am pleased to note that we are able to help Mr. Hogan and his investigators as well.

The most recent recoveries of stolen securities bring to a total of $5.5 million those stolen stocks and bonds and other securities which have been captured, because of confidential information provided by the subcommittee to law enforcement offices.

The Investigations Subcommittee is conducting an inquiry into the worldwide traffic in stolen and counterfeit securities and the key role played by organized crime in this racket.

Witnesses before the subcommittee have testified that stolen, lost, or bogus securities totaling $50 billion are being used to perpetrate frauds in the United States and in major European banking centers such as Zurich, Brussels, and London.

Previously, subcommittee investigators provided information to law enforcement agencies that led to these actions:

In Los Angeles on April 29, 1971, the Organized Crime Strike Force of the Department of Justice recovered $400,000 in stolen U.S. Treasury bills and arrested four persons for possession and interstate transportation of stolen securities.

On May 5, 1971, the New York District Attorney's Office recovered $2.6 million in stolen stock certificates and arrested seven persons who were charged with grand larceny.

In Las Vegas on May 26, 1971, the Clark County Sheriff's Department recovered a $1 million U.S. Treasury note which had been stolen from the Chase Manhattan Bank. Three persons were charged with possession of interstate transportation of stolen securities.

On September 17, 1971, the Justice Department's Organized Crime Strike Force in New York recovered $500,000 in five stolen U.S. Treasury bills and arrested one person who was charged with their possession.

One recent witness before the Investigations Subcommittee asserted that if all the securities in the free world were called back to be authenticated, there would be a serious economic setback, because so many of them are stolen or counterfeit.

This is a problem that poses a threat to the very foundation of our economy—and the economies of most of the major nations in the world.

The uses of stolen securities are varied. Organized crime figures use them to establish credit and as collateral on loans. They launder them in Switzerland and elsewhere.

There was a time when the underworld was not interested in stealing securities. They wanted cash only. But that has changed. Today securities are a commodity much in demand among criminals, particularly in organized crime as the big crime syndicates are moving more and more into legitimate pursuits as a way to "cleanse" their illegally gained profits.

The Investigations Subcommittee has already documented in considerable detail the way the traffic in stolen securities operates. Our inquiry is continuing. New hearings will be held this fall.

This recent action by the District Attorney of New York is a timely reminder that organized crime will exploit any situation where it can turn an illicit profit.

INTERNATIONAL FINANCIAL INSTITUTIONS — SWEARING-IN CEREMONY

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in the RECORD the remarks of Secretary of the Treasury Shultz at the swearing-in ceremony of various U.S. officials of the International Financial Institutions, and an article published in the New York Times on Monday, August 20, 1973.

I am particularly pleased by the swearing in of Kenneth Guenther as Alternate U.S. Executive Director of the Inter-American Development Bank. Mr. Guenther was a member of my staff as economic adviser until he assumed this new and distinguished post for which he was confirmed by the Senate.

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

THE HONORABLE GEORGE P. SHULTZ, SECRETARY OF THE TREASURY, REMARKS AT THE SWEARING-IN CEREMONY OF VARIOUS U S. OFFICIALS OF THE INTERNATIONAL FINANCIAL INSTITUTIONS, AUGUST 22, 1973

We are swearing in to office today four men—Charles Sethness as U.S. Executive Director of the World Bank, and Hal Reynolds as his Alternate; Rex Beach as the U.S. Director of the Asian Development Bank; and Kenneth Guenther as the Alternate U.S. Executive Director of the Inter-American Development Bank. This event marks another important step in the foreign economic policy of the United States. Along with John Porges and Jesun Paik who have already assumed their duties as Inter-American Bank Executive Director and Asian Bank Alternate Director, respectively, we now have a full management team representing the U.S. in the international financial institutions.

Little public attention has been focused on the important programs of these institutions, and I would like to say a few words about them and the important work of our representatives here.

Development is something that goes on quietly day after day. These banks rarely get headlines except for the more dramatic help they give in the wake of natural disasters or their efforts to finance rebuilding after a destructive war.

Development takes time, persistence, patience and dedication. It also requires sound financial and economic policies. These men have the difficult task of seeing that the effort is well managed—that sound policies are followed and that U.S. interests are looked after. They must be hard-nosed bankers, diplomats of no small moment, besides having the dimension of vision and understanding. It is one of the most important tasks and yet, by its nature, if it is well done, it will not be heard of—there will just be steady progress.

Last September, President Nixon called for a "total reform of international economic affairs" to help shape the world for a generation of peace. He warned the members of the International Monetary Fund of the increasing potential for economic conflict as the danger of armed conflict decreased. His words strengthened a growing worldwide sentiment that something had to be done, some action taken, and we began a series of negotiations for reform.

Through the IMF's Committee of Twenty we are approaching agreement on international monetary reform. In several weeks I will go to Tokyo where international reform discussions will officially begin with other trading nations of the world under the General Agreement on Tariffs and Trade to expand world trade and reduce trading barriers. The Congress is presently considering comprehensive legislation on trade submitted by the President to enable us to participate meaningfully in these negotiations. The third part of our foreign economic policy, to which the President is deeply committed, concerns our relations with the developing countries. He feels strongly that the programs of the international financial institutions, which are of vital importance to those countries, are an integral part of a cooperative international economic system.

To encourage and sustain this move toward global cooperation, it is essential that the United States maintain its fair share in these programs. Our active role ensures a beneficial effect on the world system in general and, in particular, on developing countries, as well as for ourselves. These multilateral programs constitute part of a balanced development assistance program and are a complement to our bilateral programs. They represent a shared responsibility and leadership.

Let me take just a moment to describe these institutions:

The World Bank Group is the global structure. It has three parts to it—the Bank itself, the International Development Association or IDA, and the International Finance Corporation. The Bank is the oldest of the institutions with over 25 years experience, and plays a leading role in coordinating economic assistance. It brings the collective judgment of its 122 member nations into play to promote sound economic policies in borrowing countries.

The regional development banks were created to bring special expertise to bear on development problems in the particular geographic areas they serve. The Inter-American Development Bank, established in 1959, is made up of the U.S., Canada and 22 Latin American countries. The Asian Development Bank was established in 1966, with the strong support of the U.S., and now has 24 Asian members and 14 non-Asian members. The African Development Bank, established in 1963, consists of 36 independent African nations but is increasing its scope as Europeans and Japanese join the new African Development Fund. The U.S. is not yet a member.

These banks do a great deal to further economic growth and stability in the less developed countries—which is just as important to us as it is to those countries themselves. This encourages growth in world export and import markets and, as the less developed countries grow, opportunities for the U.S. also grow. In these times of inflation, developing countries are a prime source for raw materials and for semi-manufactured products. One-third of the raw materials used by the U.S. come from less developed countries and this ratio is rising. And we export products to these countries. Year after year the United States has had a positive balance of trade with them—even in 1972 when we had a deficit balance with other countries.

The international financial institutions also promote participation by the private sector in the financing of development assistance through the sale of their bonds in the private capital markets. In addition, both domestic and foreign private investment in the less developed countries increases when the banks finance infrastructure and other important economic development projects.

I think you can see why we feel it is important to continue our participation through our contributions to these banks. We pay our "fair share" in funding the international financial institutions—a fair share internationally negotiated on the basis of burden-sharing considerations. Our contribution is roughly related to the U.S. relative economic strength among the donors to the specific institution. This burden-sharing relieves some of the pressures for bilateral aid. For example, the World Bank and the Asian Bank are prepared to head a group of member nations to mobilize resources from many capital-exporting countries for reconstruction aid to Indochina.

The President strongly supports the programs of the banks. They form a key component of his foreign economic policy. Our shares in them fit in with our budgetary and balance of payments objectives. They make good sense. And, they are an efficient and effective instrument for channeling our support to the less developed countries.

We are working hard to help shape the programs and the procedures of the international financial institutions so that they are responsive to the legitimate joint concerns of Congress and the Executive Branch. We have already been able to bring about a number of desirable changes and adaptations in the banks. The key to further success in doing so clearly lies in the professional skills of those who represent us.

We will continue negotiating with other nations in our efforts to resolve our differences and to "erect a durable structure of peace in the world from which all nations can benefit." The road to that goal includes working for international cooperative improvements through the international financial institutions—a task which these four gentlemen will now help us to carry out.

[From the New York Times, Aug. 20, 1973]

UNITED STATES LAGS IN GIVING SUPPORT TO BANKS AIDING POOR NATIONS

(By Edwin L. Dale, Jr.)

WASHINGTON, August 19.—An unfinished highway in Ohio, the Japanese ancestry of a Senator and the Chicano constituency of a Congressman are among the many forces at work in Congress that are threatening to frustrate what the Nixon Administration regards as an important part of its foreign policy.

The issue, which gets little public attention at home but a good deal abroad, is the lagging American contribution to the resources of the internation lending institutions that aid the economic development of the poor countries. The institutions are the World Bank, the inter-American Development Bank and the Asian Development Bank.

For about five years the Administration has encountered gradually increasing difficulty in winning Congressional assent to the agreements establishing the United States contributions which are now far behind schedule. Four separate committees of congress are involved, and even if the committee stage is hurdled, floor action in both House and Senate is increasingly unpredictable.

With the United States foreign aid program dwindling—the bid for this year barely passed by the House last month provided less than $1-billion in economic aid for the whole world apart from Indochina—the contributions to the international banks are seen by the State and Treasury Departments as the chief remaining sign of United States interest in the nearly 100 poor countries.

"This frustrating business is complicating things for us elsewhere," says Paul A. Volcker, Under Secretary of the Treasury for Monetary Affairs. "It is subject to the interpretation that we are going isolationist. In matters like trade and monetary reform, the less-developed countries are less enthusiastically with us than they might otherwise be."

Congress, or at least an apparent majority of Congress, seems to be unimpressed. This is the current evidence.

The United States is more than a year behind schedule in the current round of contributions by the rich countries to the International Development Association, the World Bank's subsidiary, which helps the very poorest of the poor countries with easy-term loans. The other industrial countries had to volunteer their subscriptions before they were legally obliged to do so to prevent the association from stopping operations altogether last year.

Congress has still not approved the United States pledge of $100-million to the comparable division of the relatively new Asian Bank first agreed upon three years ago.

Congress last year approved only half of the pledged amount for the Inter-American Bank, and a further cut is threatened this year in the $500-million requested.

LABORIOUS TALKS ON SHARE

In all of these cases, the United States share of the contribution was worked out in laborious international negotiations, conducted mainly by the Treasury Department. The United States share in the International

Development Association, for example, is 40 percent.

Why the Congressional hostility?

One part of the answer is exemplified by the case of Representative Clarence F. Miller, Republican of Ohio, a member of the appropriations subcommittee that handles funds for the international banks.

Part of Mr. Miller's district lies in Appalachia and President Nixon's budget austerity has resulted in the halting of construction on a half-finished highway there. Mr. Miller is furious and believes that his district should come ahead of little-known international lending agencies of which his constituents have barely heard.

Representative Edward R. Roybal, Democrat from Los Angeles, is another member of the subcommittee. Mr. Roybal is said to have soured on the inter-American Bank because, in his view, it has not hired enough Spanish-speaking Americans.

INOUYE FEARS JAPAN

An ironic case is that of Senator Daniel K. Inouye, Democrat of Hawaii, who heads the Senate appropriations subcommittee, Senato Inouye, a member of the Watergate investigating committee, was called "that little Jap" by John J. Wilson, the attorney for H. R. Haldeman and John D. Ehrlichman, the former Presidential assistants.

In fact, one of Senator Inouye's chief concerns about the international lending agencies is his fear that Japan is coming to dominate the Asian Bank, which makes him reluctant to approve a large United States contribution. Meanwhile, because of Congressional delays and doubts, the American share in the capital of the bank has dropped to only 9 percent.

Of deeper importance than these particular cases is the general apathy, and even hostility, in Congress about foreign aid in general, of which the international banks are an important part. The House passed this year's foreign aid bill by only five votes, and at one point last year the Senate voted to kill the aid bill altogether.

SOME "REAL RISKS"

"One of our problems," says John M. Hennessy, Assistant Secretary of the Treasury for International Affairs, "is that the people in Congress never hear from home about this."

Mr. Hennessy and others argue that the United States would take "real risks" if, by finally abandoning its contributions to the international banks, it showed a lack of interest in the underdeveloped countries.

"There is a race for raw materials in the world," he points out. "We cannot be pushing for international solutions in the trade, monetary and investment fields and fail to pick up our part of the burden in the fourth area—proving resources for the developing countries.

Meanwhile, most of the other industrial countries have expressed a willingness to approximately double their contributions in the next round. Given the problem of Congressional attitudes, the United States negotiators have been able to make no commitments so far.

A CHILD'S "COST OF LIVING"

Mr. CRANSTON. Mr. President, if phase 4 is rough on adults, it is just plain disastrous for kids.

Last year, Los Angeles schoolchildren paid a nickel for a half-pint of milk, provided under federally subsidized school feeding programs.

This fall, that half-pint of milk will be sold to children for 10 cents—a 100-percent increase—and some children will not be able to afford it.

There are a number of reasons why this is happening: Presidential budget-cutting, diminished or exhausted food surpluses, and congressional failure to resolve Senate-House differences in an agriculture spending bill.

The crunch on kids could not come at a worse time. A number of American families are having to skip some of the traditional staples of good nutrition—meat, fish, eggs—in the face of climbing prices. For children from poor families, who seldom eat as well as they should at home, the meal at school can be the nutritional high-point in an otherwise skimpy daily regimen.

But this month, thousands of American schoolchildren will find school meals featuring more soybean meal and less meat, little or no cheese, and milk either nonexistent or well up in price. In Denver schools, even napkins and straws are no longer free: For the first time, these "frills" will cost a penny apiece.

Mr. President, I know that the overall problem of price increases in school feeding programs is as complex as it is serious. But there is at least one area in which the Congress can take immediate action to resolve a part of the crisis, and that is in the milk subsidy program.

Prior to the August recess, the Senate passed an agriculture appropriations bill that raised funding for the special milk program from $25 million to $97 million, roughly equal to last year's spending level. But by not yet meeting in Senate-House conference on the bill, the Congress has allowed the administration to fund the milk program at about one-quarter the Senate amount, or $25 million.

Mr. President, in the interest of California children and children throughout the country, I urge the Senate conferees to maintain the Senate position on this urgent program, and see that the full $97 million is available at once.

Mr. President, I invite the attention of Senators to an article in the National Observer, of September 3, entitled "Inflation Also Shows Up on School-Lunch Menus." I ask unanimous consent to print the article to which I have referred in the RECORD.

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

INFLATION ALSO SHOWS UP ON SCHOOL-LUNCH MENUS—VANISHED SURPLUSES HELP BOOST PRICES; SOYBEANS, IN DISGUISE, INVADE LUNCHROOMS

American youngsters will be paying more for lunch and enjoying it less as they head back to school after summer vacation. Lunch prices in many schools will be raised a nickel, and most of the hamburgers will contain soybean meal. For a lot of youngsters, there won't be a glass of milk to wash it all down with.

School-lunch supervisors are dealing with the same problems worrying supermarket shoppers—shortages of certain food items (macaroni and peas, nearly everywhere) and astronomical rises in the price of meat. Besides that, the schools are being hurt by the evaporation of Federal food surpluses. Until this year, the Agriculture Department shared these surpluses, which it had acquired over the years through its price-support programs, with school lunchrooms. But most of the surplus items, such as cheese and dried milk, are gone.

STALLED SUBSIDIES

Milk prices will be higher at many schools because the Agriculture Department has suspended a Federal milk-subsidy program that last year allowed school lunchrooms to sell half-pints of milk for a nickel. Milk is going up to 10 cents in many schools; schools in Salt Lake City will hold it to 8 cents, but it'll be 11 cents in Austin, Texas. A $97 million appropriation that might restore the subsidy is tied up in a Senate committee.

Many items counted on in the past "just aren't available this year," says Wade Bash, chief of the food-service program for Ohio schools. He told the Associated Press: "We will try to provide as much meat as possible. If some foods are scarce, the supervisors are going to have to use all the ingenuity they have to provide meals that will meet the nutritional requirements of the Federal Government."

To be eligible for Federal cash-subsidy programs, a school must provide "cooked edible protein," a fruit or vegetable, and bread and butter. "Cooked edible protein" has heretofore been taken as Government gobbledygook for "meat"—but no longer.

"MECKLENBURGERS"

Schools in Charlotte and Mecklenburg County, North Carolina, are mixing soybean meal with ground beef, cutting the price to 30 cents from 35, and calling it a "Mecklenburger." Soybean "stretchers" are being used in Columbia, S.C., and Portland, Ore., too. But cooks there are calling their dishes by the same old names.

Most school districts are raising the price of lunches a nickel to help absorb costs that have risen as much as 50 per cent on some foodstuffs. Denver schools haven't. But students there soon will have to pay for some extras that used to be free. Straws, napkins, and lumps of sugar will sell for a penny, tabs of mustard and catsup and squares of margarine will go for 2 cents, and soda crackers will sell for 3 cents a package.

Some schools officials are trusting to a little luck. Tom Stokes, director of food services for Richland County District No. 1, which includes Columbia, S.C., is "blind-ordering" meat. "We're having a hard time finding it at any price, and we're ordering some not knowing until it arrives how much it will cost," he says.

TVP LOAF

Stokes, like lunchroom operators in other cities, is using "TVP," for textured-vegetable protein, as a stretching mix with meat loaf, spaghetti, and sloppy joes. TVP is made of soybeans, and up to 30 per cent of meat loaf can be TVP. Ground beef, which Stokes paid 62 cents a pound for last year, now costs 91 cents, and chicken legs and thighs have gone to 87 cents a pound from 42 cents. Precooked broiled-beef patties have gone to 12 cents from 7, and the price of beans and peas is nearly 20 per cent higher.

Columbia youngsters needn't look for Vienna sausages. "Vienna sausages are just out of sight," says Stokes. "The last time I looked, they had gone up $11 a case. They might be higher now. I don't know, and I'm not even going to look. I'm not buying." His lunchrooms still serve milk for a nickel, but extra milk costs 10 cents a half-pint.

Mrs. Ruth Smalley, co-ordinator of food services for the largest school district in Portland, Ore., expects to serve a lot of fish, which remains cheaper than most meats. She, like her colleagues, finds that the meat shortage pinches hardest in the upper grades: "The older children simply expect bigger portions." Her meat suppliers promise "adequate" supplies, but most of them want only short-time contracts. She expects shortages in flour.

PARENTS UNDERSTAND

In Salt Lake City, lunchroom supervisors report "a great deal of hedging" by canners, who despite bumper crops of fruit and vegetables, seem to be holding back supplies. James C. Gatherum, director of food services for Granite School District, the largest in Salt Lake City, reports that he contracted three times for 300,000 pounds of frozen, precooked, chicken-fried steaks and three times the contracts were canceled. He cut his potato costs in half by contracting to buy a farmer's crop before it was planted.

Some school officials find little parent grumbling about the situation. "People are pretty realistic about food prices," says Portland's Ruth Smalley, whose costs have jumped 11 per cent over last year. "If the housewife sees her own costs go up in the supermarkets, she knows that the lunchroom's costs are going up too."

Like resourceful housewives, lunchroom supervisors are forced to use novel solutions. The lunchroom supervisor in Yukon, Okla., was so strapped for red meat when school opened that the school bought its own herd—five head of cattle—and slaughtered them.

PRESIDENT NIXON'S LAUDABLE SUPPORT FOR THE ARTS AND HUMANITIES

Mr. PERCY. Mr. President, it was my pleasure to read in the September 1, Washington Post a column by Clayton Fritchey applauding President Nixon's continuing dedication to the improvement of the national status of the arts and humanities. I would like to add my own expression of appreciation to Mr. Fritchey's commendation, for I do, indeed, believe that President Nixon deserves tremendous credit for his support for the National Endowments of the Arts and Humanities.

During Mr. Nixon's Presidency, authorizations for the two endowments have increased from $22.575 million in fiscal year 1969, to $80 million in fiscal year 1973. Also of great significance is the fact that proportionate appropriations levels have risen dramatically during this time. In 1969, less than 56 percent of the authorized amount was appropriated; in 1973, 95 percent was available for expenditure.

As a trustee, the Kennedy Center, representing the U.S. Senate, I have seen first hand the consistent support the Nixon administration and the first family has given to this magnificient national asset.

Without the President's enlightened and enthusiastic cooperation and support for the arts and humanities, the notable gains achieved would certainly not have been possible.

For those who did not have the opportunity to read Mr. Fritchey's fine article, I ask that it 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, Sept. 1, 1973]

A BRAVO FOR NIXON ON THE ARTS

(By Clayton Fritchey)

A reader writes to ask, "Isn't there anything the President can do in the eyes of the press that is right?" The question was posed before the appointment of Henry Kissinger as Secretary of State, which the media has generally approved, but, beyond that, there is one sphere in particular where Mr. Nixon deserves high marks. Perhaps more than any other President, he has been doing right by the arts and humanities.

In all the years before he went to the White House, Mr. Nixon seemed no more enthusiastic about art than about communism. The only thing more surprising than the President's trips to Peking and Moscow has been his good will tour of Parnassus, which has left the Muses in a state of wonder.

When Mr. Nixon unexpectedly began showing interest in the arts soon after he took office in 1969, some skeptics thought it would be a flash in the pan, but instead White House support for the National Council of Arts and the National Endowments of Art and Humanities consistently increased, with notable results.

Unless something untoward occurs, Congress will soon send to the White House the greatest federal appropriation ever made in this country for the once sadly neglected arts.

Before Congress recessed, the House (309–63) passed a bill giving the Endowment $145 million a year. Earlier, the Senate (76–14) voted $160 million for fiscal year 1974, $208 million for 1975 and $400 million for 1976, or a total of $760 million for three years.

When Congress reconvenes, a joint conference committee will reconcile the differences between the House and Senate, but with White House backing there seems little doubt that the compromise will be on the generous side. In any case, the appropriation will break all records, for even the House sum is nearly double the $76 million appropriation for the current year.

When Roger Stevens retired as the first chairman of the National Arts Council in 1969, the budget for the Endowments was only around $15 million a year. Even so, he predicted the appropriation would reach $150 million within a decade. It sounded like a pipe dream at the time, but the dream has been realized in a mere four years.

Mr. Nixon, of course, does not deserve all the credit, for both John F. Kennedy and Lyndon Johnson helped pave the way for public and political acceptance of government support and encouragement of the arts, a policy long established elsewhere in the Western world.

Senators like Jacob Javits (R-N.Y.), J. W. Fulbright (D-Ark.) and Claiborne Pell (D-R.I.) have also for years been generating bipartisan support on Capitol Hill for aiding the arts. Javits, in fact, introduced the first such bill as far back as 1949. In floor debate this year, he argued that a country "that can devote $80 billion a year for the military can in a bicentennial year (1976), devote $400 million for cultural enrichment."

John F. Kennedy's efforts were cut short by his death, but Lyndon B. Johnson enthusiastically carried on at first. Both the Arts Council and the Endowments were established by law under him in 1965, with an opening budget of $5 million. But he lost interest when the intellectual and artistic community turned against him over his Vietnam policy.

Fortunately, Roger Stevens, who knows the art of politics as well as the art of show business, saved the program by his courtship of Congress. He kept reminding the legislators that the U.S. budget for the arts was about 14 cents a year per person as against $1.40 in Canada, $2.80 in West Germany, $5.50 in Austria.

Mr. Nixon supplanted Mr. Stevens with Nancy Hanks and Michael Straight as chairman and deputy chairman of the Arts Endowments, and they, too, have been effective both on and off the Hill. But there is no voice as compelling as the President's, as Mr. Nixon showed when he said:

"We could be the richest nation in the world, the most powerful nation in the world, the freest nation in the world—but only if the arts are alive and flourishing can we experience the true meaning of our freedom, and know the full glory of the human spirit."

Seven years ago, Meg Greenfield wrote in The Reporter: "In Washington, art is sometimes called culture, and it is thought, on the whole, to be good. The sentiment is not new, but its widespread acceptance is new, and so is the growing conviction that the federal government has an important part to play in the artistic life of the nation." That just about sums it up, even today.

REVIVAL TIME FOR LOUISVILLE

Mr. HUDDLESTON. Mr. President, an article in the September 8 issue of Business Week magazine noted the fine redevelopment that has been undertaken in the city of Louisville, Ky., under local leadership.

I commend the accomplishments of this project and believe that it can serve as a model for urban planners in other areas.

I, therefore, ask unanimous consent that this article be inserted in the RECORD.

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

REVIVAL TIME FOR LOUISVILLE

Until a redevelopment effort led by business jelled four years ago, Louisville, Ky., had shared the experience of other medium-sized U.S. cities in watching its downtown deteriorate while suburbs absorbed new growth. "Louisville had always been long on antiques and old silver but short on risk-taking capital," explains lawyer Gordon B. Davidson, a former president of Louisville Central Area, Inc., a 12-year-old civic and business group whose rejuvenation efforts are now showing impressive results.

A five-year, $2-billion redevelopment plan combining public and private effort has left the worries over risk money mostly a memory. The plan for the city's downtown and Ohio River front has already given Louisville a new skyline, a reclaimed waterfront, and a growing reputation as a revived regional business center. The new look is drawing civil leaders from such cities as Memphis, Dayton, Birmingham, and Flint for a "how to" lesson in central city development.

Among the major projects at the heart of Louisville's revival:

A traffic-free shopping mall, lined with trees and outdoor cafes. The three-block retail hub is the nation's third-largest pedestrian shopping mall. Its $1.5-million cost was financed by a special city tax on owners of property along the mall, at the suggestion of merchants and landlords themselves. Besides upgrading the quality of central city life, the mall is putting more dollars into store cash registers. In the two months since it opened, area retailers report a 15% sales increase over last year. New businesses are also coming to the mall. This fall, for instance, Ayr-Way Stores, Inc., a discount subsidiary of Associated Dry Goods Corp. that has four stores in suburban Louisville, will move into the mall with its first downtown outlet.

Plaza/Belvedere, a 7-acre, $13.5-million park, dedicated in May, on the riverfront. Beneath the complex of overlooks, landscaped courts, walks, and fountains is a 1,600-car municipal garage. The Plaza/Belvedere has been a catalyst for adjoining projects built on land reclaimed from auto wrecking yards and crumbling warehouses that once blighted the city's waterfront. Already the $6-million Louisville Trust Co. building, the

$4-million American Life & Accident tower, and the $10.5-million, 29-story Galt House hotel have been built adjacent to the Plaza/Belvedere. More than $62-million in additional construction is planned for the waterfront. Among the projects are a Hilton hotel, two 30-floor apartment buildings, office buildings, and shops.

Also included is a $14-million complex containing county and city courts and public safety headquarters, now under construction. And a convention and exhibition center is planned to link the shopping mall with the riverfront. The state has guaranteed $25-million for the new convention facility.

The city's bankers, who provided interim financing for the Plaza Belvedere three years ago when high interest rates discouraged selling of municipal bonds, have spurred the building boom with their own office towers. Along with Louisville Trust, the city's two largest banks have built high-rise corporate headquarters in the past five years. And the addition of more than 100 floors of modern office space to the city's rental stock has helped keep business from leaving the city. For example, Celanese Corp. was considering moving its downtown regional offices, but decided to stay after the new bank towers went up.

A youth movement. Louisville has never lacked plans for development—merely the push to bring them to fruition. The shopping mall, for example, was originally proposed in 1943, when Wilson Wyatt, Sr., was mayor. Now, 30 years later, the mall is a reality partly because of the efforts of 29-year-old Wilson Wyatt, Jr., the former mayor's son and the current executive director of Louisville Central Area, Inc.

The talents of young civic and business leaders like Wyatt has been a key element in Louisville's new push. Says Maurice D. S. Johnson, chairman of Citizens Fidelity Bank & Trust Co. and a former resident of Kansas City, Mo.: "When I came to Louisville, I was struck by the fact that two nationally known companies, Kentucky Fried Chicken and Extendicare, were staffed by extremely young men. They were living examples that inspired a lot of young people as entrepreneurs."

The mix of youthful leaders and older, more established men gives the city what some Louisvilleans call their "unstructured power structure." Says lawyer Davidson: "There is no single power source. Consensus of just a few people can really make a project go."

Self-help. Most urban planners see such collaborative effort as the key to redeveloping other medium-sized cities. Says Crawford C. Westbrook, vice-president of Victor Gruen Associates, the Los Angeles planning firm that helped Louisville update its downtown plan in 1969: "There was no Mayor Daley or Mayor Lindsay, and the federal government isn't playing Big Daddy any more. Redevelopment is almost exclusively a matter of leadership. And when a community like Louisville becomes self-reliant, it can always find the resources."

CIGARETTE BAN

Mr. ERVIN. Mr. President, I was dumbfounded during August to read in the newspapers that Mr. Richard O. Simpson, Chairman of the new Federal Consumer Product Safety Commission, said that the Commission would attempt to regulate the sale of cigarettes.

Last year when the Senate and House were considering the Consumer Product Safety Act, which created the Commission and endowed it with certain powers and responsibilities, we were very careful to include language to the effect that tobacco and tobacco products are exempt from the jurisdiction of the Commission.

Section 3 of the act, which defines the term "consumer product" for purposes of the statute, expressly states that the definition "does not include . . . tobacco and tobacco products."—Public Law 92–573). The Senate report on the bill (92–835) contained the unqualified statement that—

> Tobacco and tobacco products were completely exempted from the definition of consumer product by the Committee on Commerce.

It is as crystal clear as the noonday sun in a cloudless sky that Congress intended the Commission to have no authority to regulate the sale of cigarettes. Nevertheless, Mr. Simpson argued that such power could be construed from the act. This strained interpretation is based on section 30, which transferred the functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act of 1960, as amended, to the Commission. It is faulty on two grounds.

First, the legislative history of the Federal Hazardous Substances Act reveals beyond doubt that it never was intended to apply to tobacco and tobacco products. During hearings of amendments to the act in 1964, Deputy Commissioner John L. Harvey of the Food and Drug Administration testified:

> I think it is reasonably clear that the act does not presently cover cigarettes or tobacco. Certainly the coverage of cigarettes was not in contemplation of the Congress at the time of the enactment of the bill and the law would need some modification to cover cigarettes properly because it deals separately with different classes of hazardous substances, such as toxic, corrosive, irritant and so forth.

Congressman Kenneth A. Roberts of Alabama then said:

> I agree with you because I sponsored that act and I remember that we certainly did not at that time intend to cover tobacco. (*Hearings before the House Committee on Interstate and Foreign Commerce on Cigarette Labeling and Advertising*, 88th Cong., 2nd Sess., 45 (Comm. print, 1964).)

Second, the Congress has seen fit to preempt the area of cigarette regulation by enacting the Federal Cigarette Labeling and Advertising Act of 1965 and the Public Health Cigarette Smoking Act of 1969 (15 U.S.C. 1331 et seq.). These two statutes were passed subsequent to the Federal Hazardous Substances Act of 1960, and they represent the pronouncements of Congress relative to the regulation of cigarette sales in interstate commerce. Coupled with the express exemption of tobacco and tobacco products from the Consumer Product Safety Act of 1972, they leave no doubt that the Commission has absolutely no power to regulate cigarettes.

Should the Commission attempt to do what it has no authority to do, then as chairman of the Committee on Government Operations I would have no alternative but to conduct oversight hearings.

The independent regulatory agencies are creations of Congress, and they have only the powers that Congress has expressly given them. Certainly they have no authority whatsoever to legislate, which is exactly what the Commission would do if it attempts to regulate cigarettes.

Perhaps the Commission would do well to retain a constitutional lawyer for its staff, for judging by Mr. Simpson's statements the Commission could use some good advice about what the Constitution so clearly states in article I:

> All legislative Powers herein granted shall be vested in a Congress of the United States. . . .

We have seen too many attempts on the part of the Executive to legislate in the past few years. We certainly do not need such attempts on the part of the independent agencies.

Mr. President, I wrote to Mr. Simpson on August 31 in protest of his statements. I ask unanimous consent that the text of that letter, along with editorials from the Raleigh, N.C., News & Observer and the New York Times, and news reports from the Wall Street Journal and the New York Times, be printed in the RECORD.

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

COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 31, 1973.

Hon. RICHARD O. SIMPSON,
Chairman, Federal Consumer Product Safety Commission, Washington, D.C.

DEAR MR. CHAIRMAN: I was amazed to read of your comments on August 22 that the Federal Consumer Product Safety Commission may attempt to regulate the sale of cigarettes. The Commission very clearly has no such authority.

Section 3 of the Consumer Product Safety Act of 1972, P.L. 92–573, which created the Commission, very clearly states that the term consumer product "does not include . . . tobacco and tobacco products." The language of this statute could not be clearer: tobacco and tobacco products are expressly exempt from the regulatory powers of the Commission.

Furthermore, the functions of the Secretary of Health, Education, and Welfare under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), which were transferred to the Commission by section 30 of the Consumer Product Safety Act of 1972, did not include any authority whatsoever to prohibit the sale or distribution of cigarettes.

The legislative history of the Federal Hazardous Substances Act reveals beyond doubt that it does not apply to cigarettes. During discussion of amendments to the Act in 1964, Deputy Commissioner John L. Harvey of the Food and Drug Administration testified:

"I think it is reasonably clear that the act does not presently cover cigarettes or tobacco. Certainly the coverage of cigarettes was not in contemplation of the Congress at the time of the enactment of the bill and the law would need some modification to cover cigarettes properly because it deals separately with different classes of hazardous substances, such as toxic, corrosive, irritant and so forth."

Congressman Kenneth A. Roberts of Alabama then said:

"I agree with you because I sponsored that act and I remember that we certainly did not at that time intend to cover tobacco." (*Hearings before the House Committee on Interstate and Foreign Commerce on Cigarette Labeling and Advertising*, 88th Cong., 2nd Sess., 45 (Comm. print, 1964).)

Since the statutes do not give the Commission power to regulate tobacco or tobacco products, any attempt to do so would con-

stitute a usurpation of the legislative function of Congress by the Commission. Needless to say, any such violation of the doctrine of separation of powers shall not be taken lightly.

The Committee on Government Operations has oversight jurisdiction over all Executive and independent agencies. As Chairman, I would have no alternative but to conduct oversight hearings should the Commission attempt to expand so radically its powers by fiat without any statutory authority whatsoever.

To my mind, your premature announcement that the Commission would attempt to regulate cigarettes was highly improper. The role of the independent agencies, including the Commission, is quasi-judicial in nature, and your statements indicate to me that you have prejudged this issue before the evidence is even presented. The statements have placed you in the irregular position of prosecutor, judge and jury.

Only the Congress possesses the constitutional power to regulate interstate commerce, and it has in no way delegated authority to ban the sale of cigarettes. Therefore, I would suggest that the Commission stick to the job ordained for it by the enabling legislation.

Sincerely,

SAM J. ERVIN, Jr.,
Chairman.

[From the Raleigh (N.C.) News and Observer, Aug. 29, 1973]

CIGARETTE BAN IDEA ARROGANT

For the time being others must take Richard O. Simpson as seriously as he takes himself. He's the new chairman of the Federal Consumer Product Safety Commission, and he says he expects that regulatory agency to ban cigarettes. Naturally, a number of tobacco state officials and cigarette industry spokesmen have hit the ceiling with outcries of shock and disbelief.

There is not much chance that Simpson will succeed, because the idea is so fundamentally foolish. It also rests on a very dubious legal basis. But there is no doubt that his agency can propound a cigarette ban, give it the force of administrative law and put tobacco interests to a great deal of trouble and expense to undo his mischief.

Motivating Simpson, evidently, is the personal belief that people simply shouldn't smoke. And he has determined, on grounds satisfactory to himself and other tobacco haters, that a cigarette ban is possible by employment of his commission's rule-making authority and provisions of the federal Hazardous Substance Act of 1960.

The 1960 act defines as toxic or hazardous "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation or absorption through any body surface." That is a perfectly sound law to regulate various chemicals, compounds and gases, but there is not the slightest thing about its legislative history to suggest that Congress meant it to be applied to cigarettes. Indeed, specific legislation aimed at cigarettes, because of the smoking-and-health controversy, was passed in 1965 and amended in 1969. No critic of the health hazard of smoking, before or since, except for Simpson, has suggested any legal basis ever existed for attempting to ban cigarettes.

What is behind Simpson's campaign, besides his personal feelings, is a formal request that he says he anticipates from several members of Congress asking him to take this very step. Foremost among the petitioners-to-be is Utah's Sen. John E. Moss, long an arch foe of tobacco.

It would save a lot of people a lot of trouble if this campaign were called off. At bottom it is an arrogant, meddlesome and self-righteous effort. It won't succeed in any ban on cigarettes, but it may give some stature to the evil notion that, for good enough reason, the government really could dictate to millions of citizens in quite personal ways.

[From the New York Times, Aug. 26, 1973]

EDITORIAL—ANOTHER PROHIBITION?

Richard O. Simpson, chairman of the newly established Federal Consumer Product Safety Commission, entertains the "serious expectation" that his agency may ban the cigarette once and for all. The commission would, of course, have to go through an elaborate process, including a thorough review of the Surgeon General's findings on the health hazards of smoking, as well as the arguments of cigarette manufacturers and others. Even then, it might come up with a ban on only those cigarettes that exceed a level of tars and nicotine which the commission considers safe. But the surprising thing is that so drastic a move should be contemplated or even thought to be feasible.

The law that created the commission last fall exempted tobacco from the agency's range of action, but the law did authorize it to administer the Hazardous Substances Act. Mr. Simpson takes that law as his source of authority—since it gives the Government the right to ban products on the basis of the severity and frequency of the injuries they cause. The Surgeon General has held that cigarettes are an important factor in cancer, emphysema, coronary disease and other grave disorders, but domestic cigarette consumption continues to rise in spite of required warnings on the package and in advertising. Hence, Mr. Simpson reasons, a complete or partial ban may have to be the next step.

Putting aside both the logic and the legal questions involved, we have grave doubts that a Government ban would be a wise approach. This newspaper long and consistently urged measures to compel warnings of the type now legally required. We warmly supported official action to educate the public on the dangers of smoking. But from the first it has been our position that it "should be enough for public health agencies to discourage the habit by means short of prohibition."

That is still our position. Forty years after its repeal, the failure of the Eighteenth Amendment is still vivid in the national memory—along with the evils of bootlegging, gang warfare and general contempt for law that it brought in its train. On much the same reasoning, we have supported the recommendation of the National Commission on Marijuana and Drug Abuse that penalties be abolished for the private use and possession of marijuana.

A ban on those cigarettes violating a fixed safe-content standard is a more reasonable approach, not too different from present Government limits on harmful additives and other potentially dangerous substances in food and drug products. But, with all respect to Mr. Simpson's courage and integrity, we believe that even this type of control would prove unenforceable and, in the end, undesirable. The most effective function for Government is to make certain that the health hazards are fully understood. It would be as much a mistake to penalize those who refuse to heed such warnings as to penalize a glutton for overeating.

[From the Wall Street Journal, Aug. 24, 1973]

UNIT AIMS TO CURB, OR BAN, CIGARETTE SALES BY LISTING SMOKES AS HAZARDOUS SUBSTANCES

WASHINGTON.—A new battle on cigaret smoking is heating up.

The fledgling Consumer Product Safety Commission plans to propose regulations that could ban the sales of some, or all, cigarets as hazardous substances.

The plan, disclosed by the commission chairman, Richard Simpson, after a speech in Newark, N.J., comes as a surprise—and, indeed, a shock, to the tobacco industry. For one thing, the Consumer Product Safety Act, which created the independent commission, specifically excludes tobacco products from the agency's jurisdiction. However, Mr. Simpson said the commission can use its authority under another law, the Hazardous Substances Act, to regulate cigarets as a substance that causes injury or illness to humans.

The plan quickly drew fire from Tobacco Institute Inc., which termed the proposal "a sheer bureaucratic arrogation of power." The institute is the cigaret industry's trade association. "The plain fact is that the federal Hazardous Substances Act of 1960 wasn't designed for, or intended to be used in any way, in connection with questions relating to cigaret smoking and its alleged effects on health," said Horace Kornegay, president of the Tobacco Institute. "We cannot and won't voluntarily comply in an overzealous attempt to terminate the existence of an industry that has been part of America since 1607," he added.

Although the commission believes it has the authority to move on its own, Mr. Simpson said it plans to act on the basis of a petition being prepared by Sen. Frank Moss (D., Utah). Sen. Moss' petition would propose maximum allowable levels for tar and nicotine in cigarets. The Senator has been a leading sponsor of anti-cigaret legislation, including the 1971 law banning cigaret advertising on television.

In Louisville, Brown & Williamson Tobacco Corp. said it hadn't any comment to make on the commission's proposal, but noted that it was "following the matter with interest."

Lorillard Corp., owned by Loews Corp.; R. J. Reynolds Industries Inc.'s tobacco division; Philip Morris Inc. and American Brands Inc. also declined comment.

The commission's plan also is a surprise because attempting to ban cigarets is an unusually controversial move for a new agency. The five-member commission began operations in May. Yet it does have unusually broad powers to regulate the safety of a wide range of consumer products, stretching from toys to mobile homes.

One tobacco-state Congressman, Rep. Wilmer "Vinegar Bend" Mizell, a North Carolina Republican, attacked the commission's plan as an "unlawful" and "audacious empire-building scheme." Rep. Mizell, a former major league baseball pitcher, also threw a high, hard one at Mr. Simpson by calling for his resignation. The Congressman said he plans to introduce legislation that would specifically exempt tobacco products from the Hazardous Substances Act.

A spokesman for the Product Safety Commission responded that the commission and Mr. Simpson plan to remain firm in their position. He noted that Mr. Simpson actually had publicly mentioned the possibility of regulating cigarets before Wednesday but that the idea hadn't received wide publicity. "This isn't a trial balloon. He's serious" about the cigaret plan, the spokesman added.

One reason the commission is considering acting against cigarets is that the consumption of cigarets has continued to rise despite health-warning labels required on cigaret packages in recent years under a program administered by the Federal Trade Commission. The FTC earlier released a statistical report showing that the number of cigarets sold in the U.S. last year increased for the third straight year, to 561.7 billion cigarets, up from 547.2 billion in 1971.

[From the New York Times, Aug. 23, 1973]

CIGARETTE BAN TO BE ASKED BY FEDERAL SAFETY OFFICIAL

(By Gerald Gold)

NEWARK, August 22.—Richard O. Simpson, chairman of the new Federal Consumer Prod-

uct Safety Commission, said today that he was prepared to seek a ban on all or some cigarettes if, as expected, an examination confirms the surgeon general's findings in recent years on the hazardous nature of cigarette smoking.

Mr. Simpson said he was awaiting a petition from Congressmen calling for the commission to set standards for cigarettes, although the commission could act on its own.

The staff of Senator John E. Moss of the Senate Commerce Committee has begun studying the possibility of such a petition. Mr. Simpson said he felt congressional backing would enhance the chances for successful action against cigarettes.

A spokesman for the Utah Democrat said the staff was working on a petition that would call for the commission to set maximum levels for tar and nicotine in cigarettes. Those brands with contents above that level would be banned.

Mr. Simpson agreed that such an approach probably would be the opening one by the commission. He said he could not say specifically whether any cigarettes now on the market would be able to meet the standards, since the guidelines had not been drawn up yet.

Mr. Simpson mentioned the possibility of action on cigarettes in passing in an address this morning at the Product Liability Prevention Conference at Newark College of Engineering attended by several hundred representatives of professional, technical and trade groups. Later, in an interview, he expanded on his comment.

He said the commission has the power to set cigarette standards or ban cigarettes under the Hazardous Substances Act, which defines a toxic substance as "any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation or absorption through any body surface."

The Consumer Product Safety Act, which set up the commission, specifically exempts tobacco from the commission's purview, but the Hazardous Substances Act, which the commission also administers, does not.

Despite the labeling of cigarette ads on television and radio. Mr. Simpson noted, cigarette sales have increased. The Agriculture Department has reported that domestic cigarette consumption went up 2.5 percent in the 10 months that ended in April, 1973.

POWERS OF COMMISSION

The influence, Mr. Simpson said, is that the labeling and the TV-radio ban have not worked. Under the Hazardous Substances Act, the commission can halt the sale of a product if it finds that, despite cautionary labeling, the product is still a hazard.

After receiving a Congressional petition, the commission procedure would be to examine the petition, go over the supporting evidence (including the findings of the surgeon general of the Public Health Service), propose regulations or standards and publish them in the Federal Register, receive comments from industry and others and then, assuming it stood by the finding that cigarette smoking was harmful, publish final regulations banning some or all cigarettes. The whole procedure would take a number of months.

Mr. Simpson said he expected that any action or proposal would be challenged at the outset by the industry and that the issue would probably go before the courts.

"His expectations for a fight are exactly right," a tobacco industry spokesman said in response to questions. The spokesman, Horace Kornegay, president of the Tobacco Institute, the trade association of the major cigarette manufacturers, said:

"It thought it had been understood for years that the Hazardous Substances Act does not include tobacco. The Food and Drug Administration has taken that position. The act was never contemplated to cover tobacco. It was to prevent household injuries, such as children swallowing cleaning fluids and that kind of thing."

Mr. Simpson maintained, however, that the "reasons for labeling cigarettes dangerous ought to stand up under the Hazardous Substances Act, too." He said that among the criteria for banning products was the severity and frequency of the injuries they cause, in this case "cancer and death".

He emphasized that "we have a serious expectation of achieving a ban," and asserted that he felt the agency "should and will be able to achieve it."

In his address at the Newark College of Engineering, Mr. Simpson stressed the "motivations" that he hoped would encourage full compliance by industry with the agency's regulations and actions on product safety in all fields.

"One of these 'motivations' is criminal penalties," he said. "Whereas corporations can pay civil penalties, people who work for corporations pay criminal penalties. I am personally inclined in a criminal proceeding to seek out the board chairman or the corporate president, in addition to other officials, because I believe they are in the best position to assure corporate compliance."

However, he noted that he had no intention of conducting a "witch hunt" of products and strongly urged industry to work with the agency in voluntary compliance. Mr. Simpson said that so far he felt everyone he had talked with in industry had generally been cooperative.

He said his agency had completed compiling a priority list of product categories in order of the safety hazards they presented and would make the list public next week.

THE 75TH ANNIVERSARY OF THE AMERICAN HOSPITAL ASSOCIATION

Mr. PERCY. Mr. President, I wish to bring to the attention of my colleagues in the Senate that today, September 12, 1973, over 7,000 hospitals and health care institutions nationwide are commemorating the 75th anniversary of the American Hospital Association. These institutions, and the 19,000 personal members of the association share an objective that is important to all Americans—the provision of better health care services.

This 75th anniversary of AHA, then, should be a time not only for recognition of the association's existence and its accomplishments over the years, but for supporting the services of its allied State and metropolitan hospital associations throughout the Nation and the efforts of our community hospitals.

Since its earliest days, when eight hospital superintendents met to exchange ideas and information in Cleveland, Ohio, the purpose of the American Hospital Association has been to develop ways in which health services may be made more effective, accessible, and convenient for more people. Often we forget that as recently as the turn of the century, our hospitals were predominantly almshouses or shelters for the sick poor, the aged, and the mentally ill. The hospital was considered by many communities to be a last resort for persons in distress.

Largely as a result of great strides in medical science, public demands for the benefits of those advances and the efforts of such organizations as the American Hospital Association in meeting the challenges of change, today's hospitals have emerged as the center of the medical world and vital components of their communities. Progress, however, has also brought a more critical attitude about health services generally. There is rising concern, for example, about gaps in service, rising costs, and time lags in bringing the latest scientific discoveries to the patient's bedside. Health care institutions have stirred public interest and concern, and the attention of all branches of Government, including the Congress. While often critical, this increasing attention to health affairs is primarily an expression of the growing value and importance that the public places in a viable health care system.

We can, therefore, be grateful to organizations, such as the American Hospital Association, which dedicate their efforts to health care administration. The AHA conducts hundreds of educational programs and conferences for administrators and health care personnel each year. It maintains a research program, in cooperation with public and private resources, that results not only in valuable data for all who hope to improve the delivery of health care services but also brings to light the potentials of new organizational designs that can lead to a more effective and coordinated health care system of the future.

Of special interest to Members of Congress are AHA's activities with respect to Federal health legislation and Federal health agencies that work to implement such significant programs as medicare. The association has been active in the development of a proposal for national health insurance and for improving the health care system. It has taken an active role in the quest, through legislation, for improved emergency medical services, for assuring the Nation's blood supply, and for establishing standards of quality for health care. The association has been in the forefront of efforts to reduce inflation in the health services industry, and has struggled with the paradox of holding down costs while maintaining the highest quality care possible as the scope of services expands to meet health needs.

Thus the association during the past 75 years and most notably in recent decades, has developed a constituency as broad as its interests and accomplishments—hospitals, nursing homes, and other long-term care facilities, ambulatory care centers, planning agencies, individual providers of health care services, and representatives of patients and their families. Its spectrum and concerns are as broad as the spectrum of health care in America.

In serving its constituency well, the American Hospital Association has served all of us. I feel, therefore, that we should express our congratulations to AHA on its 75th anniversary and our hopes for the successful continuation of its efforts in the years ahead.

WASHINGTON POST SCORES SCHOOL MILK CUT

Mr. PROXMIRE. Mr. President, last week the New York Times on its editorial page sharply criticized the administration for slashing the school milk program

from $97 million to $25 million as well as the Congress for failing to quickly reverse this action. I was pleased to place this editorial in the CONGRESSIONAL RECORD.

At the same time I overlooked a similar editorial by another of the Nation's finest newspapers—the Washington Post. This editorial also condemns this year's school milk cutback—pointing out that it will mean far less nutrition for the Nation's schoolchildren since, with the rising cost of producing milk, even last year's $97 million would have been inadequate.

I am very hopeful that the House-Senate conferees on the Agriculture appropriations bill will meet soon to approve the Senate school milk increase to $97 million. Every day we wait is a day of inadequate nutrition for the schoolchildren of the United States.

I ask unanimous consent that the Washington Post editorial be placed in the RECORD.

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

[From the Washington Post, Aug. 31, 1973]

NO MONEY FOR MILK

It was inevitable that the rising costs of food would include school lunch programs in the dismal ascent. Local school systems report such rises from 35 cents to 45 cents for elementary school lunches and an increase from 5 cents to 10 cents a half-pint carton of milk. As predictable as these hikes may be, what wasn't predictable is that nationally about 40 million eligible American school children may get no milk at all when they return to classes next week. Some Washington-area children may be among the neglected. With large numbers of children already subjected to mostly junk-food diets, even before their parents' wallets were attacked by high food prices, it is especially dismaying that they will now be deprived of milk, a high nutrition item.

The cause of this neglect is the not unusual combination of congressional and administration indifference. The tangle on the Hill is caused by legislation left sitting in a conference committee where differences between Senate and House versions still need to be settled. The Senate bill asks for $97 million, a more realistic sum but one far surpassing the administration's request for $25 million. Currently, the milk program is operating on a continuing resolution providing $25 million.

It would be thought that with a little foresight the current situation could have been avoided; as late as last March, the Senate Select Committee on Nutrition and Human Needs was warning that the $25 million figure was inadequate. But what needs to be done now is clear: immediate action by the Senate-House conference committee when Congress reconvenes. The language of the legislation needs to specify that the money is to be provided to school districts now, with no qualifying clauses that might delay the money. Apparently, many school officials had believed that a continuing resolution would maintain the program for the amount provided last year: $95 million. Only too late did they learn the grim reality.

It should be noted, finally, that the children are not the only potential victims. The businessmen who supply the milk and the school administrators ordering it also stand to lose because of the confusion.

REPORT ON SCHOOL BUS SAFETY

Mr. JAVITS. Mr. President, I report herewith on the results of a survey on schoolbus safety which I sent to sample residents throughout New York State, with the exception of the heavily urbanized areas of New York City, Buffalo, Rochester, and Albany where travel by schoolbus is not as usual a practice as elsewhere in the State. Also included in my report today is a letter from Secretary of Transportation Claude S. Brinegar responding to my inquiries about current Transportation Department efforts on schoolbus safety.

Of nearly 4,000 responses, the overwhelming majority—96 percent—expresses concern regarding the safety of children traveling daily to and from school in buses, some 45 percent of all New York State schoolchildren, and supported efforts to improve safety factors.

A sizable proportion of the respondents—5.5 percent—indicate that greater stress should be placed on the training and selection of schoolbus drivers. Several persons, for example indicated that they felt that the buses were only as safe as their drivers while others cited examples in which drivers drove recklessly. There was also some reaction against "moonlighting"—a typical response stated:

The job requires the utmost in alertness and this is not always the case with tired and exhausted men who work a full day at some other job.

In connection with the issue of driver training, Secretary Brinegar indicated to me that the National Highway Traffic Safety Administration—NHTSA—"is currently developing curriculum materials for schoolbus driver training. These materials will be available to the States in early 1974. NHTSA's next step in this emphasis area is to develop a supervisory program."

There was also a stress on the use of seat belts by 4 percent of the respondents who felt that the use of such belts should be made mandatory on all school buses. Typical comments were:

I believe the school bus standards should be equal to any other vehicle standards in regard to the use of seat belts and our most valuable cargo travels without the use of safety belts.

A smaller number—3 percent—stressed the need for supervision of children while traveling on schoolbuses. A former schoolbus driver pointed out, for instance, that "the danger lies in the misconduct of the students."

A different view was taken by some of the 1.5 percent of the respondents who urged the use rather of protective padding and higher seat backs. It was pointed out, for example, that seat belts could be used as weapons in the hands of mischievous youngsters and that it would be difficult to install three sets of belts per seat.

The matter of schoolbus construction standards, which includes padding, was given especial emphasis in the letter from Transportation Secretary Brinegar who wrote that:

The Notice of Proposed Rulemaking on bus passenger seating and crash protection was issued in February 1973 and will apply to all school buses manufactured after September 1, 1974. The second recommended standard on the strength of structural joints of school buses is being processed within NHTSA. It is expected that the Notice of Proposed Rulemaking pertaining to this subject will be released soon.

Another 1 percent of survey respondents urged action with respect to overcrowding; and 1 percent offered other suggestions, including facing of seats to the rear, the installation of air bags and installation of an additional emergency exit on the bus roof.

Not all respondents—4 percent—were in agreement with my efforts here for schoolbus safety. Most of these objected to the proliferation of regulations and Federal controls and to the additional tax burden. One respondent, for example, observed that statistics available do not warrant the increased costs that would be necessitated by changes in present practices.

It is my intention to present the survey responses to the Senate Committee on Commerce when I testify at its anticipated hearings on schoolbus safety this fall, as well as bringing the results of the survey to the attention of the appropriate committees in both houses of the New York State Legislature, the New York State Department of Education, the New York State Department of Motor Vehicles and school superintendents in the area of the survey as well as those New Yorkers who responded to the survey.

I ask unanimous consent to have Secretary of Transportation Brinegar's letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD.

The full text of Secretary of Transportation Brinegar's letter reads as follows:

SECRETARY OF TRANSPORTATION,
Washington, D.C., August 23, 1973.

Hon. JACOB K. JAVITS,
U.S. Senate,
Washington, D.C.

DEAR SENATOR JAVITS: Thank you for your correspondence of July 17, 1973. We appreciate your continued interest in Pupil Transportation Safety and your particular concern with the National Highway Traffic Safety Administration's School Bus Task Force Report of May 1973. You will be pleased to learn that six of the seven recommendations contained in this report are already being implemented.

For example, the Notice of Proposed Rulemaking on bus passenger seating and crash protection was issued in February 1973 and will apply to all school buses manufactured after September 1, 1974. The second recommended standard on the strength of structural joints of school buses is being processed within NHTSA. It is expected that the Notice of Proposed Rulemaking pertaining to this subject will be released soon.

Chassis manufacturers are encouraged to supply the school bus manufacturer with equipment containing the advanced braking systems that conform to the Federal Requirements effective in 1974 and 1975. School bus manufacturers are, in turn, being asked to request new braking systems for their special needs. Advanced braking systems, which will be standard when the new requirements become mandatory, are now being made available to the purchaser as optional equipment.

The General Environments Corporation, Springfield, Virginia, has subjected two school buses, one manufactured by Superior Coach Division of Sheller Globe Corporation and the other by Wayne Corporation, to extensive compliance testing. Each of these buses were found to be in compliance

with all of the applicable Federal Motor Vehicle Safety Standards.

Recently, Dynamic Science, Division of Ultrasystems, Inc., Phoenix, Arizona, was awarded contract, DOT-HS-046-3-694, School Bus Improvement Program. The objective of this twelve-month program is to develop, test and recommend practical safety improvements in school bus construction. Initiation of this program fulfills the fifth recommendation of the Task Force.

Plans for school bus data collection and analysis, recommendation number 6, are underway, but the data collection activities have not yet been fully implemented. All high severity accidents involving three or more student fatalities are now being investigated by our Multidisciplinary teams.

Specific implementation of items referenced in your correspondence are a part of Task Force recommendation number 7 and will be accomplished by the States and their political subdivisions with assistance from NHTSA. Any on-going activity is conducted along guidelines provided to the States for carrying out provisions of Highway Safety Program Standard #17, Pupil Transportation Safety. Further, NHTSA is currently developing curriculum materials for school bus driver training. These materials will be available to the States in early 1974. NHTSA's next step in this emphasis area is to develop a supervisory program. We are presently addressing the liaison, coordination and programming needs of the special education student.

As you state, both the Department of Health, Education and Welfare and the Department of Labor should be consulted and we certainly concur. Our staff contacts will insure that program development is reviewed and coordinated for acceptance among the several agencies concerned.

As you can see we have moved ahead rapidly in implementing the recommendations made by the School Bus Task Force. Consequently, I see no need for further legislation at this time.

Sincerely,

CLAUDE S. BRINEGAR.

PENSION REFORM

Mr. ROBERT C. BYRD. Mr. President, on behalf of the distinguished Senator from Indiana (Mr. HARTKE), I ask unanimous consent to have a statement by him, and two insertions printed in the RECORD.

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

STATEMENT BY SENATOR HARTKE

PENSION BILLS ARE INADEQUATE

Mr. HARTKE. Mr. President, in the continuing debate on real pension reform, I would like to bring to the attention of my colleagues an important message from the academic community.

All of these experts, who have made a thorough and penetrating analytical study of the pension bills before Congress, indicate in no uncertain terms that S. 4 and S. 1179 are severely inadequate. The deficiencies of these proposals are in the areas of requiring adequate coverage, vesting, widow's benefits, and protection of pension reserves and claims.

Precisely in these specific fields I plan to offer amendments to S. 4 which will make pension reform a reality rather than an illusion. My first amendment will require full vesting after 5 years and will set up a bureau of experts in the Department of Labor who will be available to those unfortunate workers who have been dismissed from employment for the sole reason of making them ineligible for their earned vested credits.

My second amendment would treat the issue of survivors' benefits. Widows are certainly deserving of 50 percent of the retiree's annuity benefits without any reductions in his initial benefits, and I want to make sure that they receive them. I would also make it compulsory that participants in the pension program waiver the survivors' benefits in writing if they so desire.

Thirdly, in order to buttress the more progressive vesting provision, I call for the mandatory establishment of a portability fund and national clearing house. A benefit which is vested but not portable is not available in the case of disablement. My provision would also assure that the retiree's funds are not eroded by inflation.

The bills now before the Congress fall short of solving the problems in these areas. The amendments which I propose can correct these weaknesses and make pension reform actual rather than a pretense.

Mr. President, I add herewith a press release and statement, as follows:

PRESS RELEASE AND STATEMENT OF PROF. MERTON C. BERNSTEIN

MAJOR PENSION BILLS BEFORE CONGRESS INADEQUATE, ACADEMIC EXPERTS DECLARE

"The major pension bills receiving serious Congressional consideration—the Williams-Javits bill, the Senate Finance Committee (Bentsen) bill, and the Dent bill—fall short of the needed reforms" a group of academic experts declared in a statement issued today. The group of teachers of law, economics and social welfare includes some of the country's foremost experts on pensions, income maintenance and labor relations.

With Congress about to begin debate on private pension reform, the university professors issuing the statement found the bills reported to the Senate inadequate in the areas of requiring adequate coverage, vesting, widows' benefits, protection of pension reserves and claims. They noted that while most families need supplements to Social Security, private pensions do not provide them and the bills under consideration will not fill the gap. Their statement declares that pension plans now cover less than half the civilian work force, seldom pay benefits to widows, pay small benefits even to those who achieve vesting, "lack adequate protection against diversion to uses other than benefits for the elderly" and non-union employees do not have protection against firing to defeat pension claims.

The bills now before the Senate, they stated, "all fall short of rectifying these shortcomings." They urged Congress to consider vesting of at least half an employee's pension credits after 5 years of work growing to 100% after 10 years, mandatory widows' benefits and more effective prevention of conflict of interests. (Full text and the list of signatories follow.)

STATEMENT ON PENSION LEGISLATION

Legislation to reform the private pension system is overdue. At present and prospective levels of Social Security benefits regular, reliable, and substantial retirement income supplements are needed by our retirees. Individual savings typically do not bridge the gap between income and maintaining living standards. And in a high-consumption society such saving cannot be expected to do so.

The private pension system does not provide the needed supplements. It covers less than half the civilian work force and, among the covered, many cannot expect to achieve benefit status due to length of service requirements. And a great many of those who do achieve vested credits will obtain only small benefits. Although widows are the most necessitous of the elderly, private plans seldom provide effective survivor benefits. In addition, the over $150 billion in private pension reserves, augmented by about another $15 billion each year, lack adequate protection against diversion to uses other than benefits for elderly. An unfortunate number of plans terminate lacking adequate funds to pay valid claims; extrapolating from a 1973 Treasury plan termination study, as plans now operate, three-fourths of a million workers with vested benefits will receive no benefits in the next two decades.

The major pension bills receiving serious Congressional consideration—the Williams-Javits bill, the Senate Finance Committee bill, and the Dent bill—all fall short of rectifying these shortcomings and thereby fall short of the needed reforms.

VESTING

A national consensus has been achieved that it is unconscionable to deny pension benefits to long-term employees. And all current proposals would achieve complete vesting after 15 years of service. However, while some dramatic examples of pension loss involve long-term employees, the great bulk of pension losses occur to shorter term employees—most of them with fewer than 10 years of service. As the Senate Labor Subcommittee study of plans in existence for about two decades shows (had shorter lived plans been included, the showing would have been more distressing), 93 percent of employees separated under plans requiring more than 10 years unbroken service for vesting had no pension rights to show for their service. For plans with 10 year vesting, the comparable figure was 78 percent.

Actuarial studies done for the Senate Labor Committee show that the Williams-Javits bill (providing for 30 percent vesting after 8 years service increasing by 10 percent annual increments) would increase pension costs very little—which indicates that the proposed formula would salvage little for most employees separated from pension covered jobs. Few would be aided, and those few would receive only small benefits. For example, an employee separated after 8 years of service under a typical plan—one providing $5 a month per year of service—would obtain a vested benefit of $12 a month or less than $150 a year.

The Senate Finance Committee bill does only a little better—vesting 25 percent after 5 years service and improving by 5 percent annually* (but not starting until age 30). A 5 year benefit under the same $5 pattern would produce a vested benefit of $6.25 a month, or $75 a year payable years later.

Of course, better plans will cost more. However, if coverage were broadened, with earlier vesting the costs would be spread over more companies and more years, often leading to lower unit costs than when only the last employer pays all.

We urge serious consideration be given to requiring 50% vesting after 5 years of service, increasing annually by 10 percent increments. Only such a formula would improve substantially employee benefit achievement over the current unsatisfactory situation. Only such a formula, for example, would enable women—who typically have shorter service—to begin to achieve pension benefits in a substantial way.

The Senate Labor Committee has documented many cases in which employers fire employees just before their pension credits would have vested. To make vesting work, reform legislation must provide effective

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*Achieving 50% vesting for 10 years service, it would vest an additional 10% each year thereafter, reaching 100% for 15 years service.

protection against discharge and lay-off for non-bonafide reasons. To forestall and correct such abuses, employees should have the rights of protection now afforded employees under the National Labor Relations Act and collective bargaining agreements—including reasonably prompt and low cost relief.

COVERAGE

If private pension plans are to provide the supplementation needed by all, they must cover all workers. None of the bills before Congress effectively addresses the problem of coverage. Before requiring such coverage, experimentation with a national, low-cost "boiler plate" plan should be carried out. By eliminating time- and money-consuming installation costs, small company coverage will be stimulated. As many such companies are short-lived coverage should follow principles similar to those employed by TIAA/CREF regarding full and immediate vesting and a mixture of guaranteed and variable benefits.

Voluntary individual purchases of pension coverage will not solve the coverage problem. Experience in Canada shows that the Nixon Administration's proposal for such individual purchases will benefit those with above average income and least need.

CONFLICT OF INTEREST

It is high time that pension funds be treated as money belonging to employees and their beneficiaries. To that end, fund trustees should be completely neutral and owe loyalty only to plan beneficiaries. Company and union officials should not be qualified to serve because their institutional interests can conflict with those of employees at crucial times. All dealings between pension funds and the companies and unions concerned should be prohibited. The United Mine Workers case, as well as others, shows how long it takes to discover trust infidelity and how inadequate recovery is through law suits—relief was given for only three years despite findings of 20 years of improprieties.

WIDOW BENEFITS

Few plans provide survivor annuities. Many provide options for survivor benefits, but the options are seldom elected. At the least, survivor options should be required, and they should be regarded as exercised unless affirmatively rejected in writing.

REINSURANCE

A plan that fails to pay off for earned benefits is a failure. A reinsurance plan to enable terminated plans to meet substantial portions of their obligations is highly desirable and should be tried.

BARGAINING RIGHTS FOR RETIREES

Very few plans have provisions to adjust benefits to offset inflation—helping to make pensioners the chief victims of inflation. Pensioners should be able to bargain with their former employers (and successors), and such employers should be obligated to bargain with retiree representatives chosen by retirees in appropriate units. The National Labor Relations Act should be amended to provide such rights, obligations, and the election mechanism. The representative will in most cases be the *active* employee's bargaining agent. But many companies with pension plans and retirees do not have unions; unionization of active employees should not be a requirement for retiree bargaining. Without such a mechanism, private pension plans will provide unreliable benefits, and reform legislation will do almost nothing to benefit retirees.

Fifteen years have passed since the last pension reform legislation, which achieved little reform. We urge this Congress to enact the reform needed. The opportunity to do so may not come again for a very long time.

LIST OF SIGNATURES

Name, institution and school *

Professor James Schultz, Brandeis (Economics).

Professor Charles Schottland, Brandeis (Social Welfare) Former Commissioner of Social Security Administration.

Professor Leonard Hausman, Brandeis (Economics).

Professor Elliott Sclar, Brandeis (Economics).

Professor Herbert Bernhart, Baltimore (Law).

Professor Thomas P. Lewis, Boston University (Law).

Professor Donald Wollett, California-Davis (Law).

Professor George Cooper, Columbia (Law).

Professor Walter Gellhorn, Columbia (Law).

Professor Milton Konvitz, Cornell (Law).

Professor George Savage King, Emory (Law).

Professor Paul Harbrecht, Georgia (Law).

Professor Stuart Schwarzschild, Georgia State (Insurance).

Professor Vern Countryman, Harvard (Law).

Professor Julius Getman, Indiana (Law).

Professor Raymond G. McGuire, Maine (Law).

Professor James Morgan, Michigan (Economics).

Professor Jacqueline Brophy, Michigan State (Economics).

Professor Leo Kanowitz, New Mexico (Law).

Professor Morton C. Bernstein, Ohio State (Law).

Professor Bruce Jacob, Ohio State (Law).

Professor Michael Kindred, Ohio State (Law).

Professor William P. Murphy, North Carolina (Law).

Professor Robert Koretz, Syracuse (Law).

Professor George Rohrlich, Temple (Economics).

Professor Jerry L. Anderson, Utah (Law).

Dr. Harold L. Sheppard, Upjohn Institute (Sociology).

Professor Jerry L. Mashaw, Virginia (Law).

Professor Florian Bartosic, Wayne State (Law).

Professor Ronald C. Brown, William & Mary (Law).

Professor Abner Brodie, Wisconsin (Law).

Professor George Arnold, Wyoming (Law).

Professor Clyde W. Summers, Yale (Law).

Professor Thomas I. Emerson, Yale (Law).

Professor Yung-Ping Chen, UCLA (Economics).

Professor Abraham Monk, New York at Buffalo (Social Policy).

Visiting Professor George Shatzki, Pennsylvania (Law).

Dean Wilbur Cohen, Michigan (Education) Former Secretary of Health, Education and Welfare.

Professor Juanita Kreps, Duke (Economics).

Adjunct Profesor Jerome Brooks, Wayne State (Labor Law).

Professor Kenneth S. Cohen, Case Western Reserve.

Professor Leon Cabinet, Case Western Reserve.

Professor Melvyn R. Durchslag, Case Western Reserve.

Professor Martin Rein, Mass. Institute of Technology (Urban Studies).

THE COST OF LIVING COUNCIL'S PRICE CONTROLS ON THE GASOLINE RETAILER

Mr. BARTLETT. Mr. President, a Living Council's—CLC—final regulations pertaining to the sale by retailers of gasoline, No. 2 diesel fuel, and No. 2 heating oil. It seems to me that the retailers of petroleum products have been excluded from the supposedly all-encompassing phrase "liberty and justice for all." There is nothing "just" about the regulations adopted by CLC as far as retailers are concerned.

Not only has the petroleum industry been the only industry excluded from the "small business exemption," but the retailer has been picked arbitrarily by the CLC to absorb the increasing costs to obtain crude oil, much of which is being imported at prices much higher than domestic prices.

The CLC's final regulations allow a retailer to add his markup on January 10, 1973, to his August 1, 1973, costs. Thus no passthrough of cost increases since August 1, 1973, are being allowed even though the wholesale price paid by the retailer has risen in many cases.

Retailers are being choked to death by the CLC. The retailers are up in arms and thousands plan to shut down in protest this weekend—and this could be catastrophic to many consumers.

Many stations simply cannot afford to stay open. They cannot operate on a so-called "guaranteed 7-cent minimum margin" that has been eroded by cost increases incurred after August 1, 1973.

Price increases for petroleum products are inevitable because of the high prices of the world market—much higher than domestic prices. It is not fair to make the retailer pay for these increased costs, especially to the independent retailer, whether he owns a branded station or an unbranded station, because he is an important part of our national fuel distribution system and fosters competition within the marketing segment of the petroleum industry. Not only has the retailer been discriminated against because he has been excluded from the small business exemption granted to all other industries, but he also is clearly discriminated against by being the only segment of the petroleum industry not allowed to pass on costs.

I have written Secretary of Treasury George Shultz; the Director of the President's Energy Policy Office, John Love; the President's Domestic Adviser, Melvin Laird; Cost of Living Council Director, John Dunlop; and all the other members of the Cost of Living Council, to protest this unjustified discrimination toward the retailer of gasoline and other fuels.

My sincere hope is that the Cost of Living Council will act promptly to change the phase IV regulations and alleviate this unjust situation.

OMISSION OF THE WORD "POLITICAL" IN THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, a number of persons have written to me about the omission of the word "political" from the definition of those groups covered by the Genocide Convention.

* For Identification only.

This is a legitimate concern, because people have been killed on a large scale in some parts of the world because of their political views. Is the omission of political genocide from the list of crimes the Genocide Convention seeks to prevent and punish a good reason for the United States to refuse to ratify the treaty?

On March 10, 1971, Arthur Goldberg addressed this question while testifying before a subcommittee of the Senate Foreign Relations Committee in support of the Genocide Convention. I think that his remarks will be helpful to everyone who is concerned about this issue:

TESTIMONY OF ARTHUR J. GOLDBERG ON BEHALF OF THE AD HOC COMMITTEE ON HUMAN RIGHTS AND GENOCIDE TREATIES

The real question is, should political groups have been included? Well, if I had been the negotiator of that treaty I would have struggled with might and main to put it in. Our Constitution, which has been given new vitality, and I hope it holds, in recent years, protects political dissenters, but in negotiating a treaty, as I discovered in my own experience, the perfect is never the enemy of the good. I presume—I did not negotiate it so I can only presume—that what happened was that faced with an objection to the word "political" a compromise was made, and a settlement was made on the basis, let us cover as much as we can even if we cannot cover everything, and I presume that is why the word "political" was omitted from the treaty.

For myself, I would have welcomed the inclusion of the word "political" because it ought to be included. People are being killed on a large scale in some parts of the world because of their political views. I need not burden the record of this committee; the Senators and the full Committee know full well what is going on in the world, but, nevertheless, we have a treaty which like all treaties is not written by our prescription but is negotiated, and as negotiated it reaches a very important concern and that concern is the mass extermination of people for their racial, religious, and ethnical views. That is what the treaty encompasses, and that is already quite an achievement, even if it does not cover everything.

Perhaps we can look forward to the days when we can change the treaty. It does have a provision which authorizes revision.

When I negotiated the space treaty or helped negotiate the nonproliferation treaty, as I remember full well, as I discussed both before this full committee, there were questions raised as to why we did not go beyond what we did. The answer is very simple.

If we had gone beyond it, we would have had no treaty. Therefore, we settled for the best treaty possible.

I take it we stand somewhat like this. Here we have a treaty. It is not perfect. It could have been made a lot better. It is a negotiated document. In my experience in negotiations, negotiated documents, domestic or foreign, are rarely perfect. You agree, and you agree on these compromises. We agree on the compromise. The test ought to be, does the compromise imperil anything sacred to us, and I say to this committee the answer is no, it does not imperil anything sacred to us.

Mr. President, I agree with Mr. Goldberg that the Genocide Convention, while not perfect, imperils nothing which is sacred to the American people. At the same time it guarantees and embodies a deep concern which we do hold dear, the right to life for all peoples.

Mr. President, I urge the Senate to ratify the Genocide Convention without further delay.

EXPORT TO JAPAN TRADE FAIR

Mr. PERCY. Mr. President, on November 6, 7, and 8 this fall an Export to Japan Trade Fair will be held in Chicago under the sponsorship of the Chicago Association of Commerce and Industry. The main purpose of the fair is to encourage increased exports to Japan and to contribute to the betterment of United States-Japan relations.

United States firms will be exhibiting products of export potential to Japan and major Japanese business organizations will be bringing buyers to the fair.

Mr. President, it is increasingly important for the United States to have better and stronger economic ties with Japan. As the country with the world's third largest GNP, Japan is increasingly a world economic power. A more specific aim of the fair is to encourage increased U.S. exports to Japan in hopes of reducing the balance-of-trade deficit the United States has with Japan.

Mr. President, I commend all the sponsoring and participating organizations in this effort and hope the fair will be most successful.

PRODUCERS, NOT CONSUMERS, ARE KEY TO HOME HEATING OIL SHORTAGE

Mr. RIBICOFF. Mr. President, the Nation is confused and alarmed over the threatened critical shortage of home heating oil this winter. Contradictory statements and lack of decisive action by the administration have clouded the situation with uncertainty. As a result, we are threatened with a totally unnecessary situation in which independent operators will be forced out of business and the Northeast, at least, will suffer shortages of heating oil.

It is frankly impossible to comprehend the administration's position. Less than a month ago, Gov. John A. Love, Director of the President's Energy Policy Office, explained to a group of oil industry representatives that he had decided not to implement a mandatory fuel allocation system "primarily because I did not believe the current supply situation warranted that degree of Government intervention." That decision was made August 9.

Then, last Thursday, September 6, Governor Love called a press conference to warn that the supply situation is going to be so tight that he was drafting a plan for rationing the heating oil that could be burned this winter by individual consumers, even in private homes.

To confuse matters the more, President Nixon announced over the weekend, after meeting with his energy advisers, that we are not faced with a crisis after all. It is, rather, a "short-term problem" that can be met by easing emission standards and permitting the burning of imported, high-sulfur heating oil—at a projected higher cost of 2 cents a gallon—which big oil can incur by buying the more expensive fuel from overseas affiliates, and then pass the additional cost on to the American homeowner.

Is the administration's energy planning and evaluation capability so confused that the heating oil supply is viewed one month as not being severe enough to warrant even a mandatory allocation program, and then is viewed the next month as being so severe that nothing less than rationing will do, and now is seen as a short-term pollution problem?

Mr. President, what this situation needs is facts. I have just completed a survey—conducted by my Subcommittee on Reorganization, Research and International Organizations—which voids administration warnings of a critically tight supply of heating oil. The results clearly show that there is no critical shortage among companies which produce home heating oil; only among the independent operators who have to distribute most of it. Furthermore, there is now on hand or available enough heating oil to get us through the winter along the east coast, which includes 65 percent of the Nation's heating-oil consumers, if—and this is a big "if"—it is well managed by Government-policed mandatory allocations to assure fair distribution to independent terminal operators and suppliers. Such a mandatory system would also assure that the higher price and sulfur content of imported oil would be distributed fairly across the country, rather than concentrated in the Northeast, which would be the case if the burden of importing oil fell mainly on the independents.

The subcommittee sent questionnaires to all 32 oil companies producing No. 2 fuel oil for the east coast. Questionnaires were returned after 2 months by 30 of the 32 companies, including all the major producers. The companies were asked how much fuel the producers have in their storage tanks—and how much of it they have agreed to sell to independents—by the first day of the home heating season, October 1.

I am today releasing the results of my survey which throw into serious question the administration's claim of a shortage so critical that only sharp cutbacks in consumption—not tougher control of supply—can cope with it.

Figures supplied by the oil companies themselves show that on October 1, their oil storage tanks along the east coast will be filled to 82 percent of capacity with 79.4 million barrels of No. 2 fuel. This is 14 percent more than the 69.5 million barrels in storage exactly 1 year ago. This year's October 1 supply is just shy of the 79.6 million barrels that were on hand at the same time 2 years ago. So, the major producers are better off this year than last.

What is different is the situation of the independent operators who supply heating oil to 40 percent of the wholesale customers and 90 percent of the retail customers in New England, where winter strikes the hardest along the east coast. Furthermore, a supply of 70 to 80 percent of capacity on October 1 is considered by the independent operators to be the margin of safety they need to meet peak winter-demand needs. However, the independent operators have been allocated so little heating oil by these producers that their storage tanks are only 25 percent full with 3.9 million barrels. A year ago, the independents had almost twice as much in storage—7.0 million barrels—and slightly more in 1971—7.4 million barrels—according to

figures supplied by the 16-member Independent Fuel Terminal Operators Association and major nonaffiliated operators.

Comparative heating oil inventories for producers and independent operators on October 1 over the past 3 years follow:

EAST COAST—DISTRICT 1—HEATING OIL INVENTORIES

OIL PRODUCERS

October 1971	79,630,221
October 1972	69,513,797
October 1973 (projected)	79,439,400

INDEPENDENT OPERATORS

October 1971	7,359,400
October 1972	6,959,782
October 1973 (projected)	3,944,974

My survey makes clear that the problem is not an acute, aggregate shortage of heating oil along the east coast, but rather a failure by big oil to adequately supply the independents.

Mr. President, the Independent Fuel Terminal Operators Association recently has prepared two papers on the heating oil supply problem—one a memorandum to Governor Love urging immediate implementation of a mandatory allocation system, the other a background memorandum on the factors that make such action necessary.

The association, in its memorandum to Governor Love, stated the problem succinctly:

If our distribution systems are not fully supplied, the millions of homeowners who rely on us for heating oil will go cold.

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

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

[See exhibit 1.]

Mr. RIBICOFF. Mr. President, my survey, according to data supplied by the oil producers themselves, revealed a clear pattern of most independent producers facing sharp cutbacks, cutoffs or delay of No. 2 fuel shipments from producers since June, when last year's contracts expired. One major producer was late in providing this information to the subcommittee, and I have delayed releasing our detailed results on this problem until it is submitted. I hope to have this data, showing the specific supply status of the independents, by tomorrow, when Governor Love testifies before my subcommittee on the allocation situation.

The east coast independent operators experienced a record deficit of 3.1 million barrels of No. 2 fuel compared with what they had in their storage tanks on October 1 of last year. By contrast, the producers in the past 4 months have filled their tanks with 3 million barrels more than they did over the same period last year. This 3 million barrels was part of a record "summer fill" by oil producers along the east coast. Perhaps significantly, the producers' 3 million barrel surplus is almost exactly the 3.1 million barrel deficit of the independents. Had the 3 million barrels been allocated voluntarily rather than hoarded by the producers, the independent operators and their customers would at least be where they were last year at the onset of cold weather.

A 3-million barrel allocation to the independents still would have left the producers with 7 million barrels, or 10 percent, more in their tanks than they had last year on October 1. This would have provided the producers the necessary cushion to offset a projected increase in heating-oil demand of 6 to 10 percent over last year.

This allocation of 3 million barrels is precisely what the oil producers should have done under the voluntary system which the administration tells us has been in effect, and working, to assure fair distribution of the available supply.

If the voluntary allocation system is working, as the administration insists, why cannot major independent operators in my own State of Connecticut and throughout New England get even a substantial fraction of the heating oil needed to assure an ample supply for the homes, schools, stores, factories, and hospitals among their customers?

If the results of my survey show anything, it is that the administration's voluntary fuel allocation program is a failure and that it must be replaced by a mandatory system. But this the administration still refuses to do.

Why does not the President exercise his authority under the Economic Stabilization Act to make heating-fuel allocations mandatory?

Perhaps the administration really cannot make up its mind on what the heating-oil problem is, much less on how to deal with it, and thereby generates uncertainty and delay that benefit big oil and imperil the independent operators and their customers.

Or does the refusal to impose mandatory allocations represent a Government-sanctioned effort by the producers to squeeze the independent operators out of existence, reducing competition, even if it means freezing out the 90 percent of New Englanders who buy their heating oil from independents?

If the administration has not hesitated to exercise authority under the Economic Stabilization Act to assure natural gas and propane supplies to homeowners on a first-priority basis, why, then, does it speak icily of possible rationing of home heating oil?

Is big oil playing Russian roulette with our home heating supply, and is the administration spinning the wheel?

I intend to raise these issues tomorrow when Governor Love and representatives of the Independent Fuel Operators Association appear before my subcommittee to discuss the problem as part of our hearings on the bill, S. 2135, to establish a Department of Energy and Natural Resources.

I think the solution will be found in a mandatory system utilizing our own domestic reserves and hemispheric sources to the fullest, with assistance from overseas outlets, as necessary, to meet peak demand of a cold winter.

The time to take off the gloves is now before we have to begin wearing them indoors. The administration must switch to a mandatory allocation system. Other Senators and myself have written to the President requesting it. The Senate has twice passed a bill to require such a system, but the House has yet to act. Such a bill, however, is unnecessary if the President acts.

I urge him to do so before the Nation is left out in the cold.

EXHIBIT 1

MEMORANDUM: SUPPLY PROBLEMS—EAST COAST INDEPENDENT DEEPWATER TERMINAL OPERATORS, REPORT NO. 4

September 7, 1973.

GOV. JOHN A. LOVE,
Director, Energy Policy Office:

On July 6, August 8, and August 21 in response to the request of the Energy Policy Office, the Independent Fuel Terminal Operators Association submitted reports of inventory levels during July and August.[1] In accordance with our desire to keep the Federal Government fully informed, the Association submits herewith a report of current inventories and supply problems.

1. INVENTORIES, SEPTEMBER 1

Our current inventories of home heating oil are as follows:

NO. 2 FUEL OIL INVENTORIES

[Net, in barrels]

	Aug. 15, 1973	Sept. 1, 1973	Desired stock level, Oct. 1[1]	Total storage capacity
New England (7 companies)	1,290,000	2,045,000	4,590,000	6,550,000
New York City area (6 companies)	600,000	760,000	3,860,000	5,520,000
Total, Northeast (13 companies)	1,890,000	2,805,000	8,450,000	12,070,000

[1] 70 percent of total capacity. This is a conservative requirement; if tanks were filled to 80 percent of capacity, a greater margin of safety could be provided to meet peak demand needs.

2. FUEL SHORTAGE

It is clear from these inventory figures that the stocks of independent deepwater terminal operators in the Northeast are not building to levels sufficient to meet next Winter's demands. Particularly disturbing are stocks in the New York City area, which have remained at very low levels throughout the summer.

Unless our storage tanks are filled to at has taken place, and we approach the start of the heating season in an alarming position.

The figures provide further confirmation of the fact that this year the "summer fill" [2]

[1] The Association is composed of 16 companies who operate deepwater oil terminals along the East Coast from Maine to Florida. None is affiliated with a major oil company. Members market No. 2 fuel (home heating) oil, No. 6 (residual) fuel oil and gasoline at the wholesale and retail level. Members of our Association market at wholesale nearly 25% of the No. 2 fuel oil consumed in District I (the East Coast from Maine to Florida) and 40% of the No. 2 fuel oil consumed in New England. A list of members and more

least 70% of capacity by October 1, a fuel oil shortage will almost surely occur in the areas we serve.

3. MANDATORY ALLOCATION PROGRAM

In order to reach 70% of capacity more than 5.5 million barrels of No. 2 fuel oil must be moved into independent storage in the Northeast over the next month—a build-up of nearly 1.5 million barrels per week.

This will not take place unless you move immediately to institute—and make effective—a mandatory allocation program which will require domestic refiners and their foreign affiliates to deliver No. 2 fuel oil to independents.

The voluntary allocation program has been a failure. The alarming inventory levels and supply prospects outlined herein offer ample proof of this fact. Few refiners have cooperated with the voluntary program; most have, despite encouraging public statements, simply refused to comply. Most of the refiner-supplies who have provided oil to the members of our Association on an annual basis over the past 5 to 15 years have refused to maintain their supply contracts or delivery levels. No deliveries are scheduled or promised from these suppliers over the next few weeks, much less the next year.

4. INDIVIDUAL COMPANY PROBLEMS

At your request, the members of our Association recently submitted to you analyses of their specific supply problems.

Since the date of submission of this data, attempts have been made to encourage domestic suppliers who provided No. 2 fuel oil to independent deepwater terminal operators during 1972–73 to deliver the same quantities during 1973–74. Despite your efforts, which we appreciate, there has been no change of position on the part of any domestic refiners. Those who were willing to provide product prior to mid-August are still willing to supply the product. Those who have cut off or sharply reduced deliveries to independent deepwater terminal operators continue to refuse to restore or increase those deliveries.

In brief, the failure of the refiners to cooperate with your efforts offers strong evidence of the need for a mandatory allocation program to assure adequate supplies for the independent sector of the market and the consumers they serve.

5. ESSENTIAL ROLE OF INDEPENDENTS

As we have indicated, independent deepwater terminal operators handle 25% of the heating oil volume along the East Coast—and 40% of the volume in New England. We move that oil through a massive and expensive distribution system, involving docks, storage tanks, pipelines, inland storage facilities, and fleets of trucks.

There is no substitute for this system; it cannot be magically replaced on short notice by the major oil companies or by Government order. Simply stated: over the next heating season we will perform an essential function which no one else can. And, if our distribution systems are not fully supplied, the millions of homeowners who rely on us for heating fuel will go cold.

Thus, unless you act immediately, it may be too late. Unless refiners are required to move substantial quantities of No. 2 fuel oil into the independent distribution and storage system over the next month and subsequent months, no amount of emergency action by you next fall or winter—including rationing—will avoid a serious shortage.

A year ago, the Federal Government, despite our repeated warnings, assured the public that No. 2 fuel oil supplies were ample and there was no cause for concern. This projection was acknowledged to be wrong by early December; at that time some emergency steps were ordered, but it was only the arrival of unseasonably warm weather in January that prevented a major national catastrophe. Unfortunately, the failure of the Federal Government to recognize the danger and act in time did cause severe heating oil shortages in many areas last winter.

A crisis can be avoided this winter—if prompt, effective action is taken.

ARTHUR T. SOULE,
President, Independent Fuel Terminal Operators Association.

MEMBERS: 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.
Southland Oil Company, Savannah, Georgia.
C. H. Sprague & Son Company, Boston, Massachusetts.
Webber Tanks, Inc., Bucksport. Maine.
Wyatt, Inc. New Haven, Connecticut.

The companies listed above 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 the Association are independent marketers of No. 2 fuel oil, No. 6 fuel oil, gasoline and other petroleum products.

Members of the Association distribute 40% of the No. 2 fuel oil consumed in New England, and more than 20% of the No. 2 fuel oil consumed along the East Coast (District I). Metropolitan Petroleum Company (a subsidiary of the Pittston Company), a nonmember, is an independent who markets an additional 3–4% in District I.

The independent share of the total East Coast market for No. 2 fuel oil, at the terminal level, is approximately 25%; the remaining 75% is controlled by refiners.

Of the nation's No. 2 fuel oil consumption (for heating purposes), New England accounts for 20%. New York, New Jersey and Pennsylvania account for 35% and the remainder of District I accounts for 10%. Thus 65% of the nation's No. 2 fuel oil is consumed in District I.

MANDATORY ALLOCATION PROGRAM AND INCREASED SUPPLIES OF HOME HEATING OIL

In recent weeks, Federal energy policy officials have stated that "allocation schemes . . . do not increase supply."

That is not correct.

Given the current state of the domestic and foreign markets and the Phase IV price regulations, a mandatory allocation program will:

Increase the supply of No. 2 fuel oil available to U. S. consumers.

Reduce the price of that product in the Northeastern states.

The impact of a mandatory allocation program would be as follows:

INCREASED SUPPLY

Domestic refiners are currently planning to supply most of their domestic demand from their domestic refineries.

Independent terminal operators and other independent marketers are, as a consequence, apparently expected to purchase the major portion of their requirements from foreign sources.

These independents do not have extensive overseas organizations, foreign refineries, foreign crude oil production, foreign tanker fleets or vast financial resources. Since they are not integrated internationally, they do not have preferential access to foreign crude oil and refined product production of their own affiliates, as do the majors. Thus, unless there is a mandatory program the independents will be able to buy less oil than the majors, will be forced to pay higher prices, and will face a severe supply gap caused by the short-fall in domestic deliveries.

If there is a mandatory program, domestic refiners will be required to provide a substantial portion of their domestic production to independent marketers to fill this gap. As a result, a supply gap may be created in their own systems; in order to fill this gap the refiners will have to enter the world market to purchase additional supplies.

However, because of their greater buying power and access to overseas supplies (in large measure from their own overseas affiliates) the refiners will surely be able to purchase and import the quantities of No. 2 fuel oil required to meet the demands of their own systems and the demands of independents they must supply under the allocation system. In fact, there are strong indications that the major international refiners are presently buying and storing substantial quantities of No. 2 fuel oil (gasoil) that they could, if required, ship to the U. S. market.

In helping to meet total U.S. No. 2 fuel oil needs these majors may not enjoy an optimum economic return, but their performance in dealing with the supply disruption caused by the 1967 Suez crisis demonstrates that—if they are forced to do so—the majors can exercise enormous flexibility and ingenuity in meeting supply problems through their world-wide operations. And while it may not be the optimum, they will make a substantial profit on sales to the U.S.

In sum, the allocation system will force the importation of additional quantities of No. 2 fuel oil—by those companies who have control of supplies and are in the best position to do the importing—and thus increase total supply available to U.S. consumers.

LOWER PRICES

As indicated, under current conditions—without a mandatory system—independent deepwater terminal operators and other independent marketers are apparently expected to bear the burden of importing substantially more No. 2 fuel from foreign sources than in past year.

Under the new Cost of Living Council rules, the importer may average the cost of these high priced imports over his entire inventory. However, most independents handle smaller volumes and serve more limited market areas than the major refiners.

Imported heating oil is currently much more costly than domestic. Thus, as the proportion and quantity of imports by independents increases, the prices paid by their customers will rise sharply.

Since most imports will naturally flow into the Northeastern states, customers of independents in that area will be forced to bear almost the entire burden of higher cost imported No. 2 fuel oil. In effect, there will be a two-price system within the United States—a high level for the Northeast and a lower level for the remainder.

In contrast, as indicated above, under a mandatory allocation system, the proportion

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detailed description of the Association is enclosed (Attachment A.)

[2] This is the process which in past years has raised inventories to near capacity levels *before* the onset of cold weather.

of imports by independents would be lower than under current conditions; the imports by refiners, higher

However, the refiners would be permitted, under CLC regulations, to average the cost of the imported heating oil and in doing so, would spread the costs over a much larger inventory base and in most cases, throughout their national marketing system.

Thus, a mandatory allocation system would eliminate the two-price system or, at the least, sharply reduce the price differentials, and provide substantially reduced costs for consumers of fuel oil in the Northeastern states.*

AMERICAN PEOPLE SUPPORT BALANCED BUDGET CONCEPT

Mr. HELMS. Mr. President, I desire to place in the RECORD several newspaper articles and editorials which are representative of the kind of support that I have seen throughout the country for the principle of a balanced budget for the Federal Government.

Earlier this year, Senator BYRD of Virginia and I introduced S. 2215, the Emergency Anti-Inflation Act, which focuses upon large-scale deficit spending and a growing national debt as the primary cause of inflation in our economy. This bill will require the Federal Government to operate on a budget in which no more is spent than is taken in.

It is encouraging for me to report to the Senate that 16 Senators have joined Senator BYRD and me as sponsors of this bill: Senators BARTLETT, BELLMON, BROCK, BUCKLEY, CURTIS, DOMENICI, DOMINICK, FANNIN, GURNEY, GOLDWATER, HANSEN, MCCLURE, NUNN, SCOTT of Virginia, THURMOND, and TALMADGE.

There is no question in my mind that the American public is fully aware of the terrible effect that inflation is having upon our economy and our way of life in this country. The businessman, the farmer, the workingman, their families and all retired Americans can no longer afford to pay for this ever increasing inflation.

I am convinced that people are tired of being misled by promises that economic controls and high interest rates will reduce inflation. The American public is too smart to be fooled by excuses. Americans realize that the Government is causing inflation through its deficit spending and large public debt policy. They also realize that the individuals that were elected to represent them in Congress and in the Presidency can reverse this trend if they are willing.

The way to do this is to start at the beginning and eliminate inflation at its source by balancing the Federal budget and reducing our national debt. This way, and only in this way, can we restore a stable value to the American dollar and insure that our generation and future generations will be able to enjoy the high standards of living and prosperity that the natural wealth of this Nation has to offer.

* It should be noted that 60% of the nation's heating oil is consumed in the Northeastern states; and each 1 cent increase in the price of heating oil costs the consumers of New England an additional $50 million per year, and the consumers of New York an additional $50 million per year.

Mr. President, I ask unanimous consent that several newspaper articles and editorials in this connection be printed in the RECORD.

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

[From the Cheyenne (Wyo.) State Tribune]

THE BEST ANTI-INFLATION DEAL YET

One of the unfortunate byproducts of Watergate has been the loss of the President's clout in his battle to cut back on federal spending. A Senate group which includes Wyoming's Cliff Hansen now has picked up the cudgel.

A bill whose prime sponsor is Sen. Jesse Helms, R-N.C., has been introduced to mandatorily require a federal balanced budget beginning with Fiscal Year 1975 which commences next July 1.

The bill is properly titled "Emergency Anti-Inflation Act of 1973," and we say it is apt because federal spending has more to do with inflation in America today than any other single factor.

"If we are serious about controlling inflation and eliminating the prospect of an increasing national debt in the future," says Senator Helms, "then the Senate must face up to the facts regarding deficit spending in the last four years."

During the past four years, the U.S. budgets have run up a deficit of $100 billion, which Helms calls "the primary stimulus for the inflation which has seriously eroded the purchasing power of the dollar both at home and abroad."

President Nixon has achieved partial success in his struggle with the Democratic-controlled Congress over exorbitant spending; but it has not been enough of a victory.

While most liberals in Congress pay lip service to cutting back on federal spending, they still vote their true sentiments by seeking to increase the federal outlay in almost every sector. This is the peculiar weakness of Congress because while its members perhaps understand the cause for inflation, as do their constituents, every time a reduction is made in a particular area which affects some of their folks back home, the latter let out a might yell of anguish and the senator or congressman involved then makes an effort to get the money restored. As a result, we are unable to make any progress on cutting federal spending and as a result, inflation continues its ugly progress.

Says Senator Helms: "We have heard a good deal of rhetoric over the need to do something about inflation and the need to control and limit the national debt. Well, here is an opportunity to take some action, to face up to the danger that reckless federal spending has presented to our nation's economic security and to protect against future increases in the national debt."

Wage and price controls will never stop inflation, the North Carolinian points out, "because these controls are not directed at the cause of inflation. Not even Phase VI can stop inflation. There is no question that it will be difficult for some senators to commit themselves to a balanced federal budget, because such a budget will necessitate cutting down substantially on federal expenditures."

Helms says, however, that he is "firmly convinced that an overwhelming majority of the American people would rather see the government spend less, thereby stopping this inflation, than to see larger and larger federal deficits being spent with money that inflation has made practically worthless."

Besides Senator Hansen from our own state and Virginia's Harry F. Byrd Jr., who joined initially with Helms in introducing the bill, the other cosponsors are three Democrats, Ernest Hollings, South Carolina, Sam Nunn, Georgia, and Herman Talmadge, Georgia; and 12 other Republicans. Among the latter are Barry Goldwater, Ariz., Strom Thurmond, S. C.; Dewey Bartlett, Okla.; Henry Bellmon, Okla.; William Brock, Tenn.; James Buckley, N. Y.; Carl Curtis, Neb.; Peter Domenici, New Mexico; Peter Dominick, Colo.; Paul Fannin, Ariz.; and James A. McClure, Idaho.

That's not very many but it is a nucleus. We remain to be shown that very many others will join this effort, but it is a beginning at least. It can put the rest of the members of Congress, senators and congressmen alike, on notice it's not enough to talk about inflation; one has to do something about it.

[From the Canton (Ohio) Repository]

BALANCING THE BUDGET

A bill introduced in the U.S. Senate shortly before Congress recessed may well be the focal point of another historic confrontation between the legislative and judicial branches of government.

Introduced by Sens. Jesse Helms, R-N.C., and Harry F. Byrd Jr., I-Va., the bill would require the President to submit and the Congress enact a balanced budget for the fiscal year beginning July 1, 1974.

In the bill, the sponsors contend the current fiscal policy by the federal government has resulted in substantial borrowing from both public and private sources and that the "aggregate of such borrowing has resulted in an exorbitant national debt totaling more than $450 billion."

Noting that the federal funds area of the budget has run a deficit of some $100 billion over the past four years, Sen. Helms said:

"If we are serious about controlling inflation and eliminating the prospect of an increasing national debt in the future, then the Senate must face up to the facts regarding deficit spending in the last four years.

"Truly no senator can ignore the impact that this $100 billion in deficit federal spending has had upon our economy. It has been the primary stimulus for the inflation which has seriously eroded the purchasing power of the dollar both at home and abroad."

Sen. Helms sees no quarrel developing with President Nixon over the issue since the President has stated his goal is a balanced budget for fiscal 1974.

There will be a problem or two, however. First, Mr. Nixon may challenge the mandating of a balanced budget by Congress—an act he could interpret as overstepping its authority.

Second, he may resist the mandate on the basis that too many financial forces have been at play too long to produce a truly balanced budget in a short period of time.

Of course, neither the Senate nor the House of Representatives has even voted on the proposal yet. But its introduction and the public interest in a balanced budget to offset the present smothering inflation promise to produce some lively debate in coming months.

It is time the President, Congress and the people of the nation study seriously the disastrous implications of continued deficit spending.

[From the Chattanooga News-Free Press]

A BILL TO BACK

Taxpayers who are more than a little tired of inflation-spurring, excessive spending by the federal government are being offered something they can shout for in the coming months. It's the Helms-Byrd bill in the Senate calling for fiscal responsibility in federal spending.

The bill, titled Emergency Anti-Inflation Act of 1973, was introduced before the congressional recess by Sen. Jesse Helms, R-N.C., and Sen. Harry F. Byrd Jr., Ind.-Va., and within days, 16 other senators signed as cosponsors. Included in that group are Sen. Bill Brock, R-Tenn., and both Sens. Sam Nunn and Herman E. Talmadge, D-Ga.

In short, the bill requires the President to

submit and the Congress to enact a balanced budget for the fiscal year beginning July 1, 1974. Sen. Helms says the measure offers "an opportunity to take some action, to face up to the danger that reckless federal spending has presented to our nation's economic security and to protect against future increases in the national debt."

The senator points to the deficit spending in just the last four years that has totaled about 100 billion dollars. He said, "No senator can ignore the impact that this 100 billion dollars in deficit federal spending has had upon our economy. It has been the primary stimulus for the inflation which has seriously eroded the purchasing power of the dollar both at home and abroad."

It will be remembered that President Richard Nixon, in his statement July 18 on Phase 4 of wage-and-price controls, said, "I propose that we should now take a balanced budget as our goal for the present fiscal year." Sen. Helms has reported the President has given him personal assurance of that aim, adding, "The bill will readily pave the way for the preparation of a balanced budget. . . ."

Getting both the President and the Congress to agree on this much-desired goal may be something else again. Sen. Helms is aware, as are many inflation-weary citizens, that some congressmen will find it difficult to adjust to the idea of cutting down substantially on federal expenditures, because far too many have pet projects.

But the goal is worthy, and here is a bill taxpayers can get behind and write letters about to Congress, if they really want to do something about inflation at the key stopping point—the big-spending federal government.

[From the Goldboro (N.C.) News-Argus]

BALANCED U.S. BUDGET MAY BE REAL POSSIBILITY

Many must have scoffed the other day when Senators Jesse Helms and Harry F. Byrd, Jr., introduced a bill requiring the federal government to live within a balanced budget beginning July, 1974.

No one doubts the sincerity of Senator Helms and Senator Byrd.

But history has left most of us far too cynical to pay much attention to talk about balanced budgets.

We all may be in for a pleasant surprise.

Word around Washington is that it might be possible to balance the budget this fiscal year. Congress appears more conscious of the pitfalls of deficit spending. Inflation, caused largely by government overspending, has reached unacceptable levels politically and economically.

Ironically, this same inflation is contributing toward balancing the budget by producing expected billions of extra dollars in taxes.

Some research people are forecasting budget surpluses in the years ahead.

The bill introduced by Senators Helms and Byrd wouldn't rely on happenchance to realize a balanced budget.

It would require the President to submit a budget in which non-trust fund expenditures do not exceed non-trust fund revenues for each fiscal year.

It would prohibit the government from spending more than it takes in during the fiscal year.

There's nothing new in the Helms' approach to budget-balancing.

It's also an approach on which no one has been able to improve.

[From the Louisburg (N.C.) Franklin Times]

BALANCED BUDGET ANSWER TO INFLATION

With the President almost scrambling trying to figure out ways to curb inflation, with controls on prices and all the other Phases of the President's program for Economic Stabilization we wonder why no one thought of a balanced budget before.

Senator Jesse Helms and Senator Harry F. Byrd of Virginia have introduced a bill that would require the government to balance its budget beginning with the 1974 fiscal year.

The bill probably stands little chance of passing; but, is one that should be seriously considered.

As Senator Helms has pointed out "controls on prices and wages will not stop inflation because it is not directed at the cause of the inflation."

He said ". . . I am firmly convinced that an overwhelming majority of the American people would rather see the Government spend less, thereby stopping this inflation, than to see larger and larger Federal deficits being spent with money that inflation has made practically worthless."

Certainly, anyone will admit that inflation is the most pressing problem with the American public today. It is the one problem that affects them most closely and most often.

Everyone agrees that some drastic measures, a balanced budget, which would be over what has been being spent running upwards to a $450 Billion Federal debt, would be a drastic change. But one would hope that our legislators will have the courage to be willing for the sake of the people who put them in office, to come up with some drastic measures to halt inflation.

The time has come for our congress to stop playing politics and staging television shows and get down to the serious business of trying to solve the grave problems facing our country.

We are in a time of crisis. People have become rather complacent about things that go on in government over the years but the time is lost forever when we as American citizens can afford to be complacent.

This is not to sound like giving up on our system of government or our government itself. This country has faced many crises before and has weathered them. But if we don't realistically face up to this one now, it is going to be some hard times ahead for the American public.

Senators Helms and Byrd should be commended for the bill and hopefully it will be looked at for what it can mean to the John Q. Public. After all who is the real government and country?

[From the Henderson (N.C.) Daily Dispatch]

IT CAN BE DONE

If enough people want to enough, the Federal budget can be balanced. It can be done without any higher taxes. It can be done without sacrificing any vital Federal Service. What's more, it can be done in the next budget (the current one is too far gone).

Preposterous, you say? Certainly not. It is only a matter of sound financing, something which Washington has not been accustomed to in a generation, except for a very few years.

Senator Helms has introduced a bill in the Senate which would require that the government spend no more than it takes in for any one fiscal year. The senator has challenged a colossal problem. It's colossal because Congress and the administration have allowed it to become that. Between the two branches of government, fiscal sanity can be restored to the Federal establishment.

A gentleman from the Washington scene was in the office the other day. He said there is a growing consciousness on Capitol Hill that the ridiculous habit of deficit and borrowing year after year must be ended. That's one of the most encouraging reports we have heard from the seat of power in many a day. The wonder is as to whether the honorables will follow through or ignore the dictates of conscience.

One hopeful sign is that more and more Americans are becoming fed up and disgusted with fiscal irresponsibility in the house of the mighty. If there shall be enough of that, those in control will sense the threat to their political future and will act accordingly and sensibly.

Trouble now and all along has been and is that citizens generally are too callous and indifferent about affairs of their government. When and if they are sufficiently concerned, results will be had. The dollar will strengthen abroad, foreign trade can be balanced, people will have greater confidence in Congress and the administration, and the nation will have made a new start toward monetary integrity.

The Helms proposal is proper. It is long overdue. But it will be a steep hill to climb. There will be obstacles to overcome. The ascent is possible and the obstacles can be tossed aside. Where there is a will there is a way. It is a question of whether there is enough will among those who can accomplish these objectives. It is possible. One wonders if it is probable.

[From the Dunn (N.C.) Daily Record]

SEVENTEEN SENATORS SUPPORT HELMS BILL

WASHINGTON.—Seventeen Senators have joined as cosponsors of a bill by North Carolina Senator Jesse Helms which will require a balanced federal budget. Senator Harry Byrd (I–Va.) joined Helms initially in introducing the Helms-Byrd measure.

The bill requires the President to submit and the Congress to enact a balanced budget for the fiscal year beginning July 1, 1974.

Included among the cosponsors are Senators Dewey Bartlett (Rp. Okla.), Henry Bellmon (R–Okla.), Bill Brock (R–Tenn.), James L. Buckley (CR–N.Y.), Carl T. Curtis (R–Nebr.), Pete V. Domenici (R–N. Mex.), Peter H. Dominick (R–Colo.), and Paul J. Fanning (R–Ariz.).

Also listed as cosponsors are Senators Barry Goldwater (R–Ariz.), Clifford P. Hansen (R–Wyo.), Ernest F. Hollings (D–S.C.), James A. McClure (R–Ida.), Sam Nunn (D–Ga.), William L. Scott (R–Va.), Herman E. Talmadge (D–Ga.), and Strom Thurmond (R–S.C.).

"I am extremely pleased to have this group of distinguished Senators join me in this effort," Helms said. "I am convinced this bill is a first step toward eliminating inflation and building a firm foundation for a stable economy in this country."

"It is time we face up to the danger of continued reckless spending by the Federal government and the threat it poses to our economic security," Helms continued. "Controls will never stop inflation because they are not directed at the cause of inflation.

"I know it is difficult for some Senators to commit themselves to a balanced budget because such actions will necessitate cutting Federal expenditures. I am happy to see so many of my colleagues willing to come forward in support of the Helms-Byrd bill."

A MESSAGE FOR PARENTS EVERYWHERE—PLEASE READ

Mr. McINTYRE. Mr. President, earlier this summer two young men died in a mountain climbing accident in New Hampshire. The story of the accident, illustrated by a dramatic photograph, was widely publicized, which might well raise the question of why I, a Senator from New Hampshire, would want to call renewed attention to a tragedy that took place in his native State.

I do so, Mr. President, because of a column that appeared in the August 24 issue of the Baltimore Sun, a column written by Edgar L. Jones. Mr. Jones was the father of Dana Jones, 28, one of the victims of the climbing accident, and this column—a letter to his daughter in India about her brother's death—was so mov-

ing, and said so many truths our generation must heed, that I want to share it with my colleagues and with all who read the CONGRESSIONAL RECORD.

I will make no effort to capture Mr. Jones' eloquence in my own words. That would be futile and presumptuous. But simply to indicate why I believe that every parent who has felt the trying pangs of the generation gap should read this column, let me quote at some length from the text I intend to put into the RECORD:

On his son:

He had found a kind of peace and inner strength in the mountains. He had found as well a fellowship with young people who had many of the same values and respect for the out of doors . . . I wrote to you of these things because, as you know, when he left with you three years ago in a long eastward quest for inner peace, he did so as a rejection of what he considered to be the prevailing American value system. He rejected not only the superpower and war mentality but the culture that revolves around status and possessions . . . While he did not reject his parents—Dana was too imbued with family love for that—he did believe, I know, that we were *too conditioned* by our own place in the American system to comprehend, as he would have liked us to comprehend, what was on his mind. He felt a barrier between us . . . But Mother and I know that somehow he managed to work it out in the mountains. He was never happier than in the past year. Between our vacation trips to New Hampshire and his several trips to Baltimore, we saw quite a bit of him, and he had developed an easy, comfortable relationship with us. He was, let's be honest about it, still of a restless, questing nature and was not at all certain what he would do in life. But he had definitely found his bearings.

On the accident:

There are many worse ways to lose a loved one than when he is doing what he really liked to do. We are mercifully free of the anger we might have felt if he had been killed in an ugly war; or the hate we might have known if he had been knocked from his bicycle by a careless motorist, or the self-reproach that might have been ours if he had died, say, of an overdose or a drinking habit. Other parents have suffered and will at other unfortunate times come to know more burdensome tragedies than this one.

On his son's friends who came to the funeral:

These were friends with whom Dana had worked and climbed . . . They kept coming in, some from scattered places, first an early few, then a dozen, a score, two score—we didn't try to count. They were Dana's age, your age, and even some younger, long-haired, bearded, blue-jeaned; the young people who out on the highways are lumped as hippy types. My thought, what honesty and openness of emotions, what sensitivity, what love and what a sense of responsibility! . . . It occurred to me that young people like yourself and Dana's friends who have been referred to scornfully as flower children have been closer to pure Christianity than most organized churches have been in a thousand years.

On the parents of these young men and women:

I know just as clearly as I know some of my own previous thoughts that they have parents who worry that they are wasting their time and will never amount to anything unless they return home and get good jobs. They are indeed, many of them, working at the most lowly of occupations in order to support themselves in an environment they find congenial and compatible with their values. But, what communion of spirit they have; what unstinting love and respect for one another; what purity of emotions and maturity. I wish it were possible to reach out to each of their parents and say from the heart, stop worrying that they may never become somebodies. They already *are* somebodies; beautiful individuals, and they gave us so much of a part of Dana we had never known and so much of themselves that we came away enriched rather than bereaved.

Mr. President, near the close of Mr. Jones' moving column he challenges John Donne's contention that every man's death diminishes the lives of those who survive.

He writes,

Under our own, perhaps special circumstances, John Donne was basically wrong. One young man's death did not diminish the lives of those who knew him but, instead, brought a heightened love and a new found inner strength to all those around him.

The letter to Mr. Jones' daughter which makes up his August 24 column, closes on this note:

As a postscript may I add that while this is your letter, written solely and expressly for you, there is a substantial portion which I wish to offer to a wider audience in the hope that it may in some way further an understanding between other parents and their children.

Mr. President, it is with that same hope that I now ask unanimous consent to have the full text of Mr. Jones' column printed in the RECORD:

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

[From the Baltimore Evening Sun, Aug. 24, 1973]

THE HARDEST LETTER—MADE EASIER BY LOVE

(By Edgar L. Jones)

Dear Barbie:

The most difficult thing I ever had to do, worse than I can bear now to think about, was to send such a terse, impersonal message to you in far-off India that your brother Dana had been killed in a mountain climbing accident. Even though you may by now be so deeply into yoga and meditation that you can accept death with more spiritual understanding than your mother and I can, nevertheless it must have been a terrible shock for you, made worse by the long wait for details and the many miles between us.

The last time you saw Dana, almost exactly two years ago when he was so ill in Afghanistan that he had to leave your small group and fly home, he was incredibly thin and weak—to us almost a ghost of his old self. I don't know if you are fully aware of the extent to which he rebuilt himself physically with a strenuous regime of exercises and the vegetarian dietary principles you both follow. By the time he left for the New Hampshire mountains he was already in good physical shape.

After he started working for the Appalachian Mountain Club and doing extensive climbing up those long trails to the peaks of the White Mountains, he broadened in the shoulders and thickened in the legs until, when next we saw him, he looked incredibly healthy to us. More important, he radiated a new happiness and a satisfaction with life. He had found a kind of peace and inner strength in the mountains. He had found as well a fellowship with young people who had many of the same values and respect for the out-of-doors. And in time he found, as surely I have written previously, a beautifully tender love in and through Michele. We wish you could have known her and seen them together.

I write to you of these things because as you well know, when he left with you three years ago in a long eastward quest for inner peace, he did so as a rejection of what he considered to be the prevailing American value system. He rejected not only the superpower and war mentality but the culture that revolves around status and possessions. He resented that in this country a person had to *be* somebody to be accounted as worth anything. While he did not reject his parents—Dana was too imbued with family love for that—he did believe, I know, that we were too conditioned by our own place in the American system to comprehend, as he would have liked us to comprehend, what was on his mind. He felt a barrier between us.

I am sure you know better than we do, Barbie, how devastating it must have been for him to have been stricken in Afghanistan while following the pull of yoga and meditation which drew you onward to the peace and security of an ashram in a distant corner of India. He was thrown back on his family, weak and dependent, and through the long months before he was able to set off on his own again, he was obviously struggling with conflicting values and a sense of not getting through to us and the world at large. But Mother and I know that he somehow managed to work it out in the mountains.

He was never happier than in the past year. Between our vacation trips to New Hampshire and his several trips to Baltimore, we saw quite a bit of him, and he had developed an easy, comfortable relationship with us. He was, let's be honest about it, still of a restless, questing nature and was not at all certain what he would do in life. But he had definitely found his bearings. We can only wish that we could have known how such a life, already crowded in 28 years with enough experiences for three lifetimes, eventually would have unfolded.

When in my terse message I said "letter follows" I had expected that it would be the hardest letter of my life. I had planned to say some of the above because I thought that the uncertainties of communication between you and Dana might have left you unaware of his happiness in the past year and that you might find some consolation in it. I had also thought I would have to give you some details of how he died. But Mother and I found that the details are irrelevant.

He and the other young man, Mark Lawrence, were friends; they were both experienced climbers; they had been on the ropes together on previous occasions, and they were in familiar climbing territory. They died together, the result of any one of a number of things that can go wrong in rock climbing, as they well understood. There are many worse ways to lose a loved one than when he is doing what he really liked to do. We are mercifully free of the anger we might have felt if he had been killed in an ugly war; or the hate we might have known if he had been knocked from his bicycle by a careless motorist, or the self-reproach that might have been ours if he had died, say, of an overdose or a drinking habit. Other parents have suffered and will at other unfortunate times come to know more burdensome tragedies than this one.

As I say, this much I had in mind for this hardest of letters, only to have found later a whole added dimension. You would know of course of the friends and relatives of our family who would so quickly come to our side. They were of tremendous help. But we could not possibly have anticipated the love that engulfed us from the moment, late Monday afternoon, when we walked hesitantly into the AMC lodge in Pinkham Notch. We were hugged and kissed and had our hands

held amid an outpouring of mutual tears and words, many words, and all the right words.

These were friends with whom Dana had worked and climbed this summer or during the previous year. They kept coming in, some from scattered places, first an early few, then a dozen, a score, two score—we didn't try to count. They were Dana's age, your age and some even younger, long-haired, bearded, blue-jeaned; the young people who out on the highways are lumped as hippy types. My, though, what honesty and openness of emotions, what sensitivity, what love and what a sense of responsibility!

Mother and I had supposed that we would have some kind of service at the funeral home, way over on the other side of the mountains, and then a cremation. I had some vague idea of taking the ashes to a spot at the lake which Dana had liked. But his friends wanted a memorial service close to Pinkham Notch. How all the arrangements got made has become a blur, but your Aunt Dorothy knew in round-about fashion of a minister, Mr. Davidson, who worked with young people in the area. He was wonderfully simple and direct, not pretending for a moment that he had known Dana personally. He spoke only of what he had learned from friends, and he couched his message in terms of his own search 35 years earlier for the peace and inspiration which the mountains had given to him and to others. There was also an all-too-brief period of silence for prayer and meditation, during which time Dana's hutmaster felt moved to speak beautifully of what Dana had meant to them all.

Much the most moving part was at the beginning when as Dana's friends came in, each in his or her natural attire, they quietly walked forward; now one, now another; and lay little bunches of wildflowers before the altar. They had so carefully refrained from ravaging nature and had brought only the most common and plentiful varieties—goldenrod, a few black-eyed susans and jewelweed. It was also impressive that somehow friends from Dana's earlier associations, like Fred and Susie from Friends School and Lee from Union College, had managed to get there. Newspapers are often accused of capitalizing on tragedy, and the Boston papers (I'm told) made sensational news of the accident; but the function of a newspaper is to make the news, however sad, widely known; and because of the eye-catching dissemination, friends of Dana's learned and came from New York, Boston, Albany, Worcester, Maine and Vermont—and I don't know from where else.

It was also extremely gratifying to us—although gratify is hardly an adequate verb—that the family of the other young man came to our service, having been through their own service at a considerably more distant place the previous day.

We had assumed that Dana had rejected Christianity along with other western values; but no, it turned out that Michele knew he had a favorite part of the Bible, which was read at the service. I wish some day soon you would read Luke 12, verses 22 to 32, because I believe it may be the place where your eastern religion and our more westernized religion come closest together in spirit. It is the part about the lilies and how they grow in which Jesus tells His disciples to give no thought to how they will eat or what they will wear but to seek first, the Kingdom of God and all their material needs will be met. It occurred to me that young people like yourself and Dana's friends who have been referred to scornfully as flower children have been closer to pure Christianity than most organized churches have been in a thousand years.

The mountain children, if I may now think of them as such, not only wanted a simple church service but they also knew instinctively what was right for the ashes. The next day eight of them, along with your cousin Dorothy and your little brother Robert, who is far from little any longer, went high into the mountains to an overlook where they knew Dana had enjoyed moments of contemplative peace. They took a few flowers, a Robert Frost poem and their own thoughts, spoken or unspoken. We did not intrude by asking the nature of their service, if indeed it could be called a service. We only know from Robert that they had shared a spiritual experience of having let Dana go free to find his destiny.

I think, Barbie, that you would have been greatly touched by and proud of these young people, who are so very much your young people and by now our young people as well. I know just as clearly as I know some of my own previous thoughts that they have parents who worry that they are wasting their time and will never amount to anything unless they return home and get good jobs. They are indeed, many of them, working at the most lowly of occupations in order to support themselves in an environment they find congenial and compatible with their values. But, what communion of spirit they have; what unstinting love and respect for one another; what purity of emotions and maturity.

I wish it were possible to reach out to each of their parents and say from the heart, Stop worrying that they may never become somebodies. They already are somebodies; beautiful individuals, and they gave us so much of a part of Dana we had never known and so much of themselves that we came away enriched rather than bereaved.

One of my favorite pieces of devotional writing long has been John Donne's admonition to inquire not for whom the bell tolls, because with each man's death goes a part of everyone else. As a humanitarian statement I still admire it. But under our own, perhaps special circumstances, John Donne was basically wrong. One young man's death did not diminish the lives of those who knew him but, instead, brought a heightened love and a new-found inner strength to all those around him. This is the thought that Mother and I rather desperately are trying to hold onto, back here in Baltimore, and which I wish to hold out to you for whatever comfort it can bring. We love you, Barbie, as you surely know.

And as a postscript may I add that while this is your letter, written solely and expressly for you, there is a substantial portion which I wish to offer to a wider audience in the hope that it may in some way further an understanding between other parents and their children. Since I write a weekly column which often deals with my personal observations and small pleasures, it would seem dishonest to me simply to avoid reference to the past week as though it had never happened to us. I feel confident you will understand.

Love, as always.

DAD.

FOREST SERVICE TOLD TO KEEP CUTTING TREES

Mr. TAFT. Mr. President, an article which I recently read in the Washington Post, concerning the report entitled 'Financial Planning Advice" which the U.S. Forest Service has sent to its field offices around the country, has disturbed me greatly.

The gist of this report is that the Forest Service shall concentrate on getting trees sold and cut even if this means postponing or cancelling programs designed to help hikers and others use the national forest for recreational purposes. The document advises the field offices to limit land use planning to those areas in the next 5 years where the highest activity in terms of timber, oil, gas or coal production or transmission will take place. At the same time, it declares that planning for new recreational projects will not be done in fiscal 1974, that the parks will be open for a shorter time during the off-season than in previous years, and that consideration should be given to shutting down "high cost, low use facilities"—in other words, the facilities in the less populated areas of the parks.

At a time when the Forest Service admits that it is considerably behind schedule in replanting the forests, and Americans' recreational needs and desire to use the forests are burgeoning, this report is quite unfortunate. I am well aware that there has been a very high demand for timber, although it seems to have slackened off in the past several months. But regardless of that demand, it would certainly be shortsighted to halt or drastically curtail our efforts to conserve, maintain and improve the areas which remain uniquely suitable to fulfill many of our recreational needs.

I expressed my concern months ago with respect to the possible relationship of the recent high level of log exports, coupled with high domestic demand, to environmental damage of our forests. However, since less than 10 percent of the exports are from Federal lands, the proposed financing priorities would affect the Federal forests to a much greater degree than log exports possibly could.

In view of the serious nature of these concerns, I urge that the appropriate committee of the Senate, the Agriculture Committee, look into this question immediately as part of its review of pending legislation dealing with management of our national forests.

Alterations of the Forest Service's budget or a much more specific directive from Congress indicating how the Forest Service should spend its money may be found necessary. If so, Congress should not hesitate to take decisive action.

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]

CUT MORE, FOREST SERVICE TOLD—GUIDELINES URGE DOWNPLAY IN RECREATIONAL USE

(By George C. Wilson)

The U.S. Forest Service must concentrate on getting trees sold and cut even if this means postponing programs designed to help hikers and others use the national forests, according to the latest White House budget guidance.

This Nixon administration philosophy runs through an 85-page report entitled "Financial Planning Advice," which the U.S. Forest Service has sent to its field offices around the country.

John R. McGuire, chief of the U.S. Forest Service, said the document represents his implementation of what the White House Office of Management and Budget wants his agency to do in fiscal 1974.

McGuire, while stopping short of disavowing the directive, said "it is unfortunate that the country is facing inflation and thus cannot do more for natural resources." He added that the budget does not include "everything we would like to do."

The book of guidance will further fuel the current controversy over how much the Forest Service should get to manage the national forests and who should receive top priority in using them.

"In light of the current high demand for

timber products for housing, etc." states the guidance document, "and the national economic importance of increased lumber and plywood production, you must make every effort to insure that these levels are met or exceeded."

The levels refer to the amount of timber that can be sold and cut from the national forests. Secretary of Agriculture Earl L. Butz and John T. Dunlop, director of the President's Cost of Living Council, announced on May 29 that 10 per cent more timber would be sold off in calendar 1973 than contemplated originally for fiscal 1973. The amount for that year and fiscal 1974 is 11.8 billion board feet, more than can safely be cut in the opinion of some conservationists, but not in the view of McGuire.

McGuire has said however, that the Forest Service is way behind schedule in replanting the forests—a pacing item for determining how many trees can be cut down without reducing the yearly yield.

The guidance document stresses that in spending money, productive areas of the national forests should take precedence over the out-of-way places favored by hikers, bird-watchers, hunters and fishermen:

"Limit land-use planning to those areas where activity levels in the next five years will be greatest or where high-level commitments cannot be deferred . . . Fiscal 1974 general land use planning will be primarily concentrated on the largest timber producing forests and areas where it must be done in response to high impact developments (e.g., oil, gas or coal; transmission lines; etc.) Defer routine planning for less critical areas. . . .

"Planning for new recreation projects will not be done in FY 1974," the document continues. "Close high-cost, low-use facilities. Shift as much work as feasible to timber purchases, states and counties, permittees or contractors . . ."

Further, the guidance book states, "recreation operation and maintenance costs will be reduced by giving consideration to closing up to 80 per cent of facilities for which standard level of operation and maintenance is estimated to cost more than $3 per visitor-day for campground and $6 per visitor-day for picnic, boating and swimming sites. Exemptions where justified can be made . . ."

In guidance which goes against the new trend for people to use parks and forests in the off-season to avoid crowds, the document states that U.S. forest facilities will be open a shorter time than usual in the off season in fiscal 1974.

In discussing roads and trails that run through the national forests, the budget guidance stated that any money saved in maintaining those routes "shall be reprogrammed to timber support activities."

This type of emphasis and the amount of money in the Nixon administration budget for the Forest Service is only part of the reason the service has suddenly become so controversial. Other reasons include the growing number of people who want to use the forests for recreation, the militancy of environmental groups who are suing the Forest Service over its tree-cutting practices in a number of places, and qualms among lawmakers about shipping U.S. logs to Japan at a time when timber supplies are limited.

FERTILIZER SHORTAGE

Mr. BARTLETT. Mr. President, although it has received inadequate attention in the press, the farmers of the United States are facing a serious shortage of fertilizer.

This shortage can be attributed to several factors including:

First, the large increase in domestic demand for fertilizer due to strong agriculture prices;

Second, a strong export demand; and

Third, domestic price ceiling.

Senator BELLMON and I have written Secretary Butz requesting that he urge the administration to drop the price ceiling on fertilizer. With the current ceiling, domestic purchasers are unable to compete with foreign markets that can pay higher prices.

Our farmers would rather pay higher prices for fertilizer than be without it.

Dr. J. C. Evans, vice president for extension at Oklahoma State University has prepared an excellent analysis of the current shortage. I ask unanimous consent that Dr. Evan's material be printed in full in the RECORD.

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

COOPERATIVE EXTENSION SERVICE,
OKLAHOMA STATE UNIVERSITY,
Stillwater, Okla., August 31, 1973.

The Honorable EARL L. BUTZ,
Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C.

DEAR SECRETARY BUTZ: Though I know that many have expressed a concern to you regarding the current fertilizer situation, I would like to communicate directly to you our concern here in Oklahoma.

Our State USDA Rural Development Committee decided to do a quick survey of 39 of our wheat-producing counties. This decision followed very quickly after one of the four regional meetings your office held on the wheat production requests for next year.

The attached results of the rapid survey are interesting and perhaps clearly demonstrate the concern. This is not a scientifically conducted survey, but I rather suspect the errors might be compensating. From conversations with plant food suppliers and local dealers, we would seem to be about to get 65% to 75% of last year's supply, and this at a time when requests are being made by your office not only to increase yields, but to increase the number of acres planted, each of which will require more plant food. Coincidentally with this, during August of 1973 we have had approximately a 20% decline in soil tests run in our lab over the quantity tested in 1972 (2,284 in 1972 to 1,796 in 1973).

The information being passed along to us by the fertilizer industry is that a substantial quantity of the plant food material is being siphoned off into international trade because of the less favorable domestic price ceilings. It very well may be that selling plant food materials to other nations results in a more favorable international trade balance than selling wheat, but if this be the case, then the probability of our being able to increase wheat production by either attempting to increase acres or yields or both is considerably lessened. It very well may be that the U.S. Government has two competing and perhaps conflicting objectives: (1) a favorable balance of trade; and (2) increased wheat production.

Also attached is a brief report developed by one of our Extension Economists which you might find useful.

We are simply alerting you to the fact that we face a very difficult task in trying to respond to your request to increase food production while facing a probability of less plant food materials than we had last year.

We simply thought you ought to be aware of this and not be surprised at the product next year in the event this situation persists.

I am writing to you as the elected chairman of the State USDA Rural Development Committee. I also serve as the Vice President for Extension at Oklahoma State University.

Sincerely yours,

J. C. EVANS,
Vice President for Extension.

1973–74 FERTILIZER SITUATION [1]

The fertilizer supply situation in Oklahoma, as elsewhere, is tight and is likely to become more severe. There appear to be several basic factors which have led to the current situation: (a) a large increase in domestic demand due mainly to strong agricultural prices, (b) a strong export demand, (c) dollar devaluation on top of the strong export demand, and (d) domestic price ceilings.

There are some additional problems facing the Oklahoma market: (a) transportation problems, (b) technical difficulties in several of the anhydrous ammonia plants that normally serve this geographic area, and (c) a large increase in demand at a time of the year when national fertilizer stocks are usually lowest.

The national situation with respect to the three major fertilizers is as follows:

Nitrogen—The nitrogen demand-supply balance is tight and will probably become much worse. Consumption of nitrogen in the U.S. for fertilizer in 1971–72 was 8.1 million tons. Consumption figures for 1972–73 won't be out until October. But it appears that it may have been as high as 8.9 to 9 million tons. Net exports in 1972–73 were 500,000 tons. Net exports for 1973–74 may run as high as 900,000 tons. Because of excess production capacity which faced the industry during most of the 1960's, little new capacity has been planned. One new plant has been announced for opening in Mid-1974. This is the only new plant announced for future completion.

Another factor which could become a problem is the supply of natural gas. It takes about 32,300 cubic feet of natural gas to produce a ton of anhydrous ammonia. If natural gas supplies become critical this winter, fertilizer manufacturers may be asked to cut back production.

Phosphate—The phosphate supply-demand balance is tight and will continue to be so through 1973–74. Domestic consumption of phosphates for fertilizer in 1971–72 was about 4.8 million tons. Domestic consumption in 1972–73 may have been as high as 5.1 million tons. Estimates for net exports in 1973–74 are 1.4 million tons, about 24 percent of the estimated available supplies. Supplies of phosphates should increase substantially by late 1974 if all of the announced 1.9 million tons of new wet phosphoric acid plant capacity is on stream by then. Until then, supplies will be tight and prices at or near their ceilings.

Potash—The potash supply is adequate and probably will be for the next few years. Prices may be up slightly particularly during the spring rush when prices are seasonally higher. Transportation may continue to cause problems with timely delivery.

Supplies of nitrogen and phosphate in Oklahoma are tight and will continue so. Some dealers are completely out of phosphate and are having considerable difficulty getting further supplies. Indications now are that many dealers will not be able to supply the same quantities this fall as were sold last fall. For those dealers fortunate enough to receive adequate supplies, timely delivery for normal planting will present a problem. It is quite likely that much of the additional wheat acreage that is anticipated will receive little or no fertilizer this fall. This may take the form of no fertilizer on some acreage or reduced application rates on all acreage. Some farmers have indicated that they may top

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[1] Report prepared by Dr. Robert Rathjen, Extension Agricultural Economist, Oklahoma State University, Stillwater, Oklahoma, August 29, 1973.

dress with phosphate after the wheat has come up if supplies are available.

PRESENTATION OF THE EMERGENCY FUEL OIL SUPPLY COMMITTEE TO CONGRESS

Mr. McINTYRE. Mr. President, over 850 fuel oil dealers from New England, New York, New Jersey, and Pennsylvania, have today warned Congress that unless immediate action is taken to establish a mandatory fuel oil allocation procedure that severe shortages will develop in the Northeast this winter.

Speaking for a united New England senatorial delegation that supports the Emergency Fuel Oil Supply Committee's position, we call for the immediate establishment of mandatory allocations of fuel oil.

The seriousness of this situation warrants immediate action.

Mr. President, I request unanimous consent that the position statement of the Fuel Oil Supply Committee be printed in the RECORD.

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

EMERGENCY FUEL OIL SUPPLY COMMITTEE OF THE RETAIL FUEL OIL DEALERS FROM NEW ENGLAND, NEW YORK, NEW JERSEY, AND PENNSYLVANIA—STATEMENT OF POSITION, SEPTEMBER 12, 1973

1. HOME HEATING OIL IS VITAL

No. 2 fuel oil is vital to the health and safety of the majority of the homeowners in our states.

Heated by oil

Area, percent of homes, number of homes:
New England, 75, 2,800,000.
New York State, 57, 3,500,000.
Long Island, N.Y., 80, 550,000.
New Jersey, 53, 1,300,000.
Pennsylvania, 35, 1,300,000.

Nearly 60% of the nation's No. 2 fuel oil is consumed in the nine Northeastern states—the highest concentration of usage in the nation.

2. ROLE OF INDEPENDENT HEATING OIL RETAILER

The major portion of this oil is delivered to homes by independent retail dealers:

Percent of Oil-Heated Homes Supplied by Independent Heating Oil Retailers

New England	82
New York State	85
Long Island, N.Y.	90
New Jersey	85
Pennsylvania	90

If these retailers are not guaranteed the full quantity of fuel oil needed to serve their customers, many of these customers will simply go cold. There is no substitute for the delivery system—the storage facilities and trucks—owned and operated by independent retailers. If the independent has no fuel, the homes he supplies will have no fuel.

3. MASSIVE SHORTAGE OF HOME HEATING OIL

All projections, analyses and statistics demonstrate that—unless prompt action is taken by the Federal Government—there there will be a massive shortage of No. 2 fuel oil in the Northeast this winter. Homes, schools, hospitals, factories and all other users of oil heat could well go cold; the result will be a severe threat to health, massive disruptions of public services and substantial loss of jobs.

Independent heating oil retailers in the Northeast have already been notified by their suppliers that deliveries in the coming winter will be far below last year's levels. The projected shortage in some areas is already as high as 40%.

4. PLAN OF ACTION

Immediate action is needed to prevent cold homes, hospitals, and schools:

A. Mandatory allocation program for No. 2 fuel oil

We strongly support Congressional legislation to increase supplies by establishing a mandatory allocation program for distillate products. Such a program must provide:

That independent retailers and wholesalers are *guaranteed 100% of their base period supply of No. 2 fuel oil;*

That major oil companies must import the substantial additional quantities of No. 2 fuel oil needed to meet the demands of their own systems and total requirements of independent retailers. Cost of Living Council rules must be amended to require that foreign costs be averaged with domestic and to permit passthrough—by both importers and retailers—of all costs of foreign product.

A mandatory allocation program will:

Increase supplies of home heating oil in the total U.S. market and in the independent market, thus preventing severe hardship for millions of homes served by independent retail dealers.

Prevent continued sharp escalation of prices in the Northeast, by assuring that a greater portion of lower priced domestic No. 2 fuel oil is made available to consumers in the 9 state area.

End discrimination by the Federal Government against homeowners who use fuel oil. Federal policies now *guarantee* full supplies of natural gas, electricity and propane to homes that rely on these fuels for heat. Only in the case of No. 2 fuel oil has the Federal Government refused to guarantee supplies to the homeowners. The lack of clear policy discriminates against the Northeastern states, where fuel oil consumption is highest in the nation.

Prevent refiners from exploiting the current fuel shortage to drive independent retailers out of business by arbitrarily cutting off their supplies, thereby severing supply relationships that, in many cases, date back for decades.

Preserve and strengthen the independent sector of the petroleum market.

We are strongly opposed to any plan for *rationing* of fuel oil to the consumer. Such a plan would be unworkable and result in chaos in the retail heating oil market.

B. Amendment of Phase IV price regulations

The Phase IV Oil Regulations blatantly discriminate against independent retailers of heating oil and gasoline.

All segments of the petroleum industry can pass through all increased costs, up to retail level; the retailer is forced to absorb all increased costs, except increased costs resulting from imported product.

Retailers are forced to use a mark-up date of January 10, 1973; the producers, manufacturers, and major oil companies are allowed a May 15, 1973 mark-up date. Thus, the independent heating oil retailer is forced to absorb all costs since January 10th. Product and nonproduct costs have obviously increased markedly from January 10th to May 15th. The major oil companies have already passed these increased marketing costs on, but the independent retailer cannot.

The independent heating oil and gasoline retailers are the only segments of the economy and the only class of retailers who are not allowed under Phase IV to pass through increased costs on a dollar-for-dollar basis.

In brief, unless substantial changes are made in the Phase IV regulations, many independent dealers, within the next few weeks, will be faced with selling substantial volumes of product at a loss. In such cases, the retailer, a small independent businessman, will be forced out of business, and the homeowners who rely on the retailer for fuel will be without heat.

We therefore strongly recommend *the following amendments to the Phase IV rules:*

The independent heating oil retailer must be permitted to adjust retail prices to reflect foreign and domestic product cost increases on a dollar-for-dollar basis, and to institute each retail adjustment on the date that the cost changes are experienced.

The independent heating oil retailer must be permitted to adjust prices to reflect all non-product cost changes such as labor, truck maintenance, and other related operating expenses, on a dollar-for-dollar basis.

The August 19, 1973 ceiling price should be calculated by using the average cost of inventory on August 1, 1973 plus the actual mark-up on June 1 to 8—the dates of the freeze. The mark-up presently permitted under the Phase IV petroleum program may be feasible for some gasoline retailers, but is completely inadequate for the heating oil retailer who must buy and maintain fleets of delivery and service trucks and bulk storage facilities, plus provide 24 hour service and deliveries and extend credit and face substantial delays in receiving payment.

The independent heating oil and gasoline retailer should be eligible for the small business exemption applicable to all other industries under the Phase IV regulations.

In addition, we urge prompt action by the Cost of Living Council to correct the gross inequities and discriminatory aspects of the Phase IV rules and regulations on the independent petroleum retailer.

C. Temporary amendment of air quality standards

We are pleased that the President and the Director of the Energy Policy Office recognize the need for a temporary relaxation of air quality standards in certain areas of the Northeast.

We recommend that, during the period October 1, 1973 through April 30, 1974, the state agencies permit—where it is currently prohibited—the burning of No. 2 fuel oil of ½ of 1% sulfur content and No. 6 (residual) fuel oil of 1% sulfur content.

This will result in increased supplies of oil to heat homes as imports of higher sulfur fuel oil from foreign refineries increase and the use of No. 2 fuel as a blend with No. 6 decreases.

D. Summary

In short, we need help from Congress in two major areas:

1. Immediate legislation to assure adequate supply and equitable distribution through a mandatory allocation program.

2. Support, assistance and, if necessary, legislation to correct the inequities of Phase IV as it applies to the independent retailer.

Organizations

New England Fuel Institute and Affiliated Associations.
Vermont Oil Heat Institute.
Better Home Heat Council of New Hampshire.
Better Home Heat Council of Massachusetts.
Independent Connecticut Petroleum Association.
Home Heating Council of Rhode Island.
Home Heating Council of Northern Rhode Island.
Maine Oil Dealers Association.
Oil Heat Institute of Long Island.
New York Oil Heating Association.
Empire State Petroleum Association.
Pennsylvania Petroleum Association and ten affiliated associations.
Delaware Valley Fuel Oil Dealers Association.

PENSION REFORM

Mr. JAVITS. Mr. President, I ask unanimous consent to have printed in

the RECORD an editorial entitled "Pension Reform Must Be Saved" published in the Los Angeles Times of September 4, 1973.

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

PENSION REFORM MUST BE SAVED

The disclosure that Rep. Wilbur D. Mills (D–Ark.), chairman of the House Ways and Means Committee, has undergone back surgery comes as bad news for reasons going beyond sympathy for his discomfort. It means that several vital pieces of legislation before his committee will probably be delayed.

One is the trade bill, the early passage of which is essential for elective U.S. participation in the coming world trade negotiations. Another is pension reform legislation.

Voluminous testimony before congressional committees has left no doubt of the need for federal legislation to assure the tens of millions of Americans covered by corporate pension plans that the retirement benefits they expect will actually be forthcoming.

According to a government study released just the other day, retirement benefits were lost by almost 20,000 workers in 1972 alone when their employers terminated the pension plans they had been depending upon. Experts believe that the figure was higher in previous, less prosperous years when the incidence of business failures was more serious.

Workers frequently lose their benefits, too, when the company for which they work is merged into another firm or when investment of the funds is managed dishonestly or ineptly. More frequently still, employes with long years of service lose their accumulated pension benefits when they change jobs before retirement age.

Sen. Jacob K. Javits (R-N.Y.) is the principal sponsor of a bill that would go far toward providing the additional safeguards that are needed.

It is taken for granted that some version of his proposal will be passed by the Senate this month, but it is in danger of being watered down to meet objections that federal insurance to provide protection against loss of benefits when a plan goes bankrupt or is otherwise terminated would be too expensive.

The House Ways and Means Committee hopes to consider pension reform legislation quickly after disposing of the trade bill. And there is the rub.

Originally, Mills promised that the committee would complete work on trade legislation before the August recess. Partly because of the disablement he has suffered from a ruptured disc in his lower back, the committee didn't make the deadline. However, he still had hoped to clear the trade bill for action by the full House in late September. Now even that target date is in jeopardy because of Mills' surgery.

The Chairmen of all congressional committees are powerful men, and Mills is more powerful than most. Rep. Al Ullman (D-Oreg.), who will fill in as acting chairman, will find it very difficult to arrange the compromises between contending economic interests that are necessary to put together an effective trade bill that will withstand challenge on the House floor.

It is important, however, that he succeed in doing so. If too much of the public's business is delayed until next year, there is the danger that it won't get through at all.

Pension reform was allowed to die in the last Congress. It is too important, to too many people, to be allowed to die again.

CHAIRMAN SIMPSON'S THREAT AGAINST TOBACCO REBUKED BY SENATOR HELMS

Mr. HELMS. Mr. President, during the August recess of Congress, hundreds of thousands of people in my State, and in other States, learned the disconcerting news that a threat had been voiced to ban cigarettes in America. Needless to say, Mr. President, such a threat, if carried out by the Federal Government, would paralyze the economy of my own State along with several others.

I will not dwell on that economic fact of life, Mr. President. But I do desire to comment on the circumstances leading up to the incredible announcement by Richard O. Simpson, newly appointed Chairman of the newly established Federal Consumer Product Safety Commission that he is entertaining the serious expectation that his agency may move to ban the cigarette absolutely.

It goes without saying, Mr. President, that Mr. Simpson's appointment is now widely regarded in my State as something akin to the Roman Emperor Caligula's choice of his horse for the post of Consul.

That aside, Mr. President, it is interesting to note that Chairman Simpson disclosed that he was triggered to act when informed a month earlier that he would be receiving a petition from one or more Members of Congress calling on Mr. Simpson and his agency to ban cigarettes.

Who are the signers of this anticipated, but as yet unfiled, petition? Who, Mr. President, are those Members of Congress whose mere contemplation can trigger a Federal bureaucrat who is yet to warm his new seat?

Not much looking was required in order to find the answer. Very quickly, the cat was out of the bag. And it was my distinguished colleague from Utah, Senator Moss, who identified himself as the author of the petition that triggered Chairman Simpson to undertake to destroy the 365-year-old tobacco industry in America—and along with it the jobs of hundreds of thousands of Americans.

Now the distinguished Senator from Utah (Mr. Moss) knows of my personal affection for him. We serve together on the Committee on Aeronautical and Space Sciences. He is a very pleasant, affable gentleman. I do not doubt his sincerity. But he should not doubt mine when I say to him that he is in for a fight. My distinguished friend can trigger as many bureaucrats as he can muster, but this Senator and many others do not intend to stand by idle and silent, while he and Chairman Simpson undertake to cripple the economy of my State and destroy the livelihood of hundreds of thousands of families.

To be sure, Mr. President, my distinguished colleague (Mr. Moss) couched his revelation of participation quite delicately. Indeed, it is important to study the precise language of a statement issued by Senator Moss:

I commend Chairman Simpson of the Federal Consumer Product Safety Commission, for his comments regarding a ban on the sale of cigarettes if found to contain poisonous substances medically harmful to users.

May we assume from the "iffy" clause that my distinguished colleague has some doubts about the alleged health hazard of tobacco? If so, perhaps we are making some progress toward objectivity, which has been long lacking in the controversy over smoking and health. An objective review of all the medical literature—a task which has not yet been undertaken—would, I think, sustain more than reasonable doubt about the role of smoking in causing diseases.

My distinguished colleague (Mr. Moss) goes on to acknowledge the fact that he did the prodding leading up to Chairman Simpson's threat. Senator Moss said:

Some time ago, I assigned to my staff a study of various substances including tobacco and asked it to prepare a petition if justified to the Consumer Product Safety Commission to issue a ruling.

Again, Mr. President, there is an "iffy" clause. May we hopefully anticipate that the Senator's staff, after applying its legal and scientific expertise, will find such a petition is not justified? Or, may we anticipate finding that other of the various substances in their study might also be included in their petition to the Commission? Like milk, butter, eggs, and other foods high in cholesterol? Like beer, wine, and liquor? Like aspirin, tranquilizers, and saccharin? Like coffee, tea, sugar, and soda pop? Like aerosol sprays, gasoline, and cooking gas?

The list of substances is long, and not limited to tobacco. For, as my colleague interprets it, the Hazardous Substances Act is sweeping. It seems to throw a very tight dragnet over the economy, covering, in his view, all that can adversely affect mankind by "ingestion, inhalation, and absorption through any body surface." Since he believes that "a habit of use" should not override "a known threat to health," perhaps we can anticipate a move to prohibit overeating, and a Federal injunction against that as well. The question is: How far is the Senator willing to go? How fair does he intend to be?

Farmers, workers, and businessmen in other fields should take warning. Even though the Senator is pointing his arrow at tobacco, the threat is broad. If he hits this bull's-eye today, other targets may be selected tomorrow.

Even if he misses, citizens should be forewarned to keep their heads down, for my distinguished colleague has a second arrow in his quiver. If prohibition does not get you, taxation may.

Earlier this year Senator Moss got off a practice shot with the second arrow of taxation which few noticed. He inserted in the RECORD an article advocating a tar and nicotine tax as a means of pursuing his policy objectives.

The author of that article is a consultant to the management firm which designed a series of such so-called incentive taxes for Mayor Lindsay to impose on Fun City.

The Senator from Utah also shot out a volley of reprints to State legislators and city officials all over the country, encouraging them to get in on a good thing. He sent along a model tax bill to help those who might not know how to draft one.

The power to tax, John Marshall said, is the power to destroy. In this case the operational word is "destroy." My colleague has given all of us a Hobson's choice—destruction of the tobacco industry by prohibition, or by taxation. We should accept neither.

In "Mein Kampf" Hitler was ruthlessly frank in setting down his strategy of world conquest. The author of the article, inserted in the RECORD by my distinguished colleague, is no less ingenuous—and no less wrong-headed. A young man, he makes up in academic degrees—A.B. Harvard, M.A. Oxford, J.D. Yale—what he may lack in experience and sensitivity.

For example: The young expert urges upon this Government—and evidently Senator Moss does not disapprove—"the tried strategy of the old British Empire: Divide and Rule." Is the young man aware, or does he care, that this was the strategy that imposed a yoke of colonialism upon millions of people in India, Ireland, Palestine, the Middle East, Asia and Africa, to say nothing about pre-Revolutionary America?

Many have vocally professed to shrink in horror from the so-called White House "enemies list" revealed in the Watergate hearings. But what about this gross application of discredited international power politics against a legal domestic industry and a legal domestic product and the millions of Americans who enjoy it?

Having identified tobacco and tobacco smokers as the "enemy" on which to apply the divide-and-rule strategy, the youthful management expert calls for—and evidently Senator Moss approves—Government intervention to determine the most coldly efficient mechanism. "There are two possibilities," he says, "taxation and/or selective prohibition."

And, my distinguished colleague from Utah, like an approving grandparent, is ready, with a taxation bill in one hand and a prohibition petition in the other, to give the young expert his choice of mechanisms, to play with.

Self-righteousness is heady business, Mr. President. It permits its possessor to accomplish what he regards as noble ends with ignoble means. And all in the name of necessity. The old ways do not work. New ways must be used.

For as the young "management consultant" sees it, "despite the Government's efforts, the health situation has not improved." By that he means, people have not sufficiently responded to warnings, higher taxes, propaganda, and Government harassment, and continue freely to decide for themselves whether to smoke or not. This sad state of affairs exists, says this young expert, "because the Government's interventions have all shared the common, unrealistic goal of reducing total cigarette consumption." He goes on to observe:

> Legislators and public officials must learn from these past experiences: Most smokers cannot or will not quit.

The only answer, he states, is taxation and/or selective prohibition.

The author is industrious to point of zealotry, ingenious to the point of sophistry. Arguments pile on argument, with references, citations, and footnotes stretching out from the end in an impressive festoon like a peacock's tail. But withal, his lengthy analysis is defective.

It comes down to this. His basic premise is false. He has threaded his pearls of wisdom on a broken string.

For it is not Government policy to discourage smoking, and certainly not by hook or crook.

This may be a satisfactory policy to some Members of Congress. It may be their fervent wish to become Government policy. But so far it is still only a gleam in their eyes.

Government policy with regard to cigarette smoking as established by Congress in the 1965 act and again in the 1970 act is designed to provide the American people with the facts about the alleged health effects of smoking and let them make their own free choice.

Let me read the declaration of policy of Public Law 91–222, an act to extend public health protection with respect to smoking:

> It is the policy of the Congress, and the purpose of this Act, to establish a comprehensive Federal program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—
>
> (1) the public may be adequately informed that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes; and
>
> (2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

Mr. President, I can understand my colleague's frustration. What do you do when millions of people reject your well-intentioned efforts to protect them from themselves?

This is a profound question. If a man or a woman knows that cigarettes may be harmful to his health, and knows exactly how much "tar" and nicotine they contain, and wants to smoke anyway, is it the Government's function to tell him that he cannot, or that he must pay higher taxes, or that the tobacco industry cannot even produce the kind of cigarettes he wants?

I submit, Mr. President, there is inherent in our American system and its traditions a citizen's fundamental right to be left alone. As basic as our right to privacy, is our right to be left alone to choose how to exercise our individual freedom.

How far shall the Government intervene to impose upon its citizens an official party-line view of the good life? Apparently there are those who would impose behavioral prohibition or behavioral taxation, or other forms of compulsion, coercion, and control. But, this is not a health question. It is an ethical question, a political question in the highest sense of the word.

A surgeon general or a government bureaucrat is no more an expert on answering this profound question than a butcher, baker, or candlestick maker. Nor is a Senator from Utah, or North Carolina, or a management consultant, or the mayor of New York City.

It is a question for the people to decide. Fortunately for the Nation, we have an indication of what the people themselves will decide. In New York City since July 1, 1971, there has been in effect a tar and nicotine tax, imposed by Big Brother Lindsay as a seminoble experiment in behavior control.

How poorly has this sumptuary tax fared? Let me count the ways.

First. Administrative costs of tax collection, compliance, and enforcement climbed. Under the New York City scheme, consumers pay the basic 4-cent city tax on cigarettes with up to 17 milligrams of tar and 1.1 milligrams of nicotine. For cigarettes higher in *either* category, they are taxed at 7 cents; brands higher in both, are taxed at 8 cents. In theory, the consumers were supposed to switch brands to avoid the tax. In practice, the ordinance shattered a fairly uniform price structure. Cigarette prices now differed by length—regular, king size, long—and also by their fluctuating tar and nicotine content.

It became extremely difficult for retailers or consumers to figure out the selling price and the tax. The result: Retailers, who have to bear the cost of all the additional bookkeeping, tended to raise prices on all brands by 4 cents. Thus, the brand-switching incentive disappeared out the window and additional enforcement costs came in the door.

Second. Contempt for the law and bootlegging increased. It is estimated that organized crime controls the distribution of half of all cigarettes sold in New York City. They get a steady flow of cash to subsidize their other criminal activities such as narcotics and loan sharking. This state of affairs is the inevitable byproduct of an unwanted and unenforceable tax, which raises legal cigarette prices to an exorbitant level, about 70 cents a pack. On the black market, popular brands are offered at a substantial discount, and are snapped up by consumers.

The tar and nicotine tax is actually an incentive to organized crime which seems to be the primary beneficiary of the new prohibition as it was of the old.

Third. Legitimate retail sales have suffered, and so have tax revenues. The onerous cigarette tax has driven 20 percent of cigarette sales to the suburbs. In addition to loss of cigarette volume, the retailer loses the sales of allied products, such as candy, tissues, razor blades, and other sundries. In little over a year after it was imposed, New York City lost $4 million in excise taxes and $2.5 million in sales taxes on cigarettes alone.

Fourth. Consumers have resisted behavior control. Sick and tired of scare propaganda and high taxation tactics, New York City's consumers have not switched to what Mayor Lindsay's bureaucrats claim are safe cigarettes. They have switched their source of supply from legitimate New York City dealers to suburban stores. That is, of course, those who can afford to make the trip. Those who cannot, that is the inner city residents, have switched to the bootlegger. For it is ironic that this tax, advocated by and implemented by men who call themselves liberals and who champion the impoverished, is extremely regressive. It falls most heavily upon those least able to afford it; the least affluent

who comprise 22 percent of the city's population.

For example, the tar and nicotine tax, in combination with the other tax levied on cigarettes, costs the two-pack-a-day smoker $240 a year, which means 8 percent to a person living on $3,000 a year as against only 1 percent to a person earning $25,000 a year.

Mr. President, let me offer an observation. I hope my colleague takes it to heart. If we fail to remember the errors of the past, we will be doomed to repeat them. No matter how you slice it or how you cut it, it is still prohibition. And what this country needs least is another prohibition.

Strangely, Mr. President, I find myself in the same camp on this issue as the New York Times. I ask unanimous consent that an editorial published by the New York Times on August 26, 1973, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the editorial was ordered to be printed as requested.

And finally, Mr. President, let me raise one other vitally important issue. Does our scientific knowledge really justify the liquidation of the tobacco industry? In other words, are we as a nation being stampeded into deciding whether to hang the defendant or put him in the electric chair before the verdict has been rendered?

The millions of men and women who earn their living in all phases of the tobacco industry and in tobacco farming have not been guilty all these many years of putting their vested interest before the public interest. The so-called powerful tobacco lobby has not been conducting a blindly selfish resistance against medical fact.

On the contrary, after decades of scientific investigation the question of smoking and health is still a question. The causes of dread illnesses, such as cancer and heart disease, are still unknown. The Congress commitment of millions in research funds for the conquest of these two diseases is ample evidence that we do not have the answers and that we must close the gaps in our knowledge if we ever expect to get those answers.

Now in this situation of uncertainy the gravest danger is in a refusal to admit our own ignorance, to seize upon the wrong answer or a partial answer. As Mark Twain put it: "It's not what you don't know that can hurt you, it's what you know that ain't so."

To make tobacco the scapegoat of our fears and ignorance of these dread unknowns would ultimately be the greatest disservice to mankind and to science itself. For once you have found the scapegoat, you need not struggle to find the cause.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the New York Times on this subject dated August 26, 1973.

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

ANOTHER PROHIBITION?

Richard O. Simpson, chairman of the newly established Federal Consumer Product Safety Commission, entertains the "serious expectation" that his agency may ban the cigarette once and for all. The commission would, of course, have to go through an elaborate process, including a thorough review of the Surgeon General's findings on the health hazards of smoking, as well as the arguments of cigarette manufacturers and others. Even then, it might come up with a ban on only those cigarettes that exceed a level of tars and nicotine which the commission considers safe. But the surprising thing is that so drastic a move should be contemplated or even thought to be feasible.

The law that created the commission last fall exempted tobacco from the agency's range of action, but the law did authorize it to administer the Hazardous Substances Act. Mr. Simpson takes that law as his source of authority—since it gives the Government the right to ban products on the basis of the severity and frequency of the injuries they cause. The Surgeon General has held that cigarettes are an important factor in cancer, emphysema, coronary disease and other grave disorders, but domestic cigarette consumption continues to rise in spite of required warnings on the package and in advertising. Hence, Mr. Simpson reasons, a complete or partial ban may have to be the next step.

Putting aside both the logic and the legal questions involved, we have grave doubts that a Government ban would be a wise approach. This newspaper long and consistently urged measures to compel warnings of the type now legally required. We warmly supported official action to educate the public on the dangers of smoking. But from the first it has been our position that it "should be enough for public health agencies to discourage the habit by means short of prohibition."

That is still our position. Forty years after its repeal, the failure of the Eighteenth Amendment is still vivid in the national memory—along with the evils of bootlegging, gang warfare and general contempt for law that it brought in its train. On much the same reasoning, we have supported the recommendation of the National Commission on Marijuana and Drug Abuse that penalties be abolished for the private use and possession of marijuana.

A ban on those cigarettes violating a fixed safe-content standard is a more reasonable approach, not too different from present Government limits on harmful additives and other potentially dangerous substances in food and drug products. But, with all respect to Mr. Simpson's courage and integrity, we believe that even this type of control would prove unenforceable and, in the end, undesirable. The most effective function for Government is to make certain that the health hazards are fully understood. It would be as much a mistake to penalize those who refuse to heed such warnings as to penalize a glutton for overeating.

NO EXPORT CONTROLS

Mr. DOLE. Mr. President, current market prices for agricultural commodities reflect the results of supply and demand. Throughout the world, people of nearly all nations are enjoying improved status or affluency compared to their plight in past years. With this affluence they have gained knowledge about nutrition, and these two factors are probably the two most important factors that are causing the increased world demand.

In recent years our farmers have been forced to accept the market price offered them for their wheat or other commodity, and that price is directly related to the export demand. Now, for over a year, we have seen constantly increasing demand for food and fiber, and resulting improvement in the prices received by farmers. Let us look at the results.

Farm income is at an all-time high.

Farm subsidies are at the lowest in years and, if prices prevail, could be eliminated next year under the new farm bill.

Farmers are responding to the increased demand by expanding their production for next year, and many are contracting their production, whenever possible, to assure the higher prices.

We are rightfully concerned about increased prices for food. But, it is interesting to note that, according to recent Department of Labor figures, food and petroleum product costs have increased far more than other items in the cost-of-living index. The past year the average increase in cost of living without considering food and petroleum is only 4 percent.

Because food is the major cost item in the American family's budget it deserves careful consideration. However, it is interesting to note that wholesale farm prices declined 11 percent between August 14 and September 7. Secretary Butz said it well in commenting on this drop:

When farm prices go up, they usually come down later. But when other prices go up, they usually stay up.

There is every reason to believe that our farmers' expansion of production will stabilize prices. Prices will not drop to previous lows, however. The improved value of other currencies resulting from devaluation of the dollar means that export prices will likely remain at higher levels and our domestic prices have always been closely related to world prices.

Mr. President, during this period of erratic and increasing prices there has been repeated discussion and some suggestions of the imposition of export controls or licensing to assure an adequate supply of food and fiber for our domestic demand.

I question the ability of our Government bureaucracy to control exports and assure this supply without breaking the market to low levels once again. We witnessed their ability in this area in June when an embargo and allocation system was invoked on soybeans, soybean products, and related or competitive protein or oil products. The results were disastrous, dropping the market prices and endangering our relations with customer nations who now have cause to doubt the sincerity of our trade commitments after such action and our reliability for delivery.

It seems simple and appropriate to suggest export controls when wheat prices are $5 per bushel, cotton is 83 cents per pound, corn at $2.44 per bushel—and we know our domestic supplies are dwindling. But adequate domestic supplies can be purchased with higher, competitive bids. When those supplies are assured, either by forward contracting or increased production, then those commodity prices will stabilize—a far more sensible system than artificial export control which we know will penalize the produce and eventually have to be equalized through supply and demand.

I have given considerable thought to the prospect of export licensing or controls. There are several questions that I find I am unable to resolve and would

pose them for consideration by control proponents.

First. What level of commodity exports would you authorize for this marketing year?

Second. To which countries should such exports go and in what quantities?

Third. How much will farm prices fall in the U.S. market and who will be the beneficiaries of such a drop in prices?

Fourth. What prices do you believe are equitable prices for the farmers of this Nation?

It is only after you examine these questions and provide the answers to the Congress that we can take such a proposal seriously. A sharp drop in farm prices, which would be the result of export controls, would reduce farm income in every State producing the affected commodities.

With such a proposal we are in effect saying that the U.S. consumer, with the highest per capita income in the world, cannot afford to pay world prices—before export shipping charges—for these basic commodities. I am confident that we are capable and willing to pay fair prices to our farmers for their commodities and do not want to return to the multi-billion-dollar farm subsidies to equalize their costs and the desired low prices in the market.

Let us examine other reasons why such controls would be damaging.

First. It is well known that export controls with lower export prices will weaken the U.S. currency, which in turn will mean U.S. consumers paying more for the things we import.

Second. We will shortly be entering into negotiations with our distinguished trading partners to seek liberalized trade through the General Agreement on Tariffs and Trade. Entering into the GATT negotiations at the same time we have export controls will weaken our negotiating position. Already Japan is seeking alternative sources of soybeans as a result of the short run export controls we placed on this essential product.

Third. We need these export markets to pay for essential imports.

Mr. President, I repeat, I share the concern over increased food prices and the above questions are the result of considerable study into the proposal of export controls. The answers to these questions, which suggest themselves to me, substantiate my position of opposition to export controls.

Through expanded markets and expanded production in agriculture we are building a new solid foundation for economic stability for this Nation—a peaceable economic stability, I would add—and I am confident that if we allow the capitalistic system to function, it will work properly and fairly, just as it has for nearly 200 years.

DR. G. D. "DUKE" HUMPHREY, PRESIDENT OF THE UNIVERSITY OF WYOMING

Mr. HANSEN. Mr. President, my State of Wyoming this week mourns the passing of one of the State's great and longtime leaders.

Dr. George D. Humphrey was president of the University of Wyoming for almost 20 years. The university is the only 4-year institute of higher learning in our State and therefore plays a greater role in all phases of Wyoming life and in our Government, than would a similar university in the more typical State with greater population density.

President Humphrey was a great builder of our university, at a time when building and expansion were very much needed. He was a great educator, and served our State well for many years—not only in his career field, but as a willing and welcomed adviser in many areas—including Government. His passing will be mourned by his thousands of friends in every community of our State and by professional associates at the national level. It was my privilege to know "Duke" Humphrey on a personal basis for many years. He was a dependable friend.

During my service as a member of the university's board of trustees, of which I was for a time president, I had the opportunity to see firsthand a small Western college at Laramie become known nationally as an institution with standards of excellence second to none. And it was my opportunity to see who provided the principal leadership and innovations from which sprung this quality growth. The physical plant also grew through those Humphrey years of the University of Wyoming, and the student body increased greatly in size as the school's reputation for superior education expanded along with its facilities. Today the total on and off campus enrollment at Wyoming is near 11,000, with many of the students natives of States from coast-to-coast.

Although a dyed-in-the-wool Wyomingite, Duke Humphrey himself was a naturalized westerner, being a native of Mississippi, where he was acquainted, it is my understanding, with both of our distinguished colleagues from Mississippi. In fact, Dr. Humphrey was for about a decade the president of Mississippi State University, then Mississippi State College, before becoming president of our university at Laramie in 1945.

It has often been observed that no position demands a greater variety of talents than does that of a university president. Duke Humphrey enjoyed the confidence of the people of Wyoming. His rapport with the State legislature set a standard which has seldom been equaled in the history of public education. He understood Wyoming.

He knew many of Wyoming's people, each of her counties, intimately and well. The solid support accorded the university by succeeding legislatures during his long tenure of office attested to the high regard in which this man was held.

While Governor, as an ex officio member of the university board of trustees, I was able to continue to work with Dr. Humphrey on university matters, and he was never reluctant to respond to my frequent requests for counsel in the field of education. I believe the educator is at the top of the ladder in relation to the value of a citizen to his country. Dr. Humphrey's significant talents in his career field have been lost, but the thousands for whom he helped make an outstanding education possible are a living memorial to his ability.

RETIRED CHIEF JUSTICE WARREN AT THE ABIDJAN WORLD PEACE THROUGH LAW CONFERENCE

Mr. JAVITS. Mr. President, by authority of the Foreign Relations Committee I was privileged to attend and address the World Peace Through Law Conference between August 26 and 29 in Abidjan, Ivory Coast. Charles Rhyne of the United States, former president of the American Bar Association, has done a most historic and distinguished work for years as president of this organization. One of the many distinguished speakers to address the conference was retired Chief Justice Earl Warren. In my judgment, Chief Justice Warren's address was the high point of this conference of 2,500 judges and lawyers from all over the world—a realistic, albeit somber appraisal of the world community's efforts to date to give effect to the 16 basic human rights treaties that have been adopted by the United Nations. The large U.S. delegation was distinguished also by the presence of Justice Thurgood Marshall of the U.S. Supreme Court who made a brilliant speech on the worldwide responsibility of the bench and bar for human rights.

Unfortunately, the United States "track record" in ratifying and, therefore, in taking the lead in implementing these international conventions that give legal effect to the basic civil rights and human liberties that all peoples need and deserve, is not good enough. The United States has ratified only 2 of the 16. One of those as yet unratified treaties, the Genocide Convention, is now on the Senate calendar. To shed further light on the necessity of Senate approval of this vital convention and to make Chief Justice Warren's incisive comments available to the Senate, I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks, together with the welcoming address by President Felix Houphouet-Botyny of the Ivory Coast.

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

ADDRESS DELIVERED BY HONORABLE EARL WARREN

The approach of the 25th anniversary of the Universal Declaration of Human Rights should fill us all with a sense of impatience at the slow progress toward the goals it proclaims. Great goals not yet attained are not diminished. But great goals, unpursued, diminish all mankind. Thus, impatient is an essential quality for us to bring to this anniversary.

It is especially fitting that we should gather together here on the continent of Africa to mark this anniversary. This is not just because some of the most urgent problems of human rights—ranging from apartheid to near-genocide—confront us on this continent. Hopefully, our being here may encourage restraint on those given to bigotry and to the torture and killing of their fellow men.

But, most certainly, our being here is a dramatic and positive recognition that much of the progress the family of nations has made toward implementing the Declaration of Human Rights has been due to the initiative and the persistence of the representatives of African States. This meeting is an appropriate way of acknowledging the debt of gratitude the entire world owes to them.

During these past 25 years, the Declaration

has become considerably more than was claimed for it when first presented to the United Nations General Assembly by Mrs. Eleanor Roosevelt.

A number of legally binding international conventions on human rights have incorporated direct references to the Declaration. So have various peace treaties.

Nearly twenty of the new African States, as well as a number in other parts of the world, include references to the Declaration and its provisions in their Constitutions. The Declaration has clearly inspired human rights provisions in the Constitutions of a number of other African States and such new non-African States as Cyprus, Jamaica, and Trinidad and Tobago. Even national courts have made reference to the Declaration and, in several instances I understand, have juridically applied it.

In the legislative work of the United Nations, the Declaration has become an arbiter and a standard of reference against which every new text on human rights is measured. In 1960, for example, the Assembly adopted by unanimous vote the Declaration on the Granting of Independence to Colonial Countries and Peoples, which specifies that "all states shall observe faithfully and strictly the provisions of the . . . Universal Declaration of Human Rights."

So there is much for which to be grateful. Yet, fidelity to the pioneers in the struggle for human rights requires us to be profoundly dissatisfied with the current state of affairs.

No one of us, if he looks with a clear and honest eye, can fail to see close at home as well as in distant places far too many manifestations of man's inhumanity to man. On every continent, including this one which is so hospitable to use, there is an ever ready tendency to divert attention from transgressions at home by crying out at the sins of neighbors. There is constant resort to rhetoric and legalisms as the substitute for constructive action. And governments everywhere have been persistently inept in finding ways to express national interests in terms of cooperation to advance individual human welfare. Bigger budgets for arms rather than stronger helping hands is still the order of the day.

Much law has been written but very little of it has been ratified. A study made in 1968 showed that, of the sixteen human rights treaties adopted by the United Nations, the total number of ratifications was barely more than twenty per cent of the maximum attainable number.

Only three—the Genocide Convention, the 1926 League of Nations Slavery Convention as amended in 1953, and the Supplementary Slavery Convention—had received more than half the maximum number of ratifications. Only seven States had ratified a majority of the sixteen. Fifty-nine States have ratified only two or less. I regret to say my own country appeared on this sadly long list of 59. Fortunately, we escaped being among the fourteen States that ratified none. The intervening years have not changed the picture substantially. That is more than a sad record; it is a disgraceful one.

It seems to me there are three deep-seated reasons for this state of affairs that must be faced before substantial progress is a reasonable possibility.

First of all, there are fundamentally different concepts of relationships between the individual and the state.

Second, international machinery to deal with the rights of individual citizens poses a sharp challenge to traditional concepts of national sovereignty. This is especially true in a period of history outstandingly marked by the rise of new nations.

And third, there is the problem of translating specific concern with violations in one region into a general concern for all regions.

The issue of whether the individual exists for the state, or the state for the individual, is far from being resolved.

There are thoughtful and persuasive advocates of the view that individuals are but part of the community; that the very understanding of human rights is a governmental concept, and that the rights of human beings cannot be considered outside of the prerogatives of government.

The American history and tradition are, of course, quite different. They find their finest expression in our Declaration of Independence and in the Bill of Rights of our Constitution. In these documents, the rights of the individual are held as "anterior and superior" to the state and, as such, are inalienable; the role of the state is, essentially, to create conditions that will help each individual exercise his right to "life, liberty and the pursuit of happiness."

These are differences that, under the best of circumstances, are not easy to reconcile. This is particularly the case in an organization like the United Nations whose members are states. Moreover, a new dimension is added when dealing with the relation of individuals to supranational authority.

The issue came sharply into focus in the earliest days of the UN in regard to the individual's right to petition the UN for protection.

The individual lost. In 1947, the Commission on Human Rights adopted a self-denying rule declaring that it has "no power to take any action in regard to any complaints concerning human rights. That inhibition, to a shameful extent, still inhibits. Three years ago, the Commission did agree to examine situations which reveal a "consistent pattern of gross violations" of human rights. But this promising development has yet to show positive results.

It is a testament to the high regard that ordinary citizens all over the world have for the United Nations and for the Commission of Human Rights that, despite repeated failures to cope with abridgements of man's fundamental rights, people continue to address their complaints to the UN. The average number of complaints about human rights violations for years had exceeded 15,000, but last year it was 27,500.

It is a tragic commentary, both as to the sensitivity of man for his fellows and as to the adequacy of our international machinery, that these complaints are almost certainly doomed to orbit in space—which is merely a contemporary way of saying they are buried in a bureaucrat's file!

This state of affairs is rooted not only in differing concepts of the relationship between the individual and the state, but in the more traditional concepts of national sovereignty.

When we met in Belgrade two years ago, I began my remarks there by observing that "perhaps the most tragic paradox of our time is to be found in the failure of nation-states to recognize the imperatives of internationalism." Then I was referring mainly to the way in which science and technology have robbed the nation-state of its ability to discharge the primary function of providing security for its citizens. Today, the question is raised in the larger context of the ability of our political mechanisms to contribute not only to the security but to the quality of life of their citizens.

The domestic jurisdiction clause in Article 2 of the United Nations Charter has inhibited the development of effective international organization on many fronts—not the least of which has been the International Court of Justice. Yet, it is in the human rights area that governments consistently have imposed the broadest interpretation possible to block inquiries into their own human rights practices. As a result, except in a few special instances, fact-finding, public exposure or airing of an issue or violation of human rights, to say nothing of conciliation, negotiation or adjudication, have been blocked.

The third barrier to progress has been the tendency to make human rights largely a matter of regional concern. Thus far, only in dealing with apartheid and decolonization has the United Nations been able to override arguments of domestic jurisdiction and create machinery to implement declarations. Without minimizing the importance of these actions, it is well to recognize they were designed to serve political as well as human rights objectives. Moreover, they cover only a small, though vital, portion of the rights of man that should concern us all.

It is too early to judge the effectiveness of the machinery which has been created to deal with deprivations arising from apartheid and decolonization. We must watch them with hope—for their own sake and for the guidance they can give us for the future. Also, we must look forward to the day when the commendable initiatives of the Africans and the Asians are extended to other important aspects of human rights.

I can understand the fears that supranational institutions might infringe upon the hard-won sovereignty, or become vehicles for the re-entry of interests or values associated with former colonial powers. But I also believe special efforts must be made to summon the good will and common purpose which are needed to overcome the fears that bar the way to progress.

Standing before us is the title of the Declaration whose birthday we honor; and its first word is "Universal." If the precedents established out of regional concerns can help us move toward broader applications that would be a fitting crown to the initiatives which have come from Africa and Asia.

Standing before us also is the basic fact that a body of international law on human rights now exists. And because it exists we can now turn our attention to the means by which it can be implemented.

The heart of any legal system is compliance. That must now become our central concern.

Any assessment of what now needs to be done gains strong encouragement from two major sources: The International Labour Organization and the Council of Europe.

For the past three years, I have had the good fortune to be associated with a judicial review panel of the ILO. I have been impressed at the extent to which the basic features of effective implementation are built into the constitutional structure of the ILO—fact finding, exposure, conciliation, and adjudication.

The handling of complaints, which is the heart of meaningful enforcement of human rights, has been carefully structured in a precise procedural manner. What is still more important, there is a record demonstrating that these arrangements have produced concrete results.

Though there may be limits to the use of ILO as a precedent, there is experience there that can be applied effectively to the entire range of human rights concerns.

The Council of Europe has faced a harsh reality that the United Nations Human Rights Commission has sought, all too often, to avoid. The stark fact is that an individual's rights ordinarily are not violated by a foreign government, but by his own. And governments have been reluctant, to say the least, to allow their citizens to appeal to a higher authority.

The European Convention on Human Rights, which came into force in September 1953, is an historic victory over this age-old reluctance. It provides clearly defined methods by which individuals can submit complaint petitions to supranational bodies with clearly defined powers for doing something about them. Moreover, the methods have been used. The powers have been exercised. Equally significant, the governments have survived, and the screams of pains from passionate defenders of national sovereignty have been neither long nor loud.

In at least three cases, internal laws have been altered to conform with the purposes of the Convention: Norway amended its Constitution in connection with a freedom of religion issue. Belgium adopted an amendment regarding freedom of expression. Austria altered its code of Criminal Procedure.

In addition, national courts have invoked or referred to the Convention in literally hundreds of decisions.

With such encouraging and concrete guidelines before us, it would be reasonable to expect a period of progress lies ahead. The present prospects, sadly, are quite the contrary. Consider, for example, the status of the proposal for a United Nations Commissioner for Human Rights whose powers would be restricted largely to tactful efforts to obtain redress of grievances. Even such a modest proposal has failed to win support at successive sessions of the General Assembly, and its prospects for adoption this year are dim.

Indeed, the most likely prospect for action at the forthcoming session of the UN Assembly portends a serious setback. It could well be a setback of far more serious consequence than the highly unfortunate self-denying rule adopted by the Human Rights Commission.

I refer to the attempts to place inhibitions on international television transmission by satellite. In this reaction of fear to a new technology that can do so much to water deserts of ignorance and misunderstanding, we face a direct challenge to the right of free access to knowledge.

In Belgrade two years ago, I observed that "science has made it possible for man to live bountifully upon this planet, but that only man himself will civilize it and make it habitable." There is no more urgent need than to share and apply the knowledge man already possesses.

There are large issues here; and real problems. Some fear that differences in culture, values and language will disappear under the impact of worldwide communications. Others eagerly anticipate the discovery and appreciation of the rich variety of the human family. It should be possible to find ways to avoid the fears of the first group while fulfilling the hopes of the second, and far more significant group.

Others point out that modern communications technology not only embraces system for spreading knowledge over the planet but also devices for invading the privacy of the individual. Our experience is already filled with far too many examples of such perverted use. New and vigorous steps to protect the individual against intrusion in to his private life and his personal choices most certainly are called for.

But even though the same technology may produce both, there is a world of difference between bugging and broadcasting. We must expect our statesmen to be able to make the distinction.

All mankind will be the loser if nations and their spokesmen look upon modern communications capabilities and potentialities in fear of what might be transmitted rather than in eager anticipation of what can be shared for the benefit of all.

We must not put shackles on what can be the most powerful instrument science and technology have yet placed in our hands for building a community of nations and enriching the family of man.

Five years ago, at the United Nations Conference in Teheran marking the 20th anniversary of the Declaration of Human Rights, the representative of Australia declared:

"If the last twenty years may be called the stage of definition, the next twenty years may prove to be the stage of implementation."

That states clearly the task before us.

A substantial body of international law on human rights has been clearly defined. It goes without saying that every government should be encouraged to ratify and, thereby, become contracting parties to global conventions and covenants covering human rights issues.

But the crucial issue remains implementation.

We have fashioned and tested models for bringing about compliance with an effective body of human rights law. But, we have held back timidly from making the earnest, sustained effort at creating the truly international institutional machinery of implementation that is required if the fruits of our labors to date are to be harvested.

Five of those twenty years already have passed. There is no time to waste.

The efforts to build a more peaceful, more productive world will succeed only if they are fueled with passionate convictions about the worth and the capabilities of the human spirit. The driving force behind the search for world community must be a sense of brotherhood, for, as the Declaration of Human Rights resoundingly asserts, "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Truer words were never spoken.

ADDRESS BY FELIX HOUPHOUET-BOIGNY

Excelencies, Ladies, Gentlemen: It is my pleasure, in the name of the Ivorian people and its Government as well as personally and in my capacity as Chief of State and also as a man and a citizen, to add my welcome and my best wishes to those of President Boni for the success of the Sixth World Peace through Law Conference.

Nothing indeed could better define the goals of the Ivorian nation and its profound character than the sponsorship under which the elite of legal and juridical professions meet today in our capital. If there is indeed a heartfelt need within us of nobleness and meaning, it is that of peace. This peace is neither an abstraction nor a practical source of ritual evocation but rather an essential and concrete object of our most fundamental aspirations and a renewed occasion for our most well thought-out actions.

If it is, on the other hand, a conviction which is important to us, it is this peace which is the preliminary condition to any progress and well being. If peace is to be sincere and durable, it can only result from the law, which is to say, the definition and establishment of rules of harmony and reason which govern the relationships among states and among men and contribute to the promotion of a greater justice.

As the important regulator of social and international life, as the reflection of morality freely accepted by the majority, the law should only be the instrument of justice and of a policy whose first purpose would be to foster the well being of all men and peace among nations for the general interest.

We take into account, certainly, the implicit difficulties in the realization and the maintenance of such an ideal in a world more often tempted by violence than by tolerance.

After one of the most horrible wars in the history of mankind, it is inevitable that a more real harmony in the world must be imposed. Barring a collective suicide, peoples and government were no longer able to envisage the use of brutal force to resolve their differences because of the huge accumulation of destructive potential.

Since then and in spite, alas, of new conflicts, certainly more localized but too often happening in a wounded third world, realism combined with the deepest feelings of our populations brought us to join the efforts to change what was often only a precarious truce into a consensual coexistence and then into a meaningful peace.

Moreover, the fabulous expansion of science and technology used in a society eager for material comfort, but because of this, ready for many excesses and disillusionments, has very quickly raised problems threatening certain balances existing at the national level as well as values on a global level.

In that regard, who will ever say enough about all the future violence and revolts implied by the arbitrariness and injustice governing today the means of production and exchange and the distribution of the fruits of development?

Peace, even if it is at first only the cessation of armed conflict, is not solely that. It is also and above all, concerned and dynamic action each day. The advent of a pacific and happy world will only result from a passionate and constant search which is the only means to solve our most dramatic common problems in a constructive and productive way.

In this spirit, the goal of the law is not only to ensure order and peace but also to promote more justice in a society of nations, corrupted by egotism and the arrogance of power. If it is important that law contribute to a reduction in the number of armed confrontations, it is essential that it increase people's awareness of the tragic conditions of life of two thirds of mankind and the awareness of the measures of fraternal solidarity and political realism to be taken before it is too late.

I would like to emphasize that, as you wish to participate in this daily construction, you have chosen the best way, that is, a concerted action as universal as possible for the questions whose reality and urgency no one can ignore. Through concerted action, you wish to propose rules, certainly incomplete, but also realistic and acceptable.

Your cooperation is the more valuable as your daily contact with problems raised by the interpretation and implementation of substantive law, everywhere in evolution, and your experience in the legislative, political, administrative and diplomatic fields, give an irresistable value to your proposals. That is to say how welcome you are in the Ivory Coast which will always be a privileged land for concerted action and cooperation, and how much we wish the full success of your meetings.

We want to be, indeed, a country of tolerance and dialogue not only because we are convinced that we remain in the mainstream of the most authentic African tradition but also because no other way can better prevent conflicts, limit their consequences, and allow the finding of their solutions.

To all of you who are our guests, we wish an agreeable stay among us with the only regret being that this large and constructive gathering of people and ideas, of which we have been so proud and happy to have been able to organize, will be so brief.

Excellencies, Ladies and Gentlemen, I have the great honor to declare open the Sixtieth World Peace through Law Conference.

THE ENERGY CRISIS

Mr. CLARK. Mr. President, last week, NBC News presented an excellent program which outlined the many facets of the energy problem now facing this country.

Our national way of life depends on energy, and what is called the energy crisis threatens the daily habits of every American. By giving an objective and thorough analysis of our current situation and future prospects, NBC has performed a valuable public service. Every possible solution to the energy shortage is controversial. Already the hunger for energy is encouraging abandonment of efforts to clean up the environment.

In his State of the Union energy proposals the President emphasized the critical need for increasing energy supplies, but skimmed over the effects of these proposals on our land and air and water, and completely ignored the potential for energy conservation.

An editorial in yesterday's Des Moines Register points out the effects of the President's policy:

The energy policy announced Sunday by President Nixon shows little imagination or courage, but it may be politically realistic for the short run. Most of Mr. Nixon's proposals boil down to somehow providing more fuel to feed the vehicles, generators, furnaces and air conditoners of an America bent on consuming all the energy it wants with too little regard for tomorrow.

Thus the President would encourage more strip mining of coal, relaxation of clean air standards, opening up of some U.S. Navy oil reserves and a half-dozen other measures to increase the supply of energy. He said little or nothing about conserving energy—for example by selective taxation or by rational transportation planning.

No one who coughed or rubbed his eyes or could not breathe during the recent pollution alerts here can ignore the need for improving air quality. Before gutting the Clean Air Act, the President should take a look at the alternatives. The distinguished Senator from Washington, Mr. JACKSON, said Sunday that a mandatory allocation program for petroleum products would make retreat from the Clean Air Act unnecessary. I agree with him.

We need to develop a balanced approach to energy policy. Environmental laws should not be made the scapegoat for energy shortages. We are not faced with a simple choice between cold homes and dirty air. We have other alternatives—not in themselves solutions to the energy shortages—but ways of seeing that homes are heated. For the short run, one of the best alternatives is a mandatory allocation program. For the long run, a clear alternative is a commitment to the conservation of energy resources.

Knowing the alternative is a prerequisite for dealing with the energy problem. NBC did a very thorough job of presenting the alternatives. The show did not provide the answers. It did present the questions. NBC should be commended for this program, and for taking 3 hours of prime time to present it. I ask unanimous consent that a transcript of the program be printed in the RECORD. I am sure it will be useful to everyone who's concerned about the national energy situation.

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

NBC REPORTS—AN AMERICAN WHITE PAPER: "THE ENERGY CRISIS"

These are some of the people who will be seen on "The Energy Crisis":

Public utilities executives/coal company executives:

George O'Connor, President, Montana Power Company.

Charles Luce, Chairman of the Board, Con Edison.

Eugene Luntey, Executive Vice President, Brooklyn Union Gas Company.

David Fogarty, Vice President, Southern California Edison.

Howard Allen, Vice President, Southern California Edison.

Jack Horton, Chairman of the Board, Southern California Edison.

T. L. Austion, President, Texas Utilities Company.

Thomas J. Galligan Jr., President, Boston Edison Company.

William P. Reilly, President, Arizona Public Service Company.

James R. Underkofler, President, Wisconsin Power and Light Company.

Alvin W. Vogtle, President, the Southern Company.

Frank M. Warren, President, Portland General Electric Company.

Edwin Phelps, President, Peabody Coal Company.

Public officials:

Gov. Tom McCall, Oregon.

Mayor Ralph Troy, Monroe, Louisiana.

Sen. Edward Kennedy, Massachusetts.

Sen. Phillip Hart, Michigan.

Sen. Lee Metcalf, Montana.

Sen. Henry Jackson, Washington.

Gov. Edwin Edwards, Louisiana.

Gov. Tom Judge, Montana.

Robert Killian, Attorney General, Connecticut.

Gov. Robert Ray, Iowa.

Gov. Robert Docking, Kansas.

Sen. Adlai Stevenson, Illinois.

Sen. James Abourezk, South Dakota.

Sen. William Fulbright, Arkansas.

John Nassikas, Federal Power Commission Chairman.

Dixy Lee Ray, Chairman, Atomic Energy Commission.

Rogers Morton, Secretary of the Interior.

John Love, Director, Energy Policy Office.

James T. Halverson, Division of Bureau of Competition, FTC.

Jack Bridges, Joint Committee on Atomic Energy.

Environmentalists:

Ralph Nader.

David Brower, President, Friends of the Earth.

Larry Moss, Southern California Representative, Sierra Club.

Edward Koupal, Chairman, People's Lobby.

Kit Muller, Executive Secretary, Northern Plains Resource Council.

Oil executives:

Joe Clements, Independent Gas Dealer, Twin Falls, Idaho.

Jay Mull, President, Mull Drilling Company.

Ron Peterson, Chairman of the Board, Martin Oil Company.

Frank Jungers, President, Aramco.

Jim Donalson, Witchita Wildcatter.

Frank Ikard, President, Petroleum Institute.

Thornton Bradshaw, President, Arco.

Orin Atkins, Chairman of the Board, Ashland Oil Company.

John McLean, Chairman, Conoco.

Rawleigh Warner, Chairman of the Board, Mobil.

Clifton Garvin, President, Exxon.

William Tavoulareas, President, Mobil.

Arnold Kaulakis, Vice President, Energy Division, Pittston Company.

Ed Hopkins, Shell, Oil, Canada.

Newspaper editors:

Duan "Doc" Bowler, Billings Gazette, Editor.

Aubrey Larson, Six Montana Weeklies, Publisher.

John Cole, Maine Times, Editor.

American Indians:

Dave Stewart, Chairman, Crow Tribal Council.

Alan Rowland, Chairman, Northern Cheyenne Tribal Council.

Bob Bailey, Secretary, Northern Cheyenne Land Owners Association.

Academicians:

Daniel Bell, Sociologist, Columbia University.

David Freeman, Sociologist, Ford Foundation.

Maury Adelman, MIT, Oil Expert.

M. King Hubbert, Geologist.

Ralph Lapp, Nuclear Scientist.

David Rose, MIT, Physicist.

Fred Hoffman, Rand Corporation.

Ron Doctor, Rand Corporation.

Stanford Field, Stanford Research Institute.

Herman Daley, Economist, Louisiana State College.

Foreign leaders:

King Faisel of Saudi Arabia.

Sheikh Zaki-Yamani, Minister of Petroleum and Mineral Resources, Saudi Arabia.

Prince Fahad of Saudi Arabia.

Fernand Spaak, Director for Energy, European Community.

Abd al-Rahman al-Atiqi, Kuwait Minister of Finance and Oil.

Yahuhiro Nakasone, Minister of International Trade & Industry, Japan.

Gerald Regan, Premier Nova Scotia.

Ahmed Douaij, Director, Kuwait Planning Board.

Hisham Nazer, President, Central Planning Organization, Saudi Arabia.

Amir Abbas Hoveyda, Prime Minister, Iran.

ENERGY CREDITS

1. The energy crisis, . . . An American White Paper. Copyright, the National Broadcasting Co., Inc., 1973, all rights reserved.

2. Reported by Frank McGee.

3. Produced by Len Giovannitti, Alvin Davis.

4. Written by Len Giovannitti, Fred Freed.

5. Directed by Darold Murray.

6. Field producers: Adrienne Cowles, Peter Freedberger, Sandra Granzow, George Orick, Marion L. Swaybill.

7. Correspondents: Richard Hunt, Walter Sheridan, John Rich, Fred Briggs.

8. Cameramen: Dexter Alley, Aaron Fears, Leroy Anderson, Scott Berner, Amatore Mazzacano, Rushan Arikan, Richard Benda.

9. Sound: James Robinson, Jim Geraghty, Henry Rosseau, Irving Gans, Lou Bernhardt, Shibley Samaan.

10. Supervising film editor: William Lockhart.

11. Film editors: Lou Castro, Tim Gibney, Harold Harris, Mary Ann Martin, Kevin O'Neill, Peter Punzi, Ben Schiller.

11. Assistant film editors: Lou Giacchetto, Mark Eiges, Joe Fitzpatrick, Leon Mabra, Dan Staiano, Al Castiglia, Dan Merrill, Peter O'Grady, Ray McCutcheon.

12. Film researcher: Barbara Steinberg; researcher: Rory Tetrault; production associate: Karen Ruthledge; unit managers: John Kerwin, Larry Cobb, Judy Murray.

13. Executive producer: Fred Freed.

(Reported by Frank McGee)

KING FAISAL (in translation). We do not wish to place any restrictions on our oil exports to the United States but as I mentioned, America's complete support of Zionism against Arabs makes it extremely difficult for us to continue to supply the United States petroleum needs or even to maintain our friendship with the United States.

FRANK JUNGERS. The reserves in Saudi Arabia—are greater than all of those in the United States and Russia and China combined.

MAN. . . . up to the prices as they are now.

ANOTHER MAN: It's impossible to buy gas.

MAN. Why? Merely because it's just a conspiracy and. . . .

Senator HENRY JACKSON. If they know they can just shut us down tomorrow obviously their bargaining advantage is enormous. . . .

MAN. The government should do something about it. Myself, I think it could be a conspiracy, too.

WOMAN. Eleven gallons is all they'd let us have.

INTERVIEWER. Going to try to fill up at another station?

WOMAN. Sure. We gotta get there.

Sen. JAMES ABOUREZK. It's ridiculous to talk about a shortage . . . when we have thirty seven billion barrels of proven reserves of oil.

WOMAN. Really. I would like to know. Really what is happening simply because the simple reason of it is . . .

THORNTON BRADSHAW (President, Arco). Oh, there's most certainly a shortage and there will continue to be an oil shortage for a long time to come.

INTERVIEWER. . . . exactly what happened tonight?

MAN. Well, we had a shortage, a power failure . . .

WOMAN. . . . If the choice is between a refrigerator and surviving, then I think that . . .

BRADSHAW. We've got to get used to living in a situation where we are short of all forms of energy.

WOMAN. Everything seems to be running out. Our electricity, they've got to get power . . .

BLONDE WOMAN. Electricity . . . when you try to dry your hair, or turn on the air conditioner and you get this low whirr . . .

Gov. TOM MCCALL. And my wife looked at me and she's very even handed and very pleasant. At breakfast the next morning, just growling, and said, one thing you're never going to take away from me is my dishwasher . . .

DAVID FREEMAN (sociologist, Ford Foundation). Energy efficiency has not been part of anyone's thinking. Not the automobile industry. Not the housewife. Not anyone.

ED HOPKINS (Shell Oil, Canada). We just can't survive without energy . . .

WOMAN. There are not many that want to go back to the horse and buggy . . .

HERMAN DALEY (economist, Louisiana State College). There is just something inherently repugnant about an economic system for there is no such thing as enough . . .

EDWARD KOUPEL (chairman, People's Lobby). Profit for profit's sake is not sufficient.

HOWARD ALLEN (vice president, Southern Cal-Edison). There's no free lunch. Somebody's going to pay for it. And it's the consumer that's going to pay.

ROBERT SANSOM (Environmental Protection Agency). There is a tension between the energy people and the environmentalists . . .

JACK BRIDGES (Joint Atomic Energy Committee). By '85 we could have a real disaster. It would be similar . . . almost like losing a war.

DAROLD MURRAY. We do have a problem?

MAN. We do have a problem; yes. And I think, well, I think the nucelar power plants is one solution.

RALPH NADER. The consequences of just one of these plants having a catastrophic accident could be in excess of the fatalities of Hiroshima only this time it'll be in the United States.

BLONDE WOMAN. Maybe if it does became a crisis and people get up in arms, the government may have to step in, because . . .

TOM SCHWINN. The situation in Washington is absolutely horrible. There are over sixty agencies and departments and committees in Washington working on the energy problem and second to Watergate, it's the biggest show in town.

FRANK MCGEE. That's the way people were talking this summer about the energy crisis. We are going to be examining that crisis here for the next three hours. One of the things we will not do, in that time, is solve it. Every part of it from the reason you can't get gas for your car to the question of whether or not we should build nuclear power plants is complicated. Intelligent and honest people disagree, even on the facts. But one thing we are sure of is that we had better try to understand as much as we can about this crisis because we are going to have to make decisions about it that involve great risks and that are going to change the way we live and the kind of world we are going to live in.

This is what we are going to be dealing with and it is neither simple nor easy.

JOHN LOVE. Well, I suppose crisis is a semantic sort of argument. If you've run out of gasoline over the weekend and there are no stations open, there's a crisis for you.

FRED FREED. What's the answer?

BRADSHAW (President, ARCO). I think that's why they call it a crisis. We don't have the answer.

MCGEE. We are a high energy, technologically advanced, affluent society, wasteful and polluting. There are those who think that is what we should go right on being, regardless of the environmental cost.

STANFORD FIELD. (Stanford Research Institute). We think that the environmentalists have exaggerated positions to advocate their own position. We believe that unemployment is too high a price to pay for cleaning up the environment.

MCGEE. They say this: That our affluence is built on growth. On using energy. That if we stop growing, our economy will stagnate; the poor will remain poor, we will have unemployment; our living standard will deteriorate. Others argue that we are destroying our environment by using so much energy. That the price of using that much energy is too high. David Brower is one of these.

FRED FREED. Somebody said you were a druid that worships trees and sacrifices human beings.

DAVID BROWER. (Friends of the Earth). Well. That was Charles Frazier's definition of the conservationists he classed as druids. I think that he finally decided I wasn't one. But, I don't mind being a druid of that kind except that I would really only sacrifice the people that don't like trees.

MCGEE. Mr. Brower believes we ought to use less energy. He is President of the Friends of the Earth.

BROWER. We are friends of the earth, yes. But we are friends of people who are friends of the earth

FREED. Why have you opposed the Alaska pipeline?

BROWER. To have it come across Alaska of course is I think environmentally unsafe, and the other point that is very important to bear in mind is that that resource isn't limitless and we are not constrained right at this moment in time, even though it is a little hard to get all the oil we want for our own conveniences, we're not constrained to use it up in our time.

MCGEE. In a way, the pipeline across Alaska was the test in the struggle between the environmentalists and energy producers. Sides were taken. The lines were clearly drawn.

At Prudhoe Bay in Alaska, on the north slope, they discovered the biggest oil field on the continent. It could produce, they said, two million barrels of oil a day. The oil companies wanted to build a pipeline to bring that oil to the lower forty-eight states. David Brower and the other environmentalists fought them. They said it would destroy the tundra, kill the caribou because, they said, the caribou wouldn't cross the pipeline. They delayed the pipeline for five years. They still oppose it.

BROWER. That oil is there. It's been there for a long time. We should take it out very carefully by the best method we can devise. I would say we found it and for Alaska's benefit, for the culture up there, we must do something that isn't as disruptive to wilderness, to environment, to our own culture here, as their proposal, which is to hurry and use it up.

MCGEE. The energy producers say if you protect the environment at the expense of energy you will finally destroy the economy. They say we have to have more coal, gas, oil . . .

JACK HORTON (Chmn. of the Board, Southern Cal. Edison). This country runs on energy and if we put environmental concerns forward so predominantly that we have a severe shortage of energy, then the country is not only going to suffer economically but they'll suffer environmentally.

BROWER. It's costing the earth something every time they want added conveniences. And it's not only costing the earth something but it's going to cost their children and theirs on down the line.

MCGEE. So we find in the course of these next three hours that we come again and again back to this basic difference. Back to the choices it involves and the cost of those choices. The cost of cleaning up our environment. Of using less energy. Of using more energy. The cost of having a nuclear power plant or an oil well or a strip mine on land that was once used to graze a cow or have a picnic.

The cost of dirty air and dirty water. The cost of cleaning them up. These are the decisions we are going to have to make.

THORNTON BRADSHAW. It is going to cost you very much more to drive your car because you're going to get much less mileage out of a gallon of gasoline. And that gallon of gasoline is going to cost a good deal more.

BRADSHAW. But the important thing I think is that the American people come to the realization and I think they are coming there quite rapidly, that the profligate use of energy is not a good way to live. Not only because they are depleting a resource which is not replaceable. Because it just leads to a way of life that in the long run is not acceptable.

FREED. To meet the energy crisis right at the moment would you favor temporarily lifting some of the environmental restriction?

BRADSHAW. I would indeed. Only because I know of no other answer.

MCGEE. Thus, we are continually confronted with the need to decide. We need energy to drive our cars. To run our air conditioners. To wash our clothes. We even need energy to clean up the environment. We don't want a new refinery near us. We don't want oil to be drilled off our beach.

DAVID FREEMAN (Sociologist Food Foundation). I guess you're really asking the question where do we put the skunk works. We still have a demand for skunks. Well the first thing I think one does is attempt to clean the skunk up to the extent that one can. But putting that question aside, you finally are left with the realization that we need energy production projects. And they have to be placed somewhere. I think that. That we have to recognize that it's the energy that's causing the pollution and we can't turn back. Sure, this is, it's much more complicated to have an energy system that's clean than dirty and this is why I said earlier that switching from dirty to clean is a painful thing. The only thing more painful is not switching.

RAWLEIGH WARNER. (chairman of the Board, Mobil). I think we all have to come to grips with everybody's desire for cleaner air and cleaner water by way of understanding what it's going to cost and assessing and establishing how much we're prepared to do at what cost. Now I think the consumer deserves to understand what the price is. No environmentalist is prepared as far as I can see to say this is what we ought to have and if we achieve this there is this price to be paid. The price is either in an increased cost in energy, or certain people are going to have to go without certain forms of energy.

MCGEE. Both sides agree there is a crisis. That it has been compounded by our increased consumption of energy doubling every sixteen years . . . one-third of the world's total consumption of energy. But

that's all they agree on. The environmentalists say we must limit the ways in which we produce energy to save our environment. The energy producers say that unless we produce more energy, suspend at least temporarily some environmental restrictions, we will destroy our society.

What are we willing to pay? For clean energy. For clean air and water. For growth. For affluence. We are dealing in this energy crisis with choices. With option. With decisions we are going to have to make it is a crisis whose resolution one way or the other, is going to be up to us.

FRANK MCGEE. Coal. They used to call it King Coal. Then, because it was dirty and hard and dangerous to mine, people began to use other fuels. But, as it turns out, coal is the only fossil fuel we have plenty of and in the near futue, we may have the technology to make it economically, into gas and oil. So now, in this energy crisis we have begun to look at it again . . . with its promise . . . and its problems.

MCGEE. This is eastern Montana. Cattle country. The last open range.

WALLY MCRAE. (Rancher). This is part of my winter pasture and most of the land that you can see here is slated for strip mining.

MCGEE. In the next half century, they expect to strip sixty million tons of coal from under the surface of this land.

MCRAE. It bothers me to think that some day this country that I know and have worked and ridden and been over most of it, is going to be turned upside down. Turned into spoil banks and electric lines and railroad tracks, and cars and trucks. People and gasification plants and liquification plants and steam generating plants.

FRED FREED. How do you assess the opposition of some of the ranchers out there?

GEORGE O'CONNOR. (President, Montana Power Company). Oh, there are people down there who are against any development. I can understand that. If I had a twenty five thousand acre kingdom down there and I had a reasonably good economic setup and a pretty good life running that ranch, I might resist change, too.

MCRAE. I think that he's right. I kind of like living on my little kingdom. I think that the coal company man or the energy company man that told you that a kingdom of his own, and I think he'd fight and scrap and just like I'm doing to save his kingdom.

MCGEE. Wally McRae's kingdom is the Rocker Six Cattle Company. A twenty seven thousand acre ranch. Custer crossed it on his way to the Little Big Horn. It's hot in the summer. Cold in the winter. A dry, barren, much loved land.

And underground, the coal. The coal country stretches from Saskatchewan in Canada across Montana and the Dakotas into Wyoming.

It's called the Fort Union Basin. The richest coal deposit on this continent. Enough, some estimate, to last five hundred years. For a long time, no one wanted it. People used oil, natural gas, electricty. Coal supplied only 13% of our energy. What changed everything in Montana was this: The 1969 National Mine Safety Act doubled the cost of deep mining coal. The Clean Air Act of 1969 prohibited the use in many places of high sulfur, dirty coal, like much eastern coal. And we began to have a fuel shortage. The rest of the country began to need Montana coal. This is the Montana Power Company's Western Energy Mine at Colstrip . . . about twenty miles north of Wally McRae's ranch.

FREED. Someone said, we have it good here in Montana. Why spoil it?

O'CONNOR. All of eastern Montana for many years has been a depressed area. The counties we're talking about where the coal is, has consistently lost population since I think about 1920.

Maybe that's good. But from the standpoint of the business man who is trying to make a living on the street selling groceries, I don't know that he's going to applaud that so much. I'm sure the poor devil that starved out there didn't think it was very good.

FREED. A lot of people have said Montana is being asked to do something for the rest of the country which brings no real good to Montana.

O'CONNOR. We aren't a foreign country out here that should have embargoes on things that come in from other countries or restrictions on the things we can contribute.

FREED. How much of an area are you mining?

O'CONNOR. Well, we have leases of about twenty-two thousand acres in that particular part of Montana but we mined about, the most we have mined is about one hundred twenty acres in a year.

MCGEE. When they mine in Montana they mean strip mining. They talk about "disturbing" the land.

This is what they mean.

In this kind of mining, the machines do the work. The men work in safety and health. Only the land is disturbed.

In the East, you may find a forty inch seam one hundred eighty feet down. Here, thirty feet down the seam may be fifty or one hundred feet thick. This year, they will strip mine about sixteen million tons of coal. Over the next fifty years, sixty billion tons. The coal companies say to do this, they will have to disturb only about one hundred thousand acres of grazing land.

Environmentalists don't believe them.

KIT MULLER (environmentalist). Thus far in the state of Montana, over a million acres are under lease. A million acres of coal.

FREED. Is there talk that the million acres will be actually mined?

MULLER. There are only four active mines in the state now and a fifth that may be opening up. Other companies have expressed interest in opening new mines but we have no clear notion at all, I don't think anybody in the state has any clear notion of what the long range plans are of the eighty seven odd corporations that presently own, that have leased coal mineral in the state. I don't think anybody in the state can answer that question. I wish we could.

MCGEE. Kit Muller. Second generation Montana. Harvard '72. Secretary of the North Plains Resource Council.

MULLER. From our point of view, given the size of the resources and the percentage of it that can only be retrieved by deep mining, we feel it preferable if deep mining was brought into the area rather than strip mining.

FREED. Why isn't there any deep mining?

O'CONNOR. Well, we've had deep mining in Montana. Right now, it isn't very active. . .

It simply became uneconomic. It was noncompetitive. . .

FREED. If the cost of reclamation went up, would it make deep mining economical again?

O'CONNOR. It would have to go astronomically high. It's hard to conceive a reclamation going that high.

MCGEE. Mining on the surface, unlike deep mining, is cheap, safe and efficient.

But in West Virginia, Kentucky, Illinois, strip mining destroyed the land. Left is scarred, broken, useless. Like each source of energy we will look at in this program, coal presents us with unpleasant choices.

We are going to look at those choice in Montana. The crucial questions are these: to what extent will mining be followed by plants generating electricity, liquifying or gasifying the coal? What many people in Montana worry about is that extensive strip mining will destroy what they see as a special way of life. If the land is to support wild life, hunting, cattle, it will have to be reclaimed, restored after the coal is stripped.

FREED. Can this land that is being stripped be reclaimed?

MULLER. Thus far, there is no hard, scientific information.

FREED. What's your guess?

MULLER. With sufficient funding and with sufficient time, probably twenty years, this land could probably be reclaimed. I'm inclined to think that it won't be reclaimed.

The plains country is very fragile. It has to be treated with respect and if you rip it all up . . . no one knows what the long range consequences will be.

MCGEE. This is the Big Sky Mine of the Peabody Coal Company, a subsidiary of the Kennicott Copper Company. Environmentalists have called Peabody the "worst" company. Peabody says it's going to be the "best".

FREED. Is there any land here where Peabody's been mining in Montana that can be called reclaimed yet?

Gene TUMA (Peabody Coal Company). No. We just simply haven't been here that long.

FREED. What's the cost of that kind of reclamation?

TUMA. We have stated to the State Bureau of Lands that it will cost as much as sixty five hundred dollars per acre.

FREED. You've spoken of spending large sums of money. I believe it's six thousand dollars an acre to reclaim strip mined land in Montana. Why is it worth it on land that sells for twenty dollars or thirty dollars an acre?

EDWIN PHELPS (President, Peabody Oil Company). Well, let me say I never, I don't believe I was ever quoted as saying it was worth spending the six thousand. I think that it does, if that's what the law requires us to do, then we must do it according to the law.

And to spend that much on it is not an economical way to reclaim it. But that's the law and so therefore we must live with it.

MCGEE. If Montana is the west of wide open spaces, it is also the west of the dying small towns. Young people are leaving this part of the state. The population is declining. In some places, forty percent are unemployed. They complain about a shortage of doctors. Inferior schools. A stagnant economy. Many believe the coal must be mined if there is to be progress and development.

JIM POSEWITZ. My question with progress and development these have been cornerstones of our society. Our conversation, at least. The question is where are we progressing towards and what are we going to try to grow into? And it's very difficult for somebody to answer when you say, show me the optimum quality of human life.

Where is it? And I think it's pretty close to where we are here in Montana.

MCGEE. Thus, what is an energy crisis for coal users in Duluth, Hammond and Seattle, is a crisis of lifestyle in Montana. A struggle is going on over how the land will be used. And for whom. Many feel the decision, once made, may be irrevocable.

At the state capital in Helena, development along with legalized gambling, is the hottest, and most ambiguous issue for Montana politicians.

Governor Tom Judge is strongly for tough environmental controls.

Governor JUDGE (Montana). We feel that if this mining is to proceed, it must proceed only with very stringent regulations.

MCGEE. Governor Judge is also strongly for development.

Governor JUDGE. I think that strip mining could create some badly needed jobs in our State. It certainly will mean some revenue to State Government.

MCGEE. The legislature is divided. A bill to ban mining was beaten. A strong . . .

* * * * *

. . . the demands of the rest of the country?

GOERS. That's the sixty four dollar question.

MCGEE. Sixty percent of the coal land is

owned by the Federal Government. Most of the rest is owned by the Burlington Northern Railroad or the Indian tribes. The decisions Washington makes will be crucial.

FREED. John, you said that you worry about what Washington bureaucrats will do, the decisions they'll make that may sabotage the protection programs Montana has under way?

GOERS. The administration's proposed reclamation bill would take away the privilege of any State imposing reclamation standards more strict than that which is carried in a rather weak reclamation law at the Federal level.

And if the administration's bill comes, goes through, it will be out of Montana's control.

ROGERS MORTON (Secretary of the Interior). Obviously, when development takes place in an area that has not been developed there is a great feeling of resistance on the part of the people affected.

MCGEE. On a day in July, the Secretary of the Interior is flying over Montana. Below him, he can see the cattle ranches . . . and the strip mining.

MORTON. If you carry the environmentalist point of view to the end point you would cut off the switches. You would turn off the valves. You would discontinue a highly sophisticated industrial civilization. On the other hand, if the developer proceeded without any environmental controls, we would desecrate the environment to where the quality of life would just deteriorate in this country. So there has to be, I think, a meeting of the minds . . . and this is going to take some doing.

MCGEE. The Indian lands, where much of the coal is in Montana, are divided between two tribes. Four thousand two hundred Crow live on a reservation of a million and a half acres.

Five coal companies have leased two hundred thirty five thousand acres for exploration.

To the East, on four hundred thirty seven thousand acres live two thousand five hundred of their ancient enemy, the Northern Cheyenne.

Over half of that land is committed to exploration by the coal companies.

Sixteen thousand acres have been leased by the Peabody Coal Company to begin mining operations. The Northern Cheyenne have petitioned the Department of the Interior to cancel these leases.

MARION SWAYBILL. Why do you want to cancel the leases you made with the coal companies?

ALAN ROWLAND (Chairman, Northern Cheyenne). Well, for one thing, they don't offer us enough money and another thing is Indian Bureau didn't comply with all the regulations.

SWAYBILL. Do you think you were cheated?

ROWLAND. I think so. You bet.

PHELPS. We didn't make the deal with just one man. We made it with a tribal council and it was, at that time, it was their opinion that they needed this. They wanted the money, the income and so forth from coal development. It was at a period when coal wasn't as valuable in people's minds as it is today.

They didn't realize the future of it. So, we were the first ones in there and we did get a better deal than maybe some of the later ones got.

Say, I'm not ashamed of the deal we made with the Cheyennes. I think it was a fair deal for them and it was a fair deal for us.

BOB BAILEY (Northern Cheyenne Landowners Assn.). The lure that was used in that first initial approach was money, certainly our people here are in need of money.

The scenery that we see right now is not going to be the same in ten, fifteen, twenty years from now. All we're going to be looking at out here is spoil banks, rock piles. The other change I foresee is the lifestyle of the people is going to change overnight.

MCGEE. It's expensive and inefficient to ship low heating Montana coal East. It would be more profitable if the companies could build electric power generating or gasification plants at the mine mouth. The first ones are already being built.

BAILEY. In the energy conversion plants that are being planned by some of the coal companies there is an estimate twenty or thirty thousand people that will all come into the reservation.

Now, if we expect thirty thousand people into the reservation as compared to the two thousand five hundred Cheyennes that live presently on this land, the Cheyennes themselves are certainly going to be minorities . . . on their own piece of land.

This coal development ultimately is going to be the final demise of the northern Cheyenne.

SWAYBILL. What if a vote was taken tomorrow on the coal issue here on the reservation?

BAILEY. Well, I'm sure it would be pro development.

MCGEE. The other tribe, the Crow, live across the western border of the reservation. They are for development.

They want it as soon as possible.

DAVE STEWART (Chairman, Crow Tribal Council). Our potential is such that we can't sit back here and let the wheels of progress go by as we sit back and depend on our natural Indian culture. We can't do that. We must progress with the outside world.

MCGEE. The most serious doubts come from outsiders, environmentalists . . . And state officials.

FLETCHER NEWBY (Director, Environmental Quality Council). The Indian land is really obviously a problem. The state in terms of legislation has practically no jurisdiction at the present time over what happens on the Indian reservation.

FREED. Isn't it true that if it happens there it would be hard to really control it in the rest of Montana?

NEWBY. In a word, yes.

MCGEE. The real issue as many people in Montana see it, is not reclamation, which they say makes good Eastern cocktail conversation. The real issue, they say, is the people who live in Montana. Is coal going to be good for them or bad for them? And how can they control the mining, and the processing and generating plants that will follow, so that it will be good for them?

Doc BOWLER (Editor, Billings Gazette). We think the coal is going to be mined. Our opinion is that there should be something left when they get done, for Montana, besides a hole in the ground.

FREED. Do you trust the coal companies to do what's best for Montana and the environment?

BOWLER. I trust them to obey the law as long as somebody's there to enforce it.

FREED. There's been a kind of a tradition in Montana of taking from the state and taking from the land and not giving much back hasn't there?

BOWLER. I think that's a fair statement of what they've done. It's not new. This has gone on for well since the fur trappers came out here I suppose. The way the west was won.

AUBREY LARSON (Newspaper Publisher). Our property taxes are the highest of all eleven western states. Our income tax is the highest of the eleven western states. Our per capita income is near the bottom of the eleven western states. And sure, these are established facts everybody knows it. And I say that maybe we'd better start doing something about it. And coal is one way. One place to start.

FREED. You're not worried about all these new people coming in will change things?

LARSON. Now. Why be scared of change? Sure, it's going to change. We feel for the better.

MCRAE. I think the answer to that is to take a look at Appalachia. I don't think that the coal development in Appalachia over the long term has done anything but make their situation worse.

FREED. Wouldn't it though create for now new schools, more doctors, and things like that?

MCRAE. I think so. And also more lawyers and more sociologists and more policemen and more social workers and certainly more doctors if the air quality gets bad. I couldn't agree with you more.

MCGEE. The coal companies have been buying leases to explore or mine wherever they can. The ranchers in Eastern Montana are deeply divided over whether they should sell the coal rights or not.

MARCUS NANCE (Rancher). Basically, the conflict is whether you have coal under your land or you don't have coal under your land. Those ranchers that do have coal either fortunately or unfortunately as you might look at it, can derive great economic benefit from the coal that is under the land.

SWAYBILL. Do you own the coal rights to your land?

NANCE. We own coal rights to approximately, my family and I, to approximately six thousand acres of coal rights.

MCGEE. Estimates of what six thousand acres of coal will bring vary between forty and sixty million dollars.

FREED. Do you own the coal rights to your land?

MCRAE. No.

FREED (VO). Wally are you going to sell out?

MCRAE. No. I might get forced out but they better come with a big gun.

One of the people from Peabody told me that I could sell out and make more money and I think he's probably right. And I told him, my granddad came into this country in the 1880's and I was sure that several times during his time in this country he could have sold out and financially benefited himself. But, I asked this guy from Peabody, I said, if my grandfather had done this, if he had sold out, where would I be now?

MCGEE. The mining has begun. Most people in Montana think it's inevitable. They want to make it as painless for themselves as possible. They want to make the payments in terms of protection and benefits to themselves as high as possible. That will mean higher costs and less power and fuel in some other parts of the country. How do you weigh heat for a house in Duluth or a school in Hammond or a kitchen in Seattle against a unique way of life on twenty dollars an acre land in Montana. Is this way of life really being threatened or is this a fantasy of the ranchers and the environmentalists? How much of the coal money will find its way into the pockets of people in Hardin and Forsyth? How do you balance the needs of environment against the needs of energy?

This is a question we will be asking over and over in these three hours. It is in many ways, the crucial question. It goes deep. It's a profound question.

It asks us to examine who we are. What life is about. What man's purpose is.

FRANK MCGEE (SOF). We used to think we had all the electric power we needed. But now, we are running short of ways to make it. There are no more dammable streams and coal pollutes and oil has to be imported and is expensive.

And we keep using more and more electricity. Dishwashers and air conditioners have become necessities. Business needs computers. Factories need automation. Electricity has become an indispensable part of our lives . . . and we can't get enough of it anymore.

Howard Allen is Vice President of Southern

California Edison, the 4th largest operating electric utility in the country.

He believes people ought to be able to use electricity for the things they want.

HOWARD ALLEN (Executive Vice President, Southern California Edison). I think that the public authorities, the public in general, are beginning to realize that energy is basic to our society and that electric energy is an absolute necessity to our way of life today.

DAVID BROWER (Friends of the Earth). They really for one thing should make a concerted effort to get people to use less energy.

FRED FREED. You're saying we are facing a choice between preserving our environment or preserving our high energy lifestyle?

BROWER. Yes, I think we very much are.

ALLEN. If we don't have energy this country is going to be in real trouble which is going to affect jobs, tax base and life styles and even the national security of the Nation.

MCGEE. Thus, the issue is joined. It is a basic decision we have to make about ourselves and what we want. Electricity is the biggest business in the country.

Half again as big as the oil business. The question is whether it should get bigger. In 1972, the Rand Corporation did a study of California power needs for the National Science Foundation.

RON DOCTOR (Rand Corporation). What we found was that electricity was growing and supposed to grow about seven times the 1970 consumption levels by the year 2000.

DOCTOR. That seven times more electricity means a growth of about 600 percent in household use of electricity. A growth of 1100 percent in commercial use of electricity. And a growth of about 300 percent in industrial use.

MCGEE. Edison serves 7,500,000 people in Southern California in cities around Los Angeles. They have had no bad shortages yet. But they say unless they can build more power plants that won't last.

ALLEN. If you don't have the generating capacity, you can't supply the kilowatts. You're going to have a power shortage in Southern California in 1975 and 1976.

ALLEN. It won't be a blackout like New York's barring some unforseen catastrophe, but it will mean interrupting certain customers one, two, or three hours in certain sections and then moving to other sections.

BROWER. The thing they should do I think is really make a much realer effort to persuade the public to use less. It is a very hard thing for the American system to do.

MAN. I just don't understand it.

WOMAN. I can't understand it.

MAN. Why is our electric bill so high?

WOMAN. Maybe I forgot to pay the last bill.

BROWER. It just goes against the grain. But here the alternatives are so environmentally bad that I think they've got to do it.

ALLEN. I think each individual has his own value judgments as to what he thinks is important to his standard of living and way of life.

MAN. I thought I asked you to keep this plugged in?

WOMAN. Sorry.

BROWER. I think that anyone who's living on a finite earth is unreasonable if he refuses to admit its finiteness and that is what they are refusing to admit.

MAN. Jane, have you been leaving the light on in the basement?

ALLEN. You can't build a power producing plant today without some adverse effect on the environment.

BROWER. They are somehow expecting a spare one to be shipped out when we wear this one out and I don't think it's going to happen.

FREED. What would you say to someone who is now talking about having an all electric kitchen? Would you tell him not to do it?

JACK HORTON. (President, S. Calif. Edison). Oh. No. We wouldn't tell him not to do it. We'd tell him that it's their choice.

MCGEE. Jack Horton is Chairman of the Board of Edison. He doesn't think Edison can tell its customers what they should use electricity for. He doesn't think they should try.

FREED. The waste isn't the reason we're in this power crisis?

HORTON. I think not.

I think the main reason is this: essentially you have to have two things to produce energy. Number one is a power plant.

And number two is fuel. The major power companies in the United States have had great difficulty in the last few years in building new plants.

ALLEN. In 1969, Edison Company had five plants under construction. Today, we don't have a single plant under construction and in the last three or four years, we've grown about 2½ kilowatts.

We have six projects on the boards. Five of the six of those plants have been delayed anywhere between a year and 2½ years.

You have to consider whether or not the environmental benefits that result from holding up the construction are of total public benefit more than letting the construction go forward.

BROWER. It's sort of good for their conscience, it's good for their technology that they have to find better ways.

ALLEN. We realized that we had a number of oil and gas firing plants in the Los Angeles Basin and the air pollution problem was critical and even before they passed laws that said you couldn't build any more plants here, we decided that we better get out of here just from a public relations and public responsibility standpoint.

We decided to build a coal plant there where the air was not burdened by other pollution, where the atmospheric conditions were such that it would be blown away and dissipated. We were welcomed by New Mexico because of the jobs and the tax base and the great benefits economically to the Indians.

Then the environmental crunch came along. They looked upon us as outsiders using their clean air and their water to supply energy to Southern California. So that we were great heroes in the early sixties.

But today, they are putting in more and more controls and saying in effect, we don't want you here anymore.

MCGEE. Recently, to avoid California environmental restrictions, Edison applied for the right to build a coal fired power plant in the desert at Kaiparowitz, Utah. They were turned down by the Secretary of the Interior.

ROGERS MORTON (Secy. to the Interior). We should not concentrate a whole group of power plants in the desert simply to take care of metropolitan communities 500 miles away in order that those communities can meet their air standards.

FREED. Without Kaiparowitz, you would have to use oil wouldn't you?

HORTON. Use oil or nuclear.

FREED. Well, at the moment, you're having some problems with nuclear?

HORTON. Yes, indeed.

FREED. If you had to use the oil, you would have to get it from abroad?

HORTON. As the matter appears today, yes.

MCGEE. The oil would have to come from abroad because it would have to be low sulfur oil to meet environmental standards.

Some of it would have to come from the Middle East. The price of Middle East oil has doubled in the last two years.

Edison says the solution is to relax the rigid standards of the Clean Air Act.

HORTON. I think that's the only thing we can do for the alternative is going to be chaos.

FREED. And you think the environmentalists will have to accept this?

HORTON. For a temporary period. Yes.

MCGEE. But environmentalists do not accept this. They say we cannot survive in the kind of environment it would create.

They say there are other answers. We should use less electricity.

We should find a way to transmit power from one part of the country to another where it's needed.

CHARLES LUCE (chairman, Con Edison). There are lots of environmental objections raised in building transmission lines.

It would be necessary to construct a much larger and heavier national grid.

It will cause, I would say, as much environmental objections and as much litigation, maybe more, than is caused by construction of power plants. And this is because people who live along the line don't want the line. They say, put it somewhere else. Well, of course, somewhere else is next to someone else.

FREED. Is nuclear energy the only practical alternative?

ALLEN. I think that in the long run nuclear energy is the answer to the energy needs of the nation.

FREED. What do you say to the scientists who argue that they are not safe enough?

ALLEN. I say this. There's risk in everything we do. There's risk when you drive here on the freeway.

RALPH NADER. We are convinced that there is overwhelming scientific evidence that the lives of millions of people in this country are being subjected to wholly unreasonable risk by the continued operation of the nuclear power plants.

MCGEE. Ralph Nader and the Friends of the Earth announced that they were suing to close down Edison's nuclear plant at San Onofre and twenty other plants.

NADER. Each of these plants contain a quantity of radioactive material, equivalent to the fallout from several thousand Hiroshima-sized nuclear weapons. Yet, the safety systems are crude and untested.

FREED. It is said that the emergency core cooling system used in nuclear plants has never been successfully tested. Is that true?

DAVID FOGARTY (Vice President, So. Cal. Edison). I think yes. In effect that is true.

FREED. How then can we be sure that the emergency cooling system is safe?

FOGARTY. The way in which we approach that is to test the various components of the system as individual pieces and then as subsystems right up to the point of injecting the coolant water into the reactor vessel.

FREED. And to your satisfaction you feel that it is safe enough and the risk is small enough to go ahead?

FOGARTY. Oh certainly.

MCGEE. The risk they are talking about is this:

That the emergency core cooling system would fail.

That the hot, radioactive material would melt through its container. That it would spread into the ground and water.

HORTON. We don't think there's a matter to worry about in the sense that we don't believe according to my technical people that a meltdown at San Onofre or any other modern nuclear plant . . . is a realistic possibility.

BROWER. Well, I like John Gofman's line here. He says people who make a claim like that are like a person who built a wooden house yesterday and say it feels perfectly secure because it hasn't burned down yet.

MCGEE. If the emergency core cooling system failed, if there were a melt down, some scientists think an area half the size of Philadelphia might be contaminated. One hundred thousand people might die.

DIXY LEE RAY. There is no industry that the world has ever known that has had such safety features built into it. And there is no activity, no industry, no technology that has ever developed such stringent rules for operation.

HENRY KENDALL (Nuclear Physicist, MIT). There is a large majority of the reactor experts that the AEC relies on who have the most serious doubts about these safety assurances.

We have hundreds of documents that have been suppressed by the AEC whose sources is the safety community and these demonstrate very clearly that the controversy over the AEC's claims is very deep and very serious.

MCGEE. On the subject of nuclear safety there are few facts of one expert that another expert does not dispute. But this much is clear.

There are risks. From a meltdown. From sabotage. From an outside catastrophe. From the nuclear waste they create that cannot be safely disposed of for thousands of years.

What is in dispute is how great these risks are. And what we ought to do about the nuclear plants.

BROWER. My own personal feeling is that they should all be closed down until their safety can be demonstrated.

ALLEN. We've got twenty nine nuclear plants operating in the United States. No one has been killed or injured in a nuclear plant operating for peaceful use of electricity. The problem is that they say, well, can you say positively, this won't happen and you can't say positively it won't happen.

You can say, we have designed these things to the point where there's one chance in ten thousand or a hundred thousand years. I say, that's a pretty good chance when you consider the alternatives.

MCGEE. On a day in July, the Presidents of six electric utility companies sat around a table in a hotel room in New York City, and after lunch, talked about their problems.

FREED. What you gentlemen have described has not been an energy crisis but really an environmental crisis.

You describe the impact of the new environmental thinking in your business.

It is fair to say that that is your view of what it is?

THOMAS GALLIGAN, JR. (President, Boston Edison Co.) The answer to your question is yes. Where the crisis is too strong and where it's suddenly a major significant problem that's been brought on by changes in priorities involving the environment that exists in the United States. There's no question.

FREED. If these environmental considerations did not exist, you would be meeting the growing demand?

GALLIGAN. The answer to the question is yes.

But I don't think, at least speaking for myself, I don't think we should say that we want to go back to the old days.

FRANK WARREN (President, Portland Gen. Elec. Co.). They will tell you at one time, you must clean up the stack 97% and you order the equipment and you engineer it and you install it and before you have finished, they have changed it to 98.5%. All right, it takes an entirely different process to do that. So you've spent your money and you still haven't met the standard that you tried.

JAMES UNDERKOFLER (President, Wisconsin Power & Light Co.). Maybe we in our generation have been over indulgent in respect to what technology can do but.

I think the younger generation is not yet fully appreciative of the real options we have and the fact that technology is going to solve this situation.

WARREN. I think it's fairly useful to say it's a crisis of decison making more than it is anything else.

MCGEE. If we decide to use more air conditioners, frost free refrigerators, washers, dryers, computers, automated machines . . . than, however, efficiently we operate those machines, we will still need more electricity and we will have to find ways to get it.

We can get it from nuclear power. If we do we will take risks to our safety that may be very great.

We can get it from coal. If we do, the power companies say we will have to lower, temporarily, environmental standards.

We can get it from oil. If we do, we will have to buy that oil in the Middle East. It will be expensive. It will effect our balance of payments. It may prevent our using oil for something else.

In the long run, we will probably be able to get the power in other ways. Some geothermal. Gas from coal.

Oil from shale. Nuclear fusion. But for now, our options are limited, and we will have to choose among them, and the price we pay, whatever we choose, will be high, uncomfortable, and perhaps painful.

FRANK MCGEE. Once, we deliberately burned up natural gas because we thought it was useless. Then we found it was cheap, clean and efficient as fuel. In the fifties and sixties, we thought it was the solution to our fuel problems. But of course, that was too good to be true. And it wasn't true.

There is this simple fact: We are consuming ourselves out of natural gas. Natural gas heats half our homes. It fuels half our industrial production.

It used to produce a quarter of our electricity. It supplies one third of our energy . . . and we are using it twice as fast as we are finding it. The natural gas industry warned us for five years that a shortage was coming. But no one paid much attention.

Then, this year, in some places, that shortage was here.

REPORTER. Mr. Locke, how serious is the power shortage?

JOHN LOCKE (Chairman, City Public Service). It's very serious.

REPORTER. Would you care to elaborate on that a little bit?

LOCKE. Well, meaning this: That we are only receiving delivery of one third of the amount of gas that we need to deliver full service.

REPORTER. What happens if the people don't save enough power? Are you just going to have to turn the switches off?

LOCKE. We'd just have to cut the service, that's all.

LOCKE. And the lights may start going out in San Antonio?

LOCKE. Well, the lights would be the last thing.

MCGEE. That was this summer.

Last winter the gas shortage closed factories in Ohio, New York, Pennsylvania, New Jersey . . . Schools had to close.

This spring in some areas there was no natural gas for new customers. Next fall farmers in the middle west may not be able to dry their corn because there is a shortage of propane.

What happened?

In the long run we just don't have enough natural gas.

In the short run there is enough. But nobody is looking for it very hard.

One reason is that the price of natural gas sold interstate is regulated at the well head by the Federal government.

The gas industry says, despite recent increases, that price is still too low.

By that they mean until they're allowed to charge more money.

Meanwhile, there are the people who use natural gas. They live here in Brooklyn, New York, Ohio, Michigan, Indiana and forty five other states.

They're almost half of the population of the United States. Eighty million Americans encouraged by an expensive advertising campaign switched to natural gas.

Now . . . this summer . . . they are being told there isn't enough anymore.

EUGENE LUNTEY (Exec. VP, Brooklyn Union Gas Co). We serve a territory of four million people. About one third of those people use gas for house heating. There are in our territory alone.

One million two hundred thousand people who depend on natural gas for cooking and that means about one billion meals a year are cooked with natural gas. If the gas from Louisiana, Texas were suddenly cut off New York City would suffer very greatly.

The customers and consumers in New York City would exist in a very cold atmosphere this coming winter.

AUCTIONEER. Texas has four hundred twenty three bids. The first is a joint bid of Kerr McGee, Cabot Belmont Case Pomeroy. Fifteen million.

MCGEE. In New Orleans one thousand miles away on a summer morning, natural gas that will be consumed in 1976 is changing hands.

AUCTIONEER. Three million six hundred and forty six thousand and eighty dollars.

And the per acre is six hundred thirty three dollars. Six million one hundred and twelve thousand dollars the per acre is one million sixty one dollars and eleven cents.

MCGEE. Six point two billion dollars will be bid in the next three hours for offshore drilling rights. It'll take three years to get the gas they're bidding for now to a house in Brooklyn.

AUCTIONEER. The next is a joint bid.

MCGEE. When they bring the gas out of the sea from down as deep as fifteen thousand feet north. At this point ownership of the gas passes from the company that took it out of the sea to the company that owns the pipeline. Very little of it will remain in Louisiana.

GOV. EDWIN EDWARDS (Governor of Louisiana). Now we find ourselves on a paradox of producing twenty five percent of all the gas that's used in America every twenty four hours. Yet we have a shortage of supply right here in our own state.

We operated or lived in the belief that we had an inexhaustible supply of natural gas. We now find ourselves in a situation where we recognize that the supply is beginning to terminate.

And the State of Louisiana cannot use any portion of this gas since it has all literally been committed by long term contracts.

MCGEE. The pipeline passes under fields of sugar cane between the Gulf and New Orleans.

The sugar refineries need gas. They can't get it from the pipeline.

JOHN THIBAUT (President, American Sugar Cane League). Under the curtailment procedures instituted by the Federal Power Commission, ten or twelve of our factories were curtailed and actually refused gas for a period of time, when we lost over a million dollars worth of sugar cane.

MCGEE. The pipeline pushes north past New Orleans.

BENJAMIN SISSON (Chairman, Jax Breweries). It was in January of last year during the cold snap.

That our brewery along with the others here in the community and a number of other plants were closed down because of a shortage of natural gas.

MCGEE. The pipeline runs from New Orleans past the Exxon refinery at Baton Rouge.

GEORGE ORICK. How do you feel about the gas going right through your state like that?

GOV. EDWARDS. Sick.

It passes through Louisiana in multiple pipelines by the billions of cubic feet per day. And we sit here helplessly with an economy dependent on natural gas and watching others benefit from this cheap gas.

MCGEE. Monroe, Louisiana. Population sixty thousand. The pipeline goes past on its way north.

Last winter on the coldest day of the year, the people of Monroe were told by the Federal Power Commission that they could no longer use natural gas to make the electricity that heated their houses.

In a time of natural gas shortage, too wasteful, the commission said they would have to convert to some other fuel. But they had always counted on natural gas, because

it had always been there, right under their feet.

JOHN BEYER. We're standing over the Monroe field about a five hundred square mile field. This is a compressor station that's compressing the gas that's gathered from the field and it's being compressed and being carried a thousand miles say to the north of us here.

Mayor RALPH TROY. Hello Governor.

Gov. EDWARDS. Hello.

TROY. Ralph Troy.

Gov. EDWARDS. Hi. How're you doing Mayor?

TROY. Fine. I've got a little problem that you're well aware of. Our gas situation.

Gov. EDWARDS. Your gas situation. Yes, it's one that frequently crosses my desk I'm afraid.

MCGEE. Mayor Ralph Troy. He's been in office for fourteen months.

Mayor TROY. The economy of this city was built on that cheap fuel. And suddenly to have it jerked out from under you as is happening to us now is traumatic for the city and for its people. If we are required to discontinue its use then that means we have to find some other means of generating electricity. And the expense of going to another system would be intolerable for us.

MCGEE. One third of the people of Monroe live below the poverty line. For them, up to now, fuel has always been cheap.

Mayor TROY. Most of these people live in poorly insulated homes. Some with no insulation at all and some with no windows at all. And they heat these with space heaters which burn gas. And these heaters just go full blast all winter. The problem for us is just that we don't have an alternative source of fuel. We don't see how we can get one.

FIRST MAN. Monroe. You can't have the gas that you've explored in Monroe. We're going to send it to Brooklyn or to the east.

SECOND MAN. Well I read in the paper where there's a number of reserves off Long Island and I just wondered why they could not drill there and get the gas there and leave the gas that we produce down here.

THIRD MAN. They don't want to go offshore and develop their deposits. Well that's their tough luck, far as I'm concerned.

WOMAN. Why do they have to have our gas? Why can't we keep it here?

LUNTEY. Absolutely, there seems no reason to me that the people in Louisiana should develop the gas off of their shore, ship it two thousand miles to the Northeast and for us to sit here with undiscovered resources unexplored resources off our shore. Within three hundred miles of the South Shore of Long Island here lie petroleum and natural gas deposits that could carry this Nation well into the twenty-first century. And yet no one has drilled one well one exploratory well between Florida and the main border.

MCGEE. To people in Nassau and Suffolk counties in Long Island, off-shore drilling means derricks on their skyline and oil on their beaches. They would rather continue to get their gas from Louisiana.

RALPH CASO (Nassau County Official). The last thing that I would want to see . . . is oil rigs about three miles off this beautiful shore line, and can you imagine what would happen here with that visual pollution, the problem of oil spills.

And the potential danger that is involved with the whole operation.

JOHN KLEIN (Suffolk County Official). The price is simply too high. What we're talking about is the way of life, the quality of life of nearly three million people.

CASO. It's almost like the people of Louisiana saying well because we are deteriorating that your area should deteriorate also.

Mayor TROY. It galls me to see people say look we don't want anyone drilling off our coast. We don't want the environment messed up. We don't want tankers coming into our coast.

TROY. Well there are gas wells all out there. And those derricks aren't very pretty when they go up and they mess up the environment.

Sen. BENNETT JOHNSTON. Before our Committee on the Interior, some of the states have come up and testified they don't want to drill for oil and gas . . . they don't want to contribute one bit of the effort that this nation needs to produce the energy . . . and yet they want our oil and gas.

WALTER SHERIDAN (NBC Correspondent). Does it seem to you, Senator, that the situation in Monroe rather epitomizes how small towns and small industries are getting caught in the bigger power struggle?

Sen. JOHNSTON. I think it is, Walter. It's particularly painful in Monroe because it sits right on top of what used to be the richest gas field in the country.

SHERIDAN. Right.

JOHNSTON. And here they don't have enough gas to run their own power plants.

SHERIDAN. Senator, what activities have there been here on Capitol Hill in connection with the natural gas shortage?

Sen. JOHNSTON. Well, every aspect of the natural gas shortage . . . is being studied from research and development to anti-trust, the whole gamut of natural gas is being studied on the hill.

Sen. EDWARD KENNEDY. And I want to find out whether the Power Commission has done any kind of study.

If they were to get a de-regulation what the impact was going to be over the consumers and over what period of time.

I don't think that's a very . . . that's a rather it's a question on the mind of every consumer that uses gas in this country.

JOHN NASSIKAS (Chairman, Federal Power Commission). I understand and say that over . . .

KENNEDY. Well, what are we going to tell them?

SHERIDAN. The natural gas industry and the Federal Power Commission say that regulation by the commission of the price of gas has kept the price too low and thus discouraged exploration for new gas.

KENNEDY. Well, let's speculate. What will the price go up or will it go down?

NASSIKAS. I assume the price will go up on deregulation because of the fact that gas has been maintained at extremely low levels, by the regulation of the Power Commission, which I head.

KENNEDY. Well, how much will it go up?

NASSIKAS. This, this cannot be predicted?

SHERIDAN. John Nassikas, the Commission's chairman, wants the Commission to stop regulating the price of natural gas. He says that a recent independent study by the Commissions shows that the shortage is real and acute and that the natural gas reserves are even less than originally estimated.

NASSIKAS. As I say I have no estimate to give you.

KENNEDY. You don't know?

NASSIKAS. I have no estimate to give you.

SHERIDAN. Critics say that the Commission study was not independent, it was dominated by industry representatives, and its conclusions were based on data furnished by the industry.

James T. Halverson of the Federal Trade Commission has conducted his own investigation and subpoened some industry records. His inquiry thus far indicates that the industry has underestimated its reserves.

COMMITTEEMAN. But you don't know how much that under reporting is, do you?

JAMES HALVERSON (Director, Bureau of Competition, FTC). Well, it's been high as ten to one, sometimes three hundred percent, four hundred percent. It depends on which field you're talking about.

MCGEE. Whatever the facts are, decisions made here in Washington are going to change the lives of people in Monroe, Louisiana, and Brooklyn, New York. Some of those decisions have already been made.

One decision has been to buy natural gas abroad. In the next ten years two trillion cubic feet of liquified natural gas will come by tanker to this country. Some from Algeria. Thirty billion dollars worth from the Soviet Union.

In Montana, they will try to begin turning coal into gas if environmentalists can be convinced that will not destroy their land and their way of life.

Nuclear devices will be used to loosen natural gas from deep inside the earth.

We will have natural gas. But we will never again have it in the cheap plentiful supply they enjoyed for so long in Monroe and so briefly in Brooklyn. They will have to depend in the future on what happens in places like Moscow, Algiers and Helena, Montana.

It may be a long cold winter in Monroe.

A bitter Christmas in Brooklyn.

The crisis of natural gas is not a complicated one. Whatever we do in the short term, whether conspiracy created our problem or bumbling politics, finally we simply do not have enough natural gas. We will have to look elsewhere.

In the long future, there is no future in natural gas.

MCGEE. As we have been going along this evening, you may have been wondering what the Government is doing about this energy crisis. The answer is not as much as a lot of people would like, more than some would like and whatever it's doing hardly seems to please anybody.

Rawleigh Warner, the Chairman of the Board of Mobil, thinks the Government interferes too much.

RAWLEIGH WARNER. Well, those of us in the oil business have, I think, a strong belief that interference with our normal operations via various commissions, via various administrative rulings have had an impact upon the industry and have helped produce this shortage.

RALPH NADER. And there is no reason why we can't go into these energy conservation programs quickly, using the Government as an example . . .

MCGEE. And Ralph Nader doesn't think the Government interferes enough.

There are 74 Federal agencies that deal with energy. That doesn't include 8 congressional committees. Because of this, it is very hard for anybody to get a necessary answer to anything from Washington, and often you get conflicting answers.

Governor John Love of Colorado has been appointed director of the energy policy office. He says he's not an energy czar.

JOHN LOVE. I'm just of course newly aboard but I've been given every assurance insofar as staffing and access to the President. And I don't think that power is going to be the problem in actually making this office work efficiently.

MCGEE. Love now has a staff of 12.

By comparison, the Department of Health, Education, and Welfare has 125,000 people. One of the problems is that some people are working to save the environment and some are working to get us more energy and sometimes they are working at cross purposes.

Russell Train is the new environmental boss but he has not yet been confirmed in his job by the Senate. Many people say that we don't have an energy policy, the question has been asked whether we ought to have an energy policy. At the White House, they call it the energy "situation". The President does not use the word "crisis" to describe it. Whichever it is, there is a good deal of confusion, duplication and conflict about it in Washington. Things more at a snail's pace. Hardly anybody is satisfied. But in fact, at the moment, it is not at all clear . . . except in the area of research and development . . . what the government policy ought to be. In

the area of research and development, it is clear that we ought to be doing more . . . but more what? We are putting most of our research money into nuclear projects. But there is opposition to this on the ground that nuclear plants are not safe. Proponents of geo-thermal, hydrogen, shale, gasification, solar energy and windmills all insist they should get most of the money. Now of course, no one really knows where technological breakthroughs will come next, or what may turn out to be practical tomorrow. We probably do not have a Government policy because the truth is, at this moment we have no consensus about what that policy should be. So in the absence of the consensus, we are muddling through what the President still insists is a "situation", not a crisis.

Less than a hundred years ago, they drilled the first American oil well in Pennsylvania. We used to produce more than half the oil in the world. Now we produce about eighteen percent. But we are using more oil than we ever used before. In the next ten years we will use more oil than we used in the last hundred years. Every day we are using more oil than we can produce.

RADIO GAS WATCH ANNOUNCER. This list is a couple of hours old. Some of these stations might be closed and some of these stations might be limiting gas to ten gallons or less.

FRANK MCGEE. Finally it came down to this: A man with a car and no gas. An oil company ran an ad that said a nation that runs on oil can't afford to run short of oil. This summer that seemed to be what we did.

We apparently ran short of oil.

DAVID FREEMAN (Sociologist, Ford Foundation). Who's to blame? Who failed us? Well I believe there's enough blame that we can tag almost every segment of government and industry and even the consumer is a partial villain.

MCGEE. David Freeman. Director of a three million dollar study of the energy crisis for the Ford Foundation.

FREEMAN. I think in this country we traditionally pride ourselves in not facing up to problems until, until we see the whites of their eyes so to speak.

MCGEE. This summer we began to see the whites of their eyes. In New Jersey, highway drivers were limited to ten gallons of gas. In Albany, New York, a dealer charged ninety nine cents a gallon.

In Colorado, in August, gasoline stations closed down all across the state, leaving drivers stranded all across the state. One Denver dealer strapped a gun to his waist and warned his irate customers not to make trouble. In the Midwest they ran out of diesel oil and farmers couldn't get enough to drive their tractors and farm their land.

Governor ROBERT RAY (Iowa). You listen to those people talk about the balance of payments. The balance of trade. Well the one place where we are still able to help in that critical area is with our agricultural products and so it's absolutely imperative that we plant those crops. Which we did get planted in the spring and now we have to get them harvested and we can't do it if we can't run tractors.

MCGEE: So the problems the gas shortage creates feed on each other and all the shortages and the problems are related. And you have to begin with a series of questions. Why is there an oil shortage? Is it real or contrived? Who is to blame for it? How long will it last? How can it be resolved? The questions are easy to ask but they are not easily answered.

The business of providing the oil on which this country runs is complicated. Perhaps more complicated than any other business. For the next hour we will examine the questions and try to find some answers. We begin with some hard facts.

In 1972, oil provided 45% of all the energy we used. The demand for oil, for a variety of reasons, has been growing. This year, despite increased production, the demand was greater than the supply. This was one reason.

We have 100 million cars on our roads.

The engines get bigger. More people want air conditioners, power brakes, power steering. Emission control devices are required to protect us against air pollution. All of these increase the consumption of gasoline. Now we don't seem to have enough. Are we running out?

FRANK IKARD (President, National Petroleum Institute). Probably in the next two or three generations we'll come to the end of the hydrocarbon age and have to look to some exotic or synthetic kinds of energy. But at least in your lifetime and mine, petroleum will be the basis of it. Or our energy sources.

FRED FREED. Mr. Bradshaw, why is there an oil shortage?

THORNTON BRADSHAW (president, ARCO). Well, in the simplest terms demand has outrun supply. Behind that is a very complex story reaching back many many years because it has been building up for many many years.

FREED. Why weren't you able to predict that?

BRADSHAW. We were not able to predict the enormous increase in demand that derived from this very heavy economy we have now. This very affluent society.

MCGEE: If the demand increased faster than the oil companies anticipated, their other problem was that the supply did not increase as fast as they anticipated.

BRADSHAW. Let's go back to the year 1968. A sort of a watershed year. In 1968 the North Slope field had just been discovered. The Prudhoe Bay field. The largest field of oil and gas ever discovered on the North American continent. And our executive committee in that year had written that oil would be delivered to the California coast by 1972.

The Alaskan oil was frozen and as a matter of fact of course still is in 1973.

Just prior to 1968 there had been a large find or series of finds of oil off-shore Santa Barbara. The Santa Barbara spill. And the age of environment and certainly from our point of view none too soon.

FREED. You mean we needed that?

BRADSHAW. We needed some dramatic event to focus the attention of the American people on the fact that our environment had been degraded.

Santa Barbara oil was shut in and still is shut in. Off-shore drilling and exploration was slowed down enormously.

RAWLEIGH WARNER. (Chairman of the Board, Mobil Oil). We've got a whole series of problems.

They relate to the availability of gas. They relate to nuclear energy and the general disappointment that's come from that source. They relate to coal and the impact of environmental actions, so that the end result of all this is that everything has fallen back on oil.

MCGEE. This is the case the oil companies make. Whatever the reasons, the simple fact is last year we consumed sixteen million barrels a day while we produced nine and a half million barrels a day. The shortage was made up by importing oil. This year we will import more. Many critics of the oil industry do not believe that we really can't produce enough oil to meet our demand.

Senator JAMES ABOUREZK. I think it's ridiculous in the United States of America to talk about a shortage of gas for automobiles, for transportation, fuel for heating homes and businesses and schools, when we have thirty seven billion barrels of proven reserves of oil in the United States today. It's ridiculous to talk about a shortage when we have an excess of refinery capacity in this country of three hundred and twenty-two thousand barrels a day.

MCGEE. As in everything else in this oil story, there is disagreement here, even among critics, as to what the oil companies are doing wrong.

MAURY ADELMAN. (MIT Oil Expert). I think it's almost entirely a failure of refinery capacity because the consumption grows from year to year. And what's happened is simply that refinery capacity hasn't expanded and there isn't a great deal of slack anywhere else in the world. Especially Europe.

FERNAND SPAAK. (Director for Energy, European Community). In Europe we have an excess of refined products and this explains why we are in a different situation at the moment.

And this explains why the U.S. is to such an extent now relying on our excess capacity to supply the American market.

MCGEE. Europe depends on imported oil and has refineries to process it. We are still the largest producer of crude oil and we don't have the refineries.

WARNER. I think it's the age old question of people wanting their product, but they don't want the plant that produces it too close to them.

The main reason why we don't have the refining capacity is that for a variety of environmental and legal reasons people have made it very difficult to build refining capacity in this country.

RALPH NADER. It's not a question of environmentalists. The question is that we, who hold this country in trust for future generations and people, who want a relatively safe environment, would not allow refineries to be built until they can be built as safe as they can be built.

They want to get off cheap and put the cost on the public in terms of contaminated environment.

WARNER. I think to me the thing that's been missed by all those who want a clean environment is the simple fact that for everything they demand there's a price.

MCGEE. They talk about compromise on both sides. So far there has been none. One place where they meet head on is Eastport, Maine. The boats are coming in with herring. They are blowing the whistle to tell the sardine packers that there will be a day's work. Fifty years ago there were twenty canneries in Eastport. Now there is one. That's about all the industry they have in Eastport now. Eastport exists in a deepening private depression.

But Eastport is also a port with twenty two foot tides. The only true deep water port in the United States. Because of that the Pittston company wants to build a three hundred and fifty million dollar oil refinery here.

ARNOLD KAULAKIS (Vice President, Pittston Company). Expansion in refining capacity anywhere on the east coast of the U.S. has got to be based on running imported crude oil. Now that crude is going to come from the Middle East.

You can build a refinery anywhere but a harbor having the potential to be developed into an oil port for the use of these very large crude carriers which carry over one and a half million barrels in one trip is a rare natural resource. And Eastport has that natural resource.

KEN LAYTON (Eastport City Council). I think the town needs it.

Since I've lived here for twenty four years and it's gone nothing but downhill the past twenty four years and this is something we need to put new life into the town. Into Eastport.

HARRY RAYE (Electrical Worker). At this time I am not working. I haven't worked since the last week of March. I'm like a good many in this area drawing unemployment compensation at this time.

MCGEE. But there is opposition to the refinery. Supporters say it comes mostly from retired people who have bought houses in the area. Who don't need the jobs.

The refinery can't be built unless it is

approved by the Maine Environmental Protection Board. On the board are a retired conservationist. A law professor. A dairy farmer. A retired Navy captain. A housewife. A retired chemist. They will decide whether or not Pittston can build the refinery at Eastport. John Cole, Editor of the Weekly Maine Times, is chief spokesman for the environmentalists.

JOHN COLE. We don't want to keep Maine poor as some people say environmentalists do. But I do want to keep Maine from being industrialized, particularly the Maine coast which is not only the property of Maine people but it is the property of people all over the U.S. and the rest of the world.

The decision has not been made. The debate continues. If the environmentalists win it, Pittston has another place to go to build its refinery.

KAULIKAS. There is a second excellent site in the Canso Straits in Nova Scotia.

We have also entered into discussions with Nova Scotian authorities on the possibilities there.

MCGEE. What Maine is debating, Nova Scotia wants . . . and has. One refinery is operating now. Two more are being built. A fourth is planned. They are ready to consider a fifth, the Pittston refinery. The Premier of Nova Scotia.

GERALD REGAN (Premier, Nova Scotia). I suppose it can be interpreted that I am saying to a degree that we are prepared to take some risks that the residents of the east coast of the U.S. have shied away from.

GEORGE ORICK. Why are you doing it?

REGAN. Well, we want to have a higher standard of living for Nova Scotians.

MCGEE. Thus once again we see the energy crisis as a crisis of decision.

If Eastport rejects Pittston's refinery, Nova Scotia is ready to build it. We will get more of the refining capacity we need. Maine will not have to risk damage to its coast line. But in Eastport, the twenty four year economic slide Mr. Layton described will continue. If Maine decides to allow the refinery to be built, that part of the state will change forever. No one can say whether for better, or worse. That is the gamble they are being asked to take . . . or reject.

FIRST MAN. Well, we used to be open on Sundays in these stations. Now they're closed. I mean, there's gotta be a reason for it. I mean, you know, this is the greatest country in the world. I mean there shouldn't be a shortage of anything.

SECOND MAN. I go to work early in the morning and get home late at night. And I can't get gas.

WOMAN. Well, I do think that the oil companies practically own America, along with a couple of the Detroit's automobile manufacturers.

THIRD MAN. But I believe they have gas and just not saying it just in order to raise the prices.

FOURTH MAN. Oh, it's killing me. It's killing me like it's killing thousands and thousands of all American people. Same thing, because it's affecting your life, your blood . . .

FRANK MCGEE. It was killing us. Nothing like it had ever happened to us before. We looked around for someone to blame.

DAVID FREEMAN (Sociologist, Ford Foundation). The reason I think a lot of people think it's all a giant conspiracy is that it's just unbelievable to them. And maddening in a high energy civilization . . .

EXXON COMMERCIAL NARRATOR. Fill up with Enco Extra for those long serious drives. But fill up with Enco Extra too if you're going to be doing something like this. Either way you've got a tiger on your side.

FREEMAN. All of a sudden, the oil industry that has been giving them glasses and green stamps to buy gas are now saying that there's not enough to go around.

MAN ON GULF COMMERCIAL. We're going to need a national energy program where our government and industry can work together to develop our future energy sources so we won't have to rely on somebody else's. You and I can help too. By not wasting the energy we already have.

FREEMAN. The general public had no reason to think that this reservoir of energy had any bottom to it at all . . .

Senator HENRY JACKSON. I have no proof that there is a conspiracy. Very responsible people . . . state attorney generals, public officials, people in the private business sector, said there is such a conspiracy. I think there are some other things that I can say with certainly and that is that I think the oil companies want to find too the supply and demand. That is, they know that if supply of petroleum is very tight and demand is substantial, that it will cause prices to rise and when prices go up, profits go up. And that's what they're in business for. Profits . . .

ROBERT KILLIAN. (Attorney General Connecticut). This whole shortage situation, so called, alleged, is directed toward putting independent wholesalers and retailers out of business, destroying the secondary brands, the unbranded marketer, who has provided the only competition in an industry that's been almost totally without competition over a period of many, many years.

INDEPENDENT DEALER. My problem is that I'm having a heck of a time trying to get gas and stay in business.

MCGEE. This was the summer of the independent. The summer of his public agony. He couldn't get any gas. By June, some estimated 2,000 independents had shut down.

It was clear that from the start, the independent had, in fact, been a dependent. He owed his existence to the big oil companies.

THORNTON BRADSHAW. (President, ARCO). For many years in the United States, we have had a surplus of refining capacity. This means that the barrels of oil which we cannot use ourselves we were glad to sell to the independents and generally at low prices. This is called the incremental barrel.

And it helped us by pushing the capacity of the refineries up. The operating capacity of the refineries up: It helped the independents by providing them with oil at rather cheap prices.

FRED FREED. And they charged less, didn't they?

BRADSHAW. They charged less.

MCGEE. Over the past forty years, the independents became an institution in the oil business. The refineries of the big companies were operating at less than capacity. They had oil available. The independents fitted into their plans.

BRADSHAW. They began to get a very large share of the market. In some states, it reaches I believe, as high as 25% of the market. They grew all during this period of time while the share of market of the majors was declining.

Now, all of a sudden we are producing our refineries all out. We have no incremental barrels. We have no surplus barrels. So this is a different kind of situation.

MCGEE. This "different kind of situation" bothered a lot of people, among them some senators. They wondered whether this wasn't a cleverly orchestrated effort to drive the independents out of business. They heard a series of witnesses, various kinds of independents, each asking for help against the big oil companies they said were trying to wipe them out.

M. B. Holdgraf, Hudson Oil Company of Kansas City. One of the big independents. He gets his oil where he can find it.

M. B. HOLDGRAF. We looked hither and yon. It's rather unique and ironic that a company dealing in millions of gallons and barrels that I get down and plead for one tanker of gasoline for my station in Henderson, Nevada to keep the door open . . .

MCGEE. Charles Shipley. He represents the Retail Service Station Dealers of Michigan. They don't feel very independent this summer.

CHARLES SHIPLEY (Executive Director, Service Station Dealers, Michigan). Independence is not a word that should be attached to any businessman who is not a part of an integrated oil company. He has no room to move except as he responds to the pull on the string that comes from his supplying company. No jobber or dealer dare introduce any market innovation or take any independent action not having the stamp of approval by his supplier.

From the control at the wellhead, through the pump nozzle, every transaction must have the blessing of the major oil companies. Almost without exception, every major integrated oil company . . . reacting to the inroads, being made in the total volume by unbranded marketers saw fit to masquerade as independents themselves.

FRED BRIGGS (NBC correspondent). In Texas, Sello stations look like independents, but they are owned by Mobil Oil. Whale gas stations in Kentucky are owned by American Oil. Alert Stations on the East Coast, owned by Exxon. In Oklahoma, R.I.D.E. Stations are owned by Shell Oil. E–Z Go in Chicago, that's part of Gulf. This is one of a chain of Chicago independents. In the last two months, it's only been open 20% of the time.

INDEPENDENT STATION OWNER. I cannot understand how major oil companies can deprive me of product yet open stations to compete with me under other names. If there is no surplus, why are they opening their own independent outlets? What chance do we have?

FREED. Are the independents going out of business?

BRADSHAW. I don't think the independents are going out of business. The only thing that we are talking about is whether or not by some mechanism of government, they should be provided the opportunity to buy oil for less than other segments of the distributive chain.

FREED. Why do the majors sell some of their gasoline under other names?

BRADSHAW. Well, I think we recognize that there are two markets, the service market. My wife, for instance, wants to go to a full service station . . . And then there's another market that has been growing where people buy on the basis of price and quality, and they don't want the service. And we and other majors, we're looking at both of those markets and hoping to supply both of those markets.

MCGEE. The fact is that the "price alone" market is the one that kept the independents alive. It enabled them to sell their gas at a lower price.

Now the majors, as Mr. Bradshaw points out, are moving into that market. At the same time, the independents are finding it hard to get any gas at all from their suppliers who happen to be the majors.

Joe Clements owns two gas stations in Twin Falls, Idaho, one in Burley.

FREED. Are you still having trouble?

JOE CLEMENTS (independent oil dealer). Yes, I am. we're closed more than we are open. I've been at the same dentist, Frank McCaffee, for I'd say twenty five years. And he called me up and told me he was going to have to quit because this winter I wasn't going to be able to get any fuel oil to keep him warm. Frank's getting to the age where he don't want to be cold. You see, and so he's left me out in the cold. I can't serve him fuel oil any more because he's going to go to one of the big boys.

FREED. So you've lost business?

CLEMENTS. Yes. I've lost quite a lot of business.

FREED. You say that you think this is something deliberately planned by the oil companies. What evidence do you have?

CLEMENTS. Well, you see, you put me in a difficult spot. I can't give you much evidence.

All I can use, I think, is horse sense, that how could the guys have more computers than I've got trucks and customers, I imagine, be caught short on a deal like this?

This summer I sold a half a million gallons less than I sold last year. Does that mean people are conserving gasoline?

No, that means that the majors sold a half a million gallons more and I sold five hundred thousand gallons less.

WALTER SHERIDAN. How important are the independents in your view?

Senator ADLAI STEVENSON. That's the only competition there is. They keep the majors honest. They keep the prices down for gasoline and they also serve areas of the country, consumers, who otherwise have great difficulty getting gasoline. I had one independent in Illinois who supplied 15,000 farmers and one of the major oil companies cut off that independent.

SHERIDAN. Is that Mr. Hicks?

Senator STEVENSON. Mr. Hicks was cut off by CITGO.

CHARLES HICKS. Cities Service cut us off the first of April. And the first of April then we had to cancel out seventy seven wholesale customers scattered all over the state of Illinois.

CHARLES HICKS (President of Hicks Oil Company). Some of these major oil companies seem to make it, try to make it, appear as if we're kind of fly by nights in the gasoline business. But I feel like if we've bought from two different companies for fifteen or twenty years, we mustn't be too much of a fly by night.

We've always got along very excellent. No fuss. No muss, with none of them. But it's a little different picture today. We don't know which way to turn.

RAWLEIGH WARNER (Chairman of the Board, Mobil). Well, I have the most dreadful time, hearing people say about this industry in which I have lived for twenty five years, that we are engaged in a conspiracy and contrived a shortage. Now, conspiracies connote doing things behind everybody's back. Connote meeting together in clandestine fashion and carving up markets. We have dozens upon dozens of Government Agencies. We have the Federal Trade Commission. We have the Federal Power Commission. We've got Commissions coming out of our ears, who are into every aspect of our business, and rightly so. I'm not against that at all. I'm citing it because I'm trying to get across a feeling and a depth of passion that says to you that we are not and we cannot conspire, and if we were so obtuse as to think that we could conspire, we are just stupid.

ROBERT SHEVIN (Attorney General, Florida). I wonder whether or not this was not manipulated . . .

McGEE. On July 9th, the Attorney General of Florida filed an anti-trust suit alleging that fifteen oil companies had conspired to create a gasoline shortage and to drive up prices.

On July 17th, the Federal Trade Commission filed a formal complaint charging the eight biggest oil companies with "coordinating" their activities over a twenty three year period to monopolize the refining of petroleum products.

On July 26th, the State of Connecticut brought suit against twenty oil companies charging them with violating the anti-trust laws.

KILLIAN (Attorney General, Connecticut). It is my belief that these twenty major oil companies have enjoyed a virtual stranglehold on gasoline and petroleum products, that has long meant inflated prices for the consumer and more recently a shortage of supplies, whether real or contrived. Far from serving as an example of the free enterprise system at its best, these companies represent a monopoly that controls petroleum production from the moment that exploration activities are commenced until the final product is dumped, pumped into the gasoline tanks of our cars.

JAMES HALVERSON. (Director, Bureau of Competition, FTC). Our investigation suggests that activities by the major integrated petroleum companies have had significant anticompetitive effects. Their control of refinery capacity . . .

McGEE. What the Federal Trade Commission complaint alleged was this: That the eight major oil companies prevent competition; that they do that by acting together to control the "gathering" of oil . . . the transporting of oil . . . the refining of oil . . . the pricing of oil . . . that they control the pipelines it travels through . . . that they control who get gasoline, and that all along this process, acting together, they have kept independents out, held competition down, pushed profits up . . .

WARNER. What they have said is that these eight elements in the industry have followed a common course of action. Now, in the normal course of business, one business does tend to do what other businesses do. They've also said that a company vertically integrated . . . by that I mean to say in all the phases of the business . . . is in violation of some law. Now, that's a novel, according to our lawyers, that's a novel complaint and one which we do not feel is at all justified.

SHERIDAN. Do you feel that you have the evidence to try the case successfully?

HALVERSON. We have put a very large amount of resources into investigating the situation before it was brought to the recommendation level, and we feel that we have the types of information that will make for a successful case.

McGEE. Mr. Halverson said the FTC had been gathering evidence for two years. He said he could not reveal what that evidence is before the hearings begin. Meanwhile, business goes on pretty much as usual. The hearings, when they begin, will be long and complex. It will take time for the FTC to hand down its decisions. Then, if the oil companies lose, there will be years of appeals through the federal court system. It may, in the end, be a landmark case, but it will not have much effect on what happens to Joe Clements of Twin Falls or the other independents, one way or the other . . . or to their customers.

Mr. McGEE. This is King Faisal of Saudi Arabia. He is going to have a great deal to say in the next few years about the way you live.

He rules over a desert kingdom of six million people. In this decade of the oil shortage he is one of the most powerful men in the world. Under these sands there are proved deposits of a hundred sixty billion barrels of oil.

Saudi Arabia and Iran and Kuwait which have a hundred thirty billion barrels of oil . . . own more than half of the world's known oil reserves. For at least the next fifteen years our oil supply is going to depend largely on what these three countries and eight other middle eastern countries with smaller oil reserves decide to do about their oil production.

The leader of one of those countries is Colonel Muammar Qaddafi of Libya.

Last month, he took over fifty one percent of the Libyan properties and assets of Occidental Petroleum, Continental, Marathon and Amarada Hess, and he was able to raise the price of their crude oil to almost five dollars a barrel.

Three days ago, he nationalized fifty one percent of the holdings of the remaining foreign oil companies . . . Exxon, Texaco, Socal, Mobil, Shell. These five companies are so far resisting this action, refusing the terms offered by Colonel Qaddafi. But the question is: can they hold out, given the world oil shortage?

WILLIAM TAVOULAREAS (President, Mobil Oil Co.). I don't know of any effective way that the consuming nations economically can get together to bring pressure on prices in the producing nations.

The man with an essential commodity in short supply has a distinct advantage when he has no anti-trust laws to worry about.

Senator HENRY JACKSON. So priority number one of all the priorities involves the skill of our diplomacy, in working out the kind of arrangement with nations abroad that will provide continuity of supply in the critical period ahead. This is the biggest problem of all.

McGEE. In non-diplomatic language that means that we had better get along with the Middle Eastern nations, because we are using almost two billion barrels more of oil a year than we produce. So unless we ration it we are going to have to import it. We will have to import about fifty percent of our oil by the 1980's. Most of it from the Middle East where our interests are complicated and conflicting.

JOHN McLEAN (Chairman, Conoco). Well, we have three sets of relationships in the Middle East, all involving the legitimate interests of the United States. First we have an emotional interest in Israel and some would go so far as to base a military commitment upon it. Second, we have a deep economic interest in Arab oil and indeed our position as a major world power in the next ten or fifteen years is going to be heavily dependent on the continuity and the flow of that oil.

Third, we've got an overriding strategic interest in avoiding a conflict with Russia in the Middle East. So the essence of our problem is to reconcile these three diverse sets of interest without doing undue damage to any one of them.

McGEE. Why do we have to get our oil from the Middle East? A blunt answer is that we can't get the amount we need anywhere else.

So we come back to those three countries. They have plenty of oil. But there are problems about our getting it. And one is that we are going to have to compete for it against other industrial countries like Japan and France who are even hungrier for oil than we are.

FERNAND SPAAK (Director for Energy, European Econ. Community). Now this is what is called the scramble for oil. People wanting to get control of oil reserves at any cost.

LEN GIOVANNITTI. Is such competition going on now?

SPAAK. Well, it is starting, it is starting.

McGEE. There are one million people in Kuwait . . . living over one of the largest pools of oil in the world. A generation ago they lived in mud huts. The average per capita income last year was thirty five hundred dollars. They are a modern, industrialized country enjoying the kind of living standard they can.

* * * * *

McGEE. Iran has the third largest pool of oil reserves in the non-communist world.

The Shah, who is the absolute ruler, has taken a different view of how to use his oil from the Kuwaitis. He is producing as much as he can, using the money he gets to modernize and industrialize Iran.

As a result, Iran has one of the highest growth rates in the world. They are spending every penny they get from oil, and when they sell more oil they rewrite their economic programs to spend the additional money.

They know the oil is going to run out some day, so while they have it they are selling it as fast as they can, to anyone who can pay for it, without regard to politics.

AMIR ABBAS HOVEYDA (Prime Minister of Iran). We don't deal only with the major companies. We deal with everybody. We deal with smaller companies. We deal with bigger companies. As a matter of fact we have oil, we can't drink it. We have to sell it. And we wish to sell it at the best price. And I could

assure you that our people when they deal in oil are very shrewd.

McGEE. One of the "shrewd benefits" Iran has managed, is to trade some of its oil for a share of ownership in the Ashland Oil Company, one of the big American independents.

The Arab countries have wanted for a long time to share in the income from refining and marketing oil for the West. Now Iran has such a deal, on American soil.

ORIN ATKINS (Chairman of the Board, Ashland Oil Company). We have entered into a memorandum of understanding with the National Iranian Oil Company under which they will acquire a fifty percent participation in our refining and marketing operations in New York State. They in turn will supply us with quantities of crude oil and this is really the only way that the United States is going to be able to assure itself in my opinion of a stable supply of oil for the future.

Ashland is definitely involved in negotiations on a number of fronts, including Saudi Arabia to mention one.

HUNT. This barren patch of desert is perhaps the world's most expensive piece of real estate.

It's the Ghowar oil field in Saudi Arabia and it covers the world's richest pool of oil.

McGEE. Saudi Arabia is over eighty percent desert. Its six million people are conservative, deeply religious. They still live in an underdeveloped country. And one of the problems of their oil is that it's bringing them billions of dollars every year.

THORNTON BRADSHAW (President, ARCO). How are they going to spend their share which might amount to as much as thirty to forty billion dollars a year?

Well if they put it in balances throughout the world. I know of no monetary system that can sustain that. I know of no way that with balances such as that floating around the world that we can have a viable international trade situation. They could invest throughout the world but after all in one year Saudi Arabia could buy all of General Motors at once.

McGEE. Saudi Arabia is now producing eight million barrels of oil a day. We want them to produce more. The question is whether they will do it, or not.

SHEIKH ZAKI YAMANI (Minister of Petroleum and Mineral Resources, Saudi Arabia). If it is up to us only, I mean if we are going to apply our internal requirements, then we will produce exactly what we can spend. And I think this shouldn't exceed the present level of production.

Anything we do beyond that will create a problem for Saudi Arabia. A financial problem. And there should be an incentive for that.

McGEE. One incentive would be to help modernize Saudi Arabia. It's an ancient country. It needs schools, roads, hospitals. This year, the Saudis are completing their first nationwide telephone system. They are building sewers for their cities. So they will trade oil for our technical help. This sounds good for us. But in fact there is a limit to how much oil we can get from Saudi Arabia because we have to find a way to pay for it with our shrunken dollars, and they have to find a way to absorb all that money.

BRADSHAW. If Saudi Arabia cannot spend the money for the benefit of their own people they might think why not stretch out the oil. Why not cut back on producing oil?

And that would sound like a fairly rational decision and wise decision on the part of the Middle Eastern nations.

But it would be catastrophe for the world because the world would not have the energy which it by then will desperately need.

McGEE. So this is the dilemma we face. The oil we need is in Saudi Arabia. We need the oil more than they need our money. Thus the question is what can we do for them? And this brings us into the arena of Middle East politics, and the question of Israel.

Our ties with Israel and our aid to Israel anger the Arabs. The more radical Arabs and the Arab guerrillas attack Saudi Arabia for being too close to the United States. Now our oil shortage is seen by some Arabs as a weapon to change a policy that they think is not what we tell them it is.

FRANK JUNGERS (President, Aramco). In actual practice I believe that most Arabs would feel that the policy has not been even handed.

McGEE. Frank Jungers is President of Aramco, the Arabian American Oil Company.

It is the largest crude oil producing company in the world. Saudi Arabia owns twenty-five percent of it. American oil companies own seventy-five percent.

SANDRA GRANZOW. We were just granted the first interview King Faisal has even given to American television. Why do you think he chose to speak out at this time?

JUNGERS. I think the King now is very much concerned with his position in the Arab world as being the one who is still pro-American in the face of what the others feel. And now that he has had an opportunity for a company like NBC to come here and to interview him he has chosen this as a way to get across his feelings to the American public in a friendly way.

King FAISAL. As a friend of the Uniited States we are deeply concerned that if the United States does not change its policy in the Middle East and continues to side with zionism, then I'm afraid such course of action will affect our relations with our American friends because it will place us in an untenable position in the Arab world and vis a vis the countries which zionism seeks to destroy.

HUNT. If I am correct, His Majesty at one time said that oil and politics did not mix. Has something occurred in the last several months to change your thinking on these lines?

King FAISAL. Undoubtedly, we are now under attack from the Arabs themselves because of our friendship with the United States and we are accused of being in collusion with zionism and American imperialism against the Arabs.

HUNT. Your majesty's remarks on this subject in the past have been interpreted to mean that Saudi Arabia might restrict its shipments of oil, particularly to the United States. Is that a correct interpretation?

FAISAL. We do not wish to place any restrictions on our oil export to the United States but as I mentioned, America's complete support of zionism against the Arabs makes it extremely difficult for us to continue to supply the United States' petroleum needs and to even maintain our friendly relations with the United States.

HUNT. Since Britain withdrew its forces from the Arab Gulf, Your Majesty, several countries around the Gulf including your own have shown an interest in buying more modern weapons. Would you comment on that please?

FAISAL. It is to protect themselves against the dangers of communism and zionism that the Arab countries have been forced to strive to acquire such weapons and military preparedness as to be able to defend their stability, their homeland and their independence.

HUNT. Is there a relationship between these purchases of weapons and oil?

YAMANI (Minister of Petroleum and Mineral Resources, Saudi Arabia). Well I think we have to defend ourselves. And probably the outsiders will be more greedy when they look at the wealthy country. We attract their appetite so we have to buy more arms for that, to defend ourselves.

Senator WILLIAM FULBRIGHT. The United States, which is by far the major supplier of arms to Israel has also contracted to provide some four billion dollars worth of arms to Iran, Saudi Arabia, and to Kuwait. The Soviet Union for its part is deeply involved in Iraq, as well as Syria and to some remaining extent in Egypt.

The Arab oil producing states quite naturally are thinking about the leverage their oil wealth might provide them in their dispute with Israel and in their related dealings with the great powers that buy their oil.

JAMES AKINS (U.S. State Department). If a country is selling oil to us and it then cuts that oil off unless we change our policy, I think that there is no better word than blackmail.

McGEE. The Saudis have said they have no intention of cutting off our oil. They have said they are even prepared to increase their production. But in the last few days, they have come under increased pressure from Libya and Egypt to use their oil to force us to change our Middle East policy.

In a telephone interview on Sunday, Saudi Petroleum Minister Yamani told NBC News this:

YAMANI. Our policy is strongly against nationalization. . . .

McGEE. That Saudi policy is strongly against nationalizing foreign oil holdings.

That Saudi Arabia will "carefully study all the consequences of the Libyan action and then act accordingly." That there will probably be "some modification" in the "present arrangement." That Saudi Arabia's policy toward the United States remains as stated by King Faisal on this program.

Thus, more than ever, as a result of Libya's actions and the recent meeting between Sadat of Egypt and King Faisal, Saudi Arabian oil seems the key to what happens in the Middle East.

Whether we like it or not, politics and oil are mixed. We need oil and we need it from Saudi Arabia. The Saudis say they are our friends but they are under pressure from the other Arabs because of Israel.

Now they are putting pressure on us, and the pressure they have is our need for more oil.

For almost three decades, we have been the richest, most powerful nation on earth.

Now a nation of six million tells us we must change our foreign policy if we want full gas tanks.

This is the world we can expect until we begin to produce new fuels to replace the oil we no longer have.

FRANK McGEE. Oil was romance once . . . black gold. The wildcatter . . . It's still there, but like all the past, dying now. This is El Dorado, Kansas. Jay Mull of Wichita. He owns about fifteen hundred low-yield wells that altogether might match two wells in Saudi Arabia.

JAY MULL (president, Mull Drilling Co.). This area is gonna produce oil and a good million barrels of oil. The best estimates the geologists can come up with working all over the country is that we haven't found half of the oil that's present in the United States to date.

Yes, there's plenty of oil.

It's the wildcatting independent who's found historically eighty–eighty-five percent of all the oil in the United States that's ever been found.

McGEE. Jay Mull is still wildcatting, still an optimist.

MULL. The well you see pumping here has been here about eighteen years. It would push this well to do ten barrels a day, but it's been producing all these years and it started out making about fifty barrels a day.

McGEE. But if there is plenty of oil, wildcatters like Jay Mull won't be the ones who find it, or get it. Those days are gone. Like most other small entrepreneurs in his time, Jay Mull feels he is being squeezed out. The big companies are too big. Finding oil on the Alaska slope or the Continental Shelf, is getting too expensive. We're now dealing with a world of multinational giants.

RAWLEIGH WARNER (chairman of the board, Mobil). Now in our terms as a multinational corporation and we operate in over a hundred countries.

WILLIAM TAVOULAREAS (president, Mobil). We find oil in all parts of the world and we bring energy to all other parts of the world. And I've never had, I've never been faced with the situation where I'd say to myself I'm only going to be a good citizen of one country because, if I do that, I'm no longer a multinational oil company.

WARNER. In terms of what we ought to be doing for our shareholders, we are a profit-making concern.

We ought to be trying to get the most attractive rate of return on the money that our shareholders have given us. We are trying to make a profit.

MCGEE. We are talking about companies that operate in a hundred countries. Whose revenues are greater than the income of some of those countries. About one company, Exxon, that earned a billion dollars in the first half of this year. We are talking about at least six oil companies with world sales this year between ten and forty billion dollars. So in the end, no matter how sentimental we feel about Mr. Mull, the wildcatter, whether we get enough oil to run our cars, our furnaces, our factories, depends on those big oil companies. And we've seen how among many people in government, in the oil business and people who use oil, suspicion exists that those big companies are conspiring to control and manipulate our supply.

Senator LEE METCALF. You read that Exxon has such and such a percent in Saudi Arabia and Gulf has such and such a percent and Shell has such and such a percent.

Then you go to little old Kuwait and it's exactly the same percentage of oil in that state. You go down into the sheikdoms and you get the same percentage down there. So they have divided up the sources of supply in the markets pretty well all over the world and if that isn't collusion I don't know what is.

FRED FREED. As you know it's been suggested that this is really the result of a conspiracy among the major oil companies to create this gasoline shortage for a number of reasons. Is there any truth in that?

THORNTON BRADSHAW (President Arco). If it's a monopoly it's the worst run monopoly I've ever seen.

WARNER. So I have to say to you that we are not making what some people choose to believe I don't believe an inordinate amount of money.

JOHN MCLEAN (Chairman of the Board, Conoco). We presently earn somewhere around eleven percent per annum after tax return on investment. Characteristically it's been below the average of all manufacturing industries in the United States.

CLIFTON GARVIN (President, Exxon). The oil business like any other business in our society is a highly competitive one. It works in the market place and the old law of supply and demand works in the market place.

TAVOULAREAS. When people talk about we're not competitive they just don't know what they're talking about. We fight, we sit down, we give our people instructions almost like the old gladiators, now go in there and get em. That is what we do all the time each and every day.

BRADSHAW. I wish we had control over the total environment which it is alleged that we have.

MCGEE. What is alleged is that the big companies control the oil of the world from the wellhead to the gas pump. That they control the wells, the refineries, the pipelines. That in this way they are able to shut off competition. That they are able to decide how much oil is available, and at what price. None of this has been proved, although the Federal Trade Commission and several states are trying to prove it. What is undeniable is that the big oil companies are very big, that they deal with very large sums of money, that they work together on joint ventures and often share refining facilities. What is also undeniable is that they have prospered during the oil shortage.

In the end the fact that concerns most of us is that there is a shortage of gas and that the price of gas is going up.

BRADSHAW. The demand has outrun supply for some very real reason.

There're reasons of governmental interference, perhaps governmental policies which certainly were not thought through, there were reasons of our overreaction to the problems of environment. They were actually reasons which provided to us by mother nature. It's getting harder and harder in the United States to find oil and gas. All the easy oil and gas has been found. Those are very real things. And that's the base. Real things . . .

FREED. The oil companies blame the drivers and they blame Detroit and they blame the government. Do you think they have any blame themselves?

JOE CLEMENT (Independent Gas Dealer, Idaho). A man in American Falls answered that this way. He said you know there's three Gods in this country. The one we go to church and talk about on Sunday. And the second God is the major oil cartels, and the third one is the Federal Government. And the big mix up here and the difficulty is that Uncle Sam wanted to get up in place of number two and oil companies are a little irked about that.

A. J. MEYER (Harvard University). To an American public possessed of wildly wasteful energy habits and long accustomed to bargain energy costs, there is no denying that oil companies offer a visible and enticing target.

Their recent quarterly earnings are up.

Tankers and refineries will continue to pollute our environment, there will certainly be selective shortages of oil and gasoline and cost of energy of all kinds to consumers, will continue to rise. But whether one likes oil companies or not there is at the moment no workable substitute for them in sight.

FRANK MCGEE. One of the things we are told is that we waste energy; that if we didn't waste so much energy, we wouldn't have this energy crisis. Is that true? Well, we do use a lot of energy, that's true. We live in a high energy society. We are 6 percent of the world's population. We use a third of the world's energy. We use that energy to provide our basic needs, which we cannot give up . . . and luxuries which we don't want to give up.

We consume energy at such a growing rate that the new twin towers of the World Trade Center in downtown New York use as much energy as the city of Syracuse. Well, how can we save energy? We could save a lot of energy if we begin to wash dishes by hand, use mass transportation to get to work, turn off the television, give up air conditioning, electric stoves, frost-free refrigerators. Our factories might return to making things by hand. Businessmen could give up their computers. There are hundreds of ways that we can conserve energy. But the cost would be to turn us back to a more primitive way of living, and not many of us want that.

Wasting energy is something else. We waste energy driving big cars instead of small ones. If we reduced the average weight of our cars from 35 hundred pounds to 25 hundred pounds, we would save 1.2 million barrels of oil a day . . . almost equal to the expected daily production from the North Slope of Alaska. If we heated and insulated and cooled our houses more efficiently and more sensibly, we could save between one and 1½ million barrels of oil a day. There are many other things like those that we could do.

That would help. How much energy we would save, no one knows. But it would be a lot. We do waste energy. Yet, having said that, we have also to say that that will not solve the energy crisis. There are still only two ways to do that.

We can simply use much less energy and live a different kind of life, not at all like the one we know now, or we can put a great deal of money and manpower into finding new sources of energy that will allow our economy to continue to grow. Those are our real choices. And the longer we postpone deciding between them, the more acute our energy crisis will become.

Our demands for energy now require supply from other countries. Most of those countries are underdeveloped, have a lower living standard, are far less wasteful than we. Their people yearn for a better life, a living standard like the one we enjoy. How long will they be willing to sustain our wasteful, insatiable, high energy society?

FRANK MCGEE. We've been talking in these three hours about two energy crises, not one. The first, the one that concerns us right now, in our daily lives, is a crisis caused by the transition from dirty to clean fuel. Because of it, there are shortages. Because of it, fuel will cost more. Because of it, we will have to create new technologies. But it is a crisis of transition; a crisis that will pass. The second crisis, that we are simply running out of the fossil fuels we have been using to feed our machines. We are going to have to find new fuels, or we are going to have to find a way to live that does not use very much energy. This is the crisis we are going to look at now.

JACK BRIDGES (Joint Committee on Atomic Energy). I think the largest single problem in the energy crisis is that the whole thing is literally beyond the comprehension of the American people and their leaders. Now we've never really had to face anything like this. . . . Our total history has been one of surplus.

Literally when the pilgrims stepped ashore, they could see more timber right in front of them, than they had left in a large portion in Europe.

By the time we had Pittsburgh opened up, we could produce as much iron as all of Europe.

World War II literally floated on a sea of American oil.

MCGEE. How do we understand what it would be like if a country like this suddenly ran out of energy. . . . We may be able to get some idea if we look at something that happened in England last year.

Last year, English coal miners went on strike. Coal provides 75% of the fuel for English electric power plants. As the production of electricity stopped, this is what happened. In the first ten days, schools began to close. Factories cut back to a three day week. By the end of the month, 400 thousand people were out of work. Electric heating of shops, offices, restaurants, and other public places were forbidden. Blackouts lasting from a few minutes to eight hours were put into effect. As the strike dragged on, factories began to work one day a week. One million people were out of work.

When the lights go on again, all over the world.

THORNTON BRADSHAW (President, Arco). Now, all of this, the British took with a stiff upper lip and in some ways, really almost liked it because it brought, at least some of the older ones, back to the days of the war when they endured far worse than that . . . but that's not the gut of the problem. The real core of the problem is that at the peak of the coal strike, there were a million people out of work directly attributable to the lack of energy and they were going out of work at the rate of 300,000 a day.

Now, where is the catastrophe point? That's what it's all about.

MCGEE. So what we are talking about is an economy and a society coming apart and in

England in 1972, when only some of its energy was cut off, it took only five weeks.

BRIDGES. Things like this we simply cannot comprehend.

That is the largest single problem getting the magnitude and the complexity of the problem understood and believed by the American people and our leaders.

MCGEE. The point is, it could happen here. It could happen to us. Not tonight or tomorrow. It has nothing to do with the problems we've been looking at . . . dirty energy, rising costs, temporary shortages, balance of payments, possible conspiracies. It has to do only with this:

Somewhere around the end of this century, we're going to begin running out, forever, of the fossil fuel that has provided the energy for our modern society. Sometime before that, we are going to have to decide what we can do about it and what we want to do about it. Some people think we simply ought to change the way we live.

DAVID BROWER (Friends of the Earth). I get back to the main point we have in Friends of the Earth. There must be a concerted effort to use less and it's not going to hurt that much. In fact, I think it will be better if we get out of these things which kind of fatten us too much.

And there are going to be lots of jobs in healing the damage that man has done in his rather reckless rampage around the earth over the last century or two.

MCGEE. If you see our age of technology as the reckless rampage Mr. Brower does, the answer is easy. Stop! Go back to living at a much lower energy level. Living in a much different way. But if, despite the pollution and the waste, you want to live in a high energy society, the decisions are harder.

Because saving and efficiency don't help enough. You are going to need to use more energy. And the question is whether, around the year 2000, you are going to be able to find it.

This plant turns coal into gas; it is being operated experimentally. But we do not know yet, how to make this process work on a scale big enough and cheap enough to be practical. Over the past eleven years, the government has spent about $40 million on coal gasification research. It will spend $125 million in the next three years. This is less than we spend every year to pay employees in military commissaries, about what it cost to bomb Cambodia for a month.

This is another of the options some people think will help us solve our energy problems. Magnetohydrodynamics. MHD. It doesn't convert coal into anything. It burns it more efficiently. Twice as efficiently as coal is now burned. The Soviet Union is now testing a small power plant with an MHD generator. Some scientists think it is very promising. The only trouble is that, despite its promise, it has not yet been proved commercially practical.

Some people feel we can find an answer to the energy crisis in rock like this. It is called shale. An amount of oil six times greater than all the proved reserves that now exist in the world is known to be trapped in this shale rock under eleven million acres of land in Colorado, Utah and Wyoming.

The trick is to get it out.

BRADSHAW. We made some 80 studies of the environmental impact of a shale plant and then a shale industry in the western, arrid regions of Colorado. And we are quite convinced that all ecological and all environmental problems can be handled.

So basically we think the shale industry is ready to take off.

MCGEE. Some geologists estimate if we produce a hundred million barrels of oil from shale, we will also produce twenty cubic miles of waste.

But if oil can be taken from shale cleanly and economically, it will help. But it won't solve this long range energy crisis. At best, it will only help to hold it off and slow it down.

There are no environmental problems with windmills. And they do generate power. But not enough.

Tidal power. Here at the Bay of Fundy in Nova Scotia, they have fifty foot tides. But most places don't have tides like this. and tidal power simply doesn't seem practical to most scientists.

In northern California, they have these geysers that spew steam from underground. This steam can be used and is beginning to be used to generate electricity. Geothermal power is cheap and clean. The problem is, there isn't enough of it that we can get at and use. There is an enormous amount at the core of the earth. We don't have the technology to reach it.

Where it is near the surface, there are often serious problems. Southern California Edison and other companies have been trying for 25 years to use the steam geysers in the Imperial Valley.

HOWARD ALLEN (vice president, Southern California Edison). In the Imperial Valley, it is hot water, contaminated with minerals and dissolved solids that will clog up any generator within a short period of time.

But, even if we were to conquer this problem, which is a tremendous technical one, it is our judgment that geothermal will not provide any more than five to eight percent of the energy needs of Southern California in the next twenty to twenty five years.

MCGEE. We have spent billions of dollars to develop nuclear power. But geologists estimate that the uranium we will need for the reactors we are building will run out in about forty years.

This is called a breeder reactor. It is remarkable because it creates more fuel than it uses. We have bet billions on the breeder. Critics argue that it is unsafe; that it creates serious waste disposal problems, that it cannot provide new nuclear fuel as fast as we need it.

So, as you can see, there are plenty of ideas as to how we can solve this energy crisis. Some of them will help. Some are impractical on any large scale. Now, we're going to look at two sources that we know could fill our energy needs as long as this earth survives. They would be clean and they would be cheap. We know how we can use them. What we don't know yet, is how to make them work.

MCGEE. Solar energy. The unlimited energy of the sun. The problem is the sun isn't always shining.

Dr. PETER GLAZER. (solar energy expert). We always have day and night. The sun is obscured by clouds and we can't predict when.

Where the sun shines nearly 24 hours a day and that place is in orbit around the earth. And that is a satellite solar power station concept that we've been pursuing for the past five years. Now, if we put out a satellite in space, 22,300 miles away we can arrange solar collectors to convert sunlight and then produce electricity. Here we have 24 hours of sunshine and thus, we no longer need the energy storage which we would have to have with any device using solar energy on the earth because the sunlight there is continuous. With the beam that we form, we can control very accurately so that we can hit any of the desired places where power is required on the face of the earth.

MCGEE. But we are a long way from having solved the problems we need to solve to make solar energy practical on a large scale. The solution most scientists are counting on is nuclear fusion.

DAVID ROSE (MIT Physicist). This is our M.I.T. controlled nuclear fusion, toy, if you like.

MCGEE. The nuclear reactors we use now release their energy by fission. The atoms come apart. Fusion generates energy from the atoms coming together. Nuclear fusion would be safe. It would be clean. There would be no waste problem. And we have an almost infinite amount of the element deuterium, which comes from sea water, that we could use for nuclear fusion.

ROSE. Estimates are that to prove whether controlled nuclear fusion is scientifically feasible would require an experiment perhaps ten times as large as this. So this is, a toy. But what a toy!

It will be something like 1980 before people can tell scientifically whether it can come about.

MCGEE. And that, finally, is the question. Are we going to be able to make this fusion reactor work, sometime in the future? Or will we find it's just not possible?

On how that question is answered will probably depend the kind of world our children and their children live in.

FRANK MCGEE. We have been with this energy crisis for 3 hours. We have left out a lot. Three hours has not been enough to say all there is to say about it. We have not solved it. It is a crisis precisely because it is not easy to solve. In this country, we have used energy as if it would last forever.

We have desecrated our environment. Now we have come to a time when we can no longer afford to do either. We have come to a time when we are going to have to decide, by the choices we make in the market place, at the polls, as citizens of this republic, the shape of our future.

It is, quite simply, up to us. 40 years ago, commenting on the way we were using up our resources. Will Rogers said that "when we want steam, we dig up some coal; when we want wood, we chop down a tree; when we want oil, we dig a hole in the ground. It's when we run out," Will Rogers said, "that we'll find out how good we really are."

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, I shall shortly move to recess until the hour of 11:55 a.m., but before I do so, I will put in a quorum call and want to ascertain precisely the status of the unanimous-consent request entered into on yesterday in connection with the conference report that was to be called up today.

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. ROBERT C. BYRD. 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.

ORDER FOR ADJOURNMENT UNTIL 9:45 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stands in adjournment until the hour of 9:45 a.m. tomorrow.

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

ORDER FOR RECOGNITION OF SENATOR JAVITS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, after the two leaders or their designees have been recognized under the standing

order, the distinguished Senator from New York (Mr. JAVITS) be recognized for not to exceed 15 minutes.

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

ORDER FOR RECOGNITION OF SENATOR MONDALE TOMORROW VACATED; ORDER FOR RECOGNITION OF SENATOR MONDALE ON MONDAY NEXT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order previously entered for the recognition of the Senator from Minnesota (Mr. MONDALE) tomorrow be vacated, and that he be recognized on Monday next, following the remarks of the distinguished junior Senator from Minnesota (Mr. HUMPHREY), for not to exceed 15 minutes.

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

VALIDATION OF CONSIDERATION NEXT WEEK OF CONSIDERATION OF S. 1636, THE INTERNATIONAL ECONOMIC POLICY ACT OF 1972; ORDER TO CONSIDER S. 356, CONSUMER PRODUCTS AND WARRANTIES BILL TODAY

Mr. ROBERT C. BYRD. Mr. President, the order which was conditionally entered into yesterday with respect to S. 1636, the International Economic Policy Act of 1972, as amended, is validated by virtue of a conversation I have had today with the distinguished Senator from Florida (Mr. CHILES). However, the conference report will not be called up until next week. Consequently, I ask unanimous consent that upon the disposition of the nomination of Mr. Arnett today, the Senate proceed to the consideration of the consumer products and warranties bill, S. 356.

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

Mr. ROBERT C. BYRD. Mr. President, so it is the understanding that there is a time agreement on the conference report on S. 1636, the International Economic Policy Act of 1972, without condition.

The ACTING PRESIDENT pro tempore. The Senator is correct.

RECESS UNTIL 11:55 A.M. TODAY

Mr. ROBERT C. BYRD. Mr. President, I move that the Senate stand in recess until the hour of 11:55 a.m. today.

The motion was agreed to; and the Senate, at 11:18 a.m., took a recess until 11:55 a.m.; whereupon the Senate reconvened when called to order by the Presiding Officer (Mr. MONTOYA).

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

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the hour of 12 noon having arrived, the Senate will now resume, in executive session, its consideration of the nomination of Alvin J. Arnett to be Director of the Office of Economic Opportunity.

What is the pleasure of the Senate?

SEVERAL SENATORS. Vote! Vote!

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is: Shall the Senate advise and consent to the nomination of Alvin J. Arnett of Maryland to be the Director of the Office of Economic Opportunity?

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 Arkansas (Mr. FULBRIGHT), the Senator from Indiana (Mr. HARTKE), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Louisiana (Mr. JOHNSTON), and the Senator from Louisiana (Mr. LONG), are necessarily absent.

I also announce that the Senator from Colorado (Mr. HASKELL) is absent because of illness.

I further announce that, if present and voting, the Senator from Minnesota (Mr. HUMPHREY) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. BAKER), the Senator from Colorado (Mr. DOMINICK), and the Senator from Arizona (Mr. FANNIN), are necessarily absent.

I further announce that, if present and voting, the Senator from Colorado (Mr. DOMINICK) would vote "yea."

The result was announced—yeas 88, nays 3, as follows:

[No. 392 Ex.]

YEAS—88

Abourezk	Ervin	Nelson
Aiken	Fong	Nunn
Allen	Goldwater	Packwood
Bartlett	Gravel	Pastore
Bayh	Griffin	Pearson
Beall	Gurney	Pell
Bellmon	Hansen	Percy
Bennett	Hart	Proxmire
Bentsen	Hatfield	Randolph
Bible	Helms	Ribicoff
Biden	Hollings	Roth
Brock	Hruska	Saxbe
Brooke	Huddleston	Schweiker
Buckley	Hughes	Scott, Pa.
Burdick	Inouye	Scott, Va.
Byrd, Harry F., Jr.	Jackson	Sparkman
	Javits	Stafford
Byrd, Robert C.	Kennedy	Stennis
Cannon	Magnuson	Stevens
Case	Mansfield	Stevenson
Chiles	Mathias	Symington
Church	McClellan	Taft
Clark	McClure	Talmadge
Cook	McGee	Thurmond
Cotton	McGovern	Tower
Cranston	McIntyre	Tunney
Dole	Metcalf	Weicker
Domenici	Mondale	Williams
Eagleton	Montoya	Young
Eastland	Moss	

NAYS—3

Curtis	Hathaway	Muskie

NOT VOTING—9

Baker	Fulbright	Humphrey
Dominick	Hartke	Johnston
Fannin	Haskell	Long

So the nomination was confirmed.

Mr. JAVITS. I ask that the President be notified.

The PRESIDING OFFICER. The President will be so notified.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order the Senate will now return to the consideration of legislative business.

THE MAGNUSON-MOSS WARRANTY-FEDERAL TRADE COMMISSION IMPROVEMENT ACT

The PRESIDING OFFICER. Under the previous order the Senate will proceed to the consideration of S. 356, which will be stated by title.

The bill was stated by title, as follows:

A bill (S. 356) to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Commerce and the Committee on Banking, Housing and Urban Affairs with amendments.

The amendment of the Committee on Commerce is to strike out all after the enacting clause and insert:

That this Act may be cited as the "Magnuson-Moss Warranty-Federal Trade Commission Improvement Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

SEC. 101. As used in this title—

(1) "Commission" means the Federal Trade Commission.

(2) "Consumer product" means any tangible personal property which is normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property regardless of whether it is so attached or installed. Notwithstanding the foregoing, the provisions of sections 102 and 103 of this title affecting consumer products apply only to consumer products each of which actually costs the purchaser more than five dollars.

(3) "Consumer" means the first buyer at retail of any consumer product; any person to whom such product is transferred for use for personal, family, or household purposes during the effective period of time of a written warranty or service contract which is applicable to such product; and any other person who is entitled by the terms of such written warranty or service contract or by operation of law to enforce the obligations of such warranty or service contract.

(4) "Reasonable and necessary maintenance" consists of those operations which the purchaser reasonably can be expected to perform or have performed to keep a consumer product operating in a predetermined manner and performing its intended function.

(5) "Repair" may, at the option of the warrantor include replacement with a new, identical or equivalent consumer product or component(s) thereof.

(6) "Replacement" or "to replace", as used in section 104 of this title, means in addition to the furnishing of a new, identical or equivalent consumer product (or component(s) thereof), the refunding of the

actual purchase price of the consumer product—

(1) if repair is not commercially practicable; or

(2) if the purchaser is willing to accept such refund in lieu of repair or replacement. If there is replacement of a consumer product, the replaced consumer product (free and clear of all liens and encumbrances) shall be made available to the supplier.

(7) "Supplier" means any person (including any partnership, corporation, or association) engaged in the business of making a consumer product or service contract available to consumers, either directly or indirectly. Occasional sales of consumer products by persons not regularly engaged in the business of making such products available to consumers shall not make such persons "suppliers" within the meaning of this title.

(8) "Warrantor" means any supplier or other party who gives a warranty in writing.

(9) "Warranty" includes guaranty; to "warrant" means to guarantee.

(10) "Warranty in writing" or "written warranty" means a warranty in writing against defect or malfunction of a consumer product.

(A) "Full warranty" means a written warranty which incorporates the uniform Federal standards for warranty set forth in section 104 of this title.

(B) "Limited warranty" means written warranty subject to the provisions of this title which does not incorporate at a minimum the uniform Federal standard for warranty set forth in section 104 of this title.

(11) A "warranty in writing against defect or malfunction of a consumer product" means:

(A) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing to refund, repair, replace, or take other remedial action with respect to the sale of a consumer product if such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between the supplier and the purchaser.

(12) "Without charge" means that the warrantor(s) cannot assess the purchaser for any costs the warrantor or his representatives incur in connection with the required repair or replacement of a consumer product warranted in writing. The term does not mean that the warrantor must necessarily compensate the purchaser for incidental expenses. However, if any incidental expenses are incurred because the repair or replacement is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the purchaser as a condition of securing repair or replacement, then the purchaser shall be entitled to recover such reasonable incidental expenses in any action against the warrantor for breach of warranty under section 110(b) of this title.

DISCLOSURE REQUIREMENTS

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, the Commission is authorized to issue rules, in accordance with section 109 of this title, which may—

(1) prescribe the manner and form in which information with respect to any written warranty shall be clearly and conspicuously presented or displayed when such information is contained advertising labeling, point-of-sale material, or other representations in writing; and

(2) require the inclusion in any written warranty, in simple and readily understood language, fully and conspicuously disclosed, items of information which may include, among others:

(A) clear identification of the name and address of the warrantor;

(B) identity of the class or classes of persons to whom the warranty is extended;

(C) the products or parts covered;

(D) a statement of what the warrantor will do in the event of a defect or malfunction—at whose expense—and for what period of time;

(E) a statement of what the purchaser must do and what expenses he must bear;

(F) exceptions and exclusions from the terms of the warranty;

(G) the step-by-step procedure which the purchase should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty;

(H) on what days and during what hours the warrantor will perform his obligations;

(I) the period of time within which, after notice of malfunction or defect, the warrantor will under normal circumstances repair, replace, or otherwise perfom any obligations under the warranty;

(J) the availability of any informal dispute settlement procedure offered by the warrantor and a recital that the purchaser must resort to such procedure before pursuing any legal remedies in the courts; and

(K) a recital that any purchaser who successfully pursues his legal remedies in court may recover the reasonable costs incurred, including reasonable attorneys' fees.

(b) Nothing in this title shall be deemed to authorize the Commission to prescribe the duration of warranties given or to require that a product or any of its components be warranted, except that the Commission may prescribe rules pursuant to section 553 of title 5, United States Code, that the term of a warranty or service contract shall be extended to correspond with any period in excess of a reasonable period (not less than ten days) during which the purchaser is deprived of the use of a product by reason of a defect or malfunction. Except as provided in section 104 of this title, nothing in this title shall be deemed to authorize the Commission to prescribe the scope or substance of written warranties.

(c) No warrantor of a consumer product may condition his warranty of such product on the consumer's using, in connection with such product, any article or service which is directly or indirectly identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if it finds that the imposition of such a condition is reasonable and in the public interest.

DESIGNATION OF WARRANTIES

SEC. 103. (a) Any supplier warranting in writing a consumer product shall clearly and conspicuously designate such warranty as provided herein unless exempted from doing so by the Commission pursuant to section 109 of this title:

(1) If the written warranty incorporates the uniform Federal standards for warranty set forth in section 104 of this title, and does not limit the liability of the warrantor for consequential damages, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar meaning. If the written warranty incorporates the uniform Federal standards for written warranty set forth in section 104 of this title and limits or excludes the liability of the warrantor for consequential damages as permitted by applicable State law, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar import. "(Liability for consequential damages limited; remedy limited to free repair or replacement within a reasonable time, without charge)", or as otherwise prescribed by the Commission pursuant to section 109 of this Act.

(2) If the written warranty does not incorporate the Federal standards for warranty set forth in section 104 of this title, then it shall be designated in such manner so as to indicate clearly and conspicuously the limited scope of the coverage afforded.

(b) Written statements or representations, such as expressions of general policy concerning customer satisfaction which are not subject to any specific limitations shall not be deemed to be warranties in writing for purposes of sections 102, 103, and 104 of this title but shall remain subject to the provisions of the Federal Trade Commission Act and section 110 of this title.

UNIFORM FEDERAL STANDARDS FOR WRITTEN WARRANTY

SEC. 104. (a) Any supplier warranting in writing a consumer product must undertake at a minimum the following duties in order to be deemed to have incorporated the uniform Federal standards for written warranty—

(1) to repair or replace any malfunctioning or defective consumer product covered by such warranty;

(2) within a reasonable time; and

(3) without charge.

In fulfilling the above duties, the warrantor shall not impose any duty upon a purchaser as a condition of securing such repair or replacement other than notification unless the warrantor can demonstrate that such a duty is reasonable. In a determination by the Commission or a court of whether or not any such additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the warrantor (including costs passed on to the purchaser) shall be weighed against the magnitude of the burdens of inconvenience and expense necessarily imposed upon the purchaser.

(b) If repair is necessitated an unreasonable number of times during the warranty period the purchaser shall have the right to demand and receive replacement of the consumer product.

(c) The above duties extend from the warrantor to the consumer.

(d) The performance of the duties enumerated in subsection (a) of this section shall not be required of the warrantor if he can show that damage while in the possession of the purchaser or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any warranted consumer product to malfunction or become defective.

FULL AND LIMITED WARRANTIES OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full, full (with limitation of liability for consequential damages) and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

SEC. 106. Nothing in this title shall be construed to prevent a supplier from selling a service contract to the purchaser in addition to or in lieu of a warranty in writing if the terms and conditions of such contract are fully and conspicuously disclosed in simple and readily understood language. The Commission is authorized to determine, in accordance with section 109 of this title, the manner and form in which the terms and conditions of service contracts shall be clearly and conspicuously disclosed.

DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from making any reasonable and equitable arrangements for representatives to perform duties

under a written warranty except that no such arrangements shall relieve the warrantor of his direct responsibilities to the purchaser nor necessarily make the representative a co-warrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) There shall be no express disclaimer of implied warranties to a purchaser if any written warranty or service contract in writing is made by a supplier to a purchaser with regard to a consumer product.

(b) For purposes of this title, implied warranties may not be limited as to duration expressly or impliedly through a designated warranty in writing or other express warranty.

FEDERAL TRADE COMMISSION

SEC. 109. The Commission is authorized to establish rules pursuant to section 553 of title 5, United States Code, upon a public record after an opportunity for an agency hearing structured so as to proceed as expeditiously as practicable to—

(a) prescribe the manner and form in which information with respect to any written warranty shall be disclosed and the items of information to be included in any written warranty as provided in section 102 of this title;

(b) prescribe the manner and form in which terms and conditions of service contracts shall be disclosed as provided in section 106 of this title;

(c) determine when a warranty in writing does not have to be designated in accordance with section 103 of this title;

(d) define in detail the disclosure requirements in paragraph (2) of subsection (a) of section 103 of this title; and

(e) define in detail the duties set forth in subsections (a), (b), and (c) of section 104 of this title and their applicability to warrantors of different categories of consumer products with "full" warranties.

PRIVATE REMEDIES

SEC. 110. (a) Congress hereby declares it to be its policy to encourage suppliers to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by suppliers in cooperation with independent and governmental entities pursuant to guidelines established by the Commission. If a supplier incorporates any such informal dispute settlement procedure in any written warranty or service contract, such procedure shall initially be used by any consumer to resolve any complaint arising under such warranty or service contract. The bona fide operation of any such dispute settlement procedure shall be subject to review by the Commission on its own initiative or upon a written complaint filed by any injured party.

(b) Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under a written warranty or service contract in writing subject to this title may bring suit for breach of such warranty or service contract in an appropriate district court of the United States subject to the jurisdictional requirements of section 1331 of title 28, United States Code. Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title may bring suit in any State or District of Columbia court of competent jurisdiction. Prior to commencing any legal proceeding for breach of warranty or service contract under this section, a purchaser must have afforded the supplier a reasonable opportunity to cure the alleged breach and must have used the informal dispute settlement mechanisms, if any, established under subsection (a) of this section. Nothing in this subsection shall be construed to change in any way the jurisdictional or venue requirements of any State.

(c) Any purchaser who shall finally prevail in any suit or proceeding for breach of an express or implied warranty or service contract brought under section (b) of this section shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by such purchaser for or in connection with the institution and prosecution of such suit or proceeding unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(d) (1) For the purposes of this section, an "express warranty" is created as follows:

(A) Any affirmation of fact or promise made by a supplier to the purchaser which relates to a consumer product or service and becomes part of the basis of the bargain creates an express warranty that the consumer product or service shall conform to the affirmation or promise.

(B) Any description of a consumer product which is made part of the bargain creates an express warranty that the consumer product shall conform to the description.

(C) Any sample or model which is made part of the basis of the bargain creates an express warranty that the consumer product shall conform to the sample or model.

It is not necessary to the creation of an express warranty that the supplier use formal words such as "warranty" or "guaranty" or that he have a specific intention to make a warranty. An affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation of the consumer product or service does not by itself create a warranty.

(2) Only the supplier actually making an affirmation of fact or promise, a description, or providing a sample or model shall be deemed to have created an express warranty under this section and any rights arising thereunder may only be enforced against such supplier and no other supplier.

GOVERNMENT ENFORCEMENT

SEC. 111. (a) It shall be unlawful and a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any person (including any partnership, corporation, or association) subject to the provisions of this title to fail to comply with any requirement imposed on such person by or pursuant to this title or to violate any prohibition contained in this title.

(b) (1) The district courts of the United States shall have jurisdiction to restrain violations of this title in an action by the Attorney General or by the Commission by any of its attorneys designated by it for such purpose. Upon a proper showing, and after notice to the defendant, a temporary restraining order or preliminary injunction shall be granted without bond: *Provided, however,* That if a complaint is not filed within such period as may be specified by the court after the issuance of the restraining order or preliminary injunction, the order or injunction may, upon motion, be dissolved. Whenever it appears to the court that the interests of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) (A) Whenever the Attorney General has reason to believe that any person under investigation may be in possession, custody, or control of any documentary material, relevant to any violation of this title, he may, prior to the institution of a proceeding under this section cause to be served upon such person, a civil investigative demand requiring such person to produce the documentary material for examination.

(B) Each such demand shall—

(i) state the nature of the conduct alleged to constitute the violation of this title which is under investigation;

(ii) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(iii) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(iv) identify the custodian to whom such material shall be furnished.

(C) No demand shall—

(i) contain any requirement which would be held to be unreasonable if contained in a subpena duces tecum issued by a court of the United States in a proceeding brought under this section; or

(ii) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena duces tecum issued by a court of the United States in any proceeding under this section.

(D) Any such demand may be served at any place within the territorial jurisdiction of any court of the United States.

(E) Service of any such demand or of any petition filed under subparagraph (G) of this subsection may be made upon any person, partnership, corporation, association, or other legal entity by—

(i) delivering a duly executed copy thereof to such person or to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, partnership, corporation, association, or entity;

(ii) delivering a duly executed copy thereof to the principal office or place of business of the person, partnership, corporation, association, or entity to be served; or

(iii) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person, partnership, corporation, association, or entity at its principal office or place of business.

(F) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(G) The provisions of sections 4 and 5 of the Antitrust Civil Process Act (15 U.S.C. 1313, 1314) shall apply to custodians of material produced pursuant to any demand and to judicial proceedings for the enforcement of any such demand made pursuant to this section: *Provided, however,* That documents and other information obtained pursuant to any civil investigative demand issued hereunder and in the possession of the Department of Justice may be made available to duly authorized representatives of the Commission for the purpose of investigations and proceedings under this title and under the Federal Trade Commission Act subject to the limitations upon use and disclosure contained in section 4 of the Antitrust Civil Process Act (15 U.S.C. 1313).

SAVING PROVISION

SEC. 112. Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined as an Antitrust Act.

SCOPE

SEC. 113. (a) The provisions of this title and the powers granted hereunder to the Commission and the Attorney General shall extend to all sales of consumer products and

service contracts affecting interstate commerce: *Provided, however,* That such provisions and powers shall not be exercised in such a manner as to interfere with warranties applicable to consumer products, or components thereof, created and governed by other Federal law.

(b) Labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, not identical to those set forth in section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in section 109 of this title, or with guidelines of the Commission, shall not be applicable to warranties complying therewith. However, if, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies—

(1) affords protection to consumers greater than the requirements of this title; and

(2) does not unduly burden interstate commerce,

then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for so long as such State continues to administer and enforce effectively any such greater requirement.

(c) Nothing in this title shall be construed to supersede any provision of State law regarding consequential damages for injury to the person or any State law restricting the ability of a warrantor to limit his liability for consequential damages.

EFFECTIVE DATE

SEC. 114. (a) Except for the limitations in subsection (b) of this section, this title shall take effect six months after the date of its enactment but shall not apply to consumer products manufactured prior to such effective date.

(b) Those requirements in this title which cannot be reasonably met without the promulgation of rules by the Commission shall take effect six months after the final publication of such rules which shall be published (subject to future amendment or revocation) as soon as possible but no later than one year after the date of enactment of this Act: *Provided,* That the Commission, for good cause shown, may provide designated classes of suppliers up to six months additional time to bring their written warranties into compliance with rules promulgated under this title.

(c) The Commission shall promulgate initial rules for initial implementation of this title, including guidelines for the establishment of informal dispute settlement procedures pursuant to section 110(a) of this title, as soon as possible after enactment but in no event later than one year after the date of enactment of this Act.

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

SEC. 201. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".

SEC. 202. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (6) as amended by section 212 of this title the following new paragraph:

"(7) The Commission may initiate civil actions in the district courts of the United States against persons, partnerships, or corporations engaged in any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by subsection (a)(1) of this section, to obtain a civil penalty of not more than $10,000 for each such violation. The Commission may comprise, mitigate, or settle any action for a civil penalty if such settlement is accompanied by a public statement of its reasons and is approved by the court."

SEC. 203. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (7) as added by section 202 of this title the following new paragraph:

"(8) After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers caused by the specific acts or practices which were the subject of the proceeding pursuant to subsection (b) of this section and the resulting cease-and-desist order, including, but not limited to, rescission or reformation of contracts, the refund of money or return of property, public notification of the violation, and the payment of damages, except that nothing in this section is intended to authorize the imposition of any exemplary or punitive damages. The court shall cause notice to be given reasonably calculated, under all of the circumstances, to apprise all consumers allegedly injured by the defendant's acts of the pendency of such action. No action may be brought by the Commission under this subsection more than two years after an order of the Commission upon which such action is based has become final. Any action initiated by the Commission under this subsection may be consolidated as the court deems appropriate with any other action requesting the same or substantially the same relief upon motion of a party to any such action.

SEC. 204. Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1) is amended by striking subsection (1) and inserting in lieu thereof the following new paragraph:

"(1) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States or by the Commission in its own name by any of its attorneys designated by it for such purpose. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."

SEC. 205. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

"(m) Whenever in any civil proceeding involving this Act the Commission is authorized or required to appear in a court of the United States, or to be represented therein by the Attorney General of the United States, the Commission may elect to appear in its own name by any of its attorneys designated by it for such purpose."

SEC. 206. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or whose business affects commerce".

SEC. 207. Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended by—

(a) deleting the word "corporation" in the first sentence of the first unnumbered paragraph and inserting in lieu thereof the word "party";

(b) inserting after the word "Commission" in the second sentence of the second unnumbered paragraph the phrase "acting through any of its attorneys designated by it for such purpose", and

(c) deleting the fourth unnumbered paragraph and inserting in lieu thereof the following:

"Upon the application of the Attorney General of the United States or of the Commission, acting through any of its attorneys designated by it for such purpose, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission issued under this Act."

SEC. 208. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting the third unnumbered paragraph and inserting in lieu thereof the following:

"If any corporation required by this Act to file any annual or special report shall fail to do so within the time fixed by the Commission for filing such report, then, if such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure. Such forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought by the Attorney General or by the Commission, acting through any of its attorneys designated by it for such purpose, in the district where the corporation has its principal office or in any district in which it does business."

SEC. 209. Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or having an effect upon commerce".

SEC. 210. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:

"(b) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer, and is prohibited by section 5, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final within the meaning of section 5, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint under section 5 is not filed within such period as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction may be dissolved by the court and be of no further force and effect: *Pro-*

vided further, That in proper cases the Commission may seek, and, after proper proof, the court may issue a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

SEC. 211. Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended to read as follows:

"SEC. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (1) of section 5 of this Act, it shall—

"(a) certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection; or

"(b) itself cause such appropriate proceedings to be brought."

[SEC. 212. (a) Section 5(a)(6) of the Federal Trade Commission Act (15 U.S.C. 45(a)(6)) is amended—

[(1) by striking out "banks,"; and

[(2) by adding at the end thereof before the period a colon and the following: *"Provided, however,* That with respect to financial institutions such authority shall only be exercised to prevent unfair or deceptive acts or practices affecting commerce (including acts or practices which are unfair or deceptive to a consumer)".

[(b) Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end of subsection (m), added by section 305 of this title, the following two new subsections—

["(n) Rules and regulations prescribed by the Commission in carrying out the authority conferred by this section with respect to unfair or deceptive acts or practices (including acts or practices which are unfair or deceptive to a consumer) shall, insofar as they apply to or affect any financial institution as defined in section 5(o)(3) of this Act, be issued only after consultation with—

[(1) the Comptroller of the Currency, if the institution is a national bank or a bank operating under the code of law of the District of Columbia;

[(2) the Board of Governors of the Federal Reserve System, if the institution is a member bank of the Federal Reserve System (other than a bank referred to in paragraph (1));

[(3) the Board of Directors of the Federal Deposit Insurance Corporation, if the institution is a bank the deposits of which are insured by such corporation (other than a bank referred to in paragraph (1) or (2));

[(4) the Federal Home Loan Bank Board, if the institution is a member of a Federal home loan bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; or

[(5) the Administrator of the National Credit Union Administration, if the institution is a credit union the accounts of which are insured by such Administrator.

[(o)(1) The power of the Commission to prevent financial institutions from using unfair or deceptive acts or practices affecting commerce (including acts or practices which are unfair or deceptive to a consumer), pursuant to paragraph (6) of subsection (a) of this section, shall be delegated by the Commission, subject to paragraph (2) of this subsection, to—

[(A) the Comptroller of the Currency, if the institution is a national bank or a bank operating under the code of law of the District of Columbia;

[(B) the Board of Governors of the Federal Reserve System, if the institution is a member bank of the Federal Reserve System (other than a bank referred to in paragraph (A));

[(C) the Board of Governors of the Federal Deposit Insurance Corporation, if the institution is a bank the deposits of which are insured by such corporation (other than a bank referred to in paragraph (A) or (B));

[(D) the Federal Home Loan Bank Board, if the institution is a member of a Federal home loan bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; or

[(E) the Administrator of the National Credit Union Administration, if the institution is a credit union the accounts of which are insured by such Administrator.

[(2) At any time by rule in accordance with section 553 of title 5, United States Code, the Commission may request and shall receive redelegation of the power to prevent particular financial institutions regulated by a particular agency described in paragraph (1) of this subsection from using unfair or deceptive acts or practices affecting commerce (including acts or practices which are unfair or deceptive to a consumer) from any agency to which such power has been delegated in accordance with such paragraph, upon a finding that such redelegation is necessary to prevent any such financial institutions from using unfair or deceptive acts or practices.

[(3) As used in this section, the term "financial institution" means—

[(A) any bank the deposits of which are insured by the Federal Deposit Insurance Corporation;

[(B) any savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

[(C) any thrift or home financing institution which is a member of a Federal home loan bank; or

[(D) any credit union the accounts of which are insured by the Administrator of the National Credit Union Administration."]

The amendment of the Committee on Banking, Housing and Urban Affairs is to the substitute amendment of the Committee on Commerce, to strike out the language beginning on page 60, after line 12, down to and including line 2 on page 64, and insert as follows:

TITLE III—FINANCIAL INSTITUTIONS

SEC. 301. (a) In order to prevent unfair or deceptive acts or practices affecting commerce (including acts or practices which are unfair or deceptive to a consumer) by financial institutions, each Federal regulatory agency of financial institutions shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by financial institutions subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices.

(b) Compliance with the requirements imposed under this section shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in clause (A) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in clause (A) or (B)) and mutual savings banks, as defined in the Federal Deposit Insurance Act, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the division of consumer affairs established by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any other authority conferred on it by law.

(d) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this section does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this section.

(e) Each agency exercising authority under this section shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this section during the preceding calendar year.

(f) As used in this section—

(1) the term "financial institution" means—

(A) any bank the deposits of which are insured by the Federal Deposit Insurance Corporation and any mutual savings bank, as defined in the Federal Deposit Insurance Act;

(B) any savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

(C) any thrift or home financing institution which is a member of a Federal home loan bank; and

(D) any credit union the accounts of which are insured by the Administrator of the National Credit Union Administration; and

(2) the term "Federal regulatory agency of financial institutions" means—

(A) the Comptroller of the Currency, if the institution is a national bank or a bank operating under the Code of Law of the District of Columbia;

(B) the Board of Governors of the Federal Reserve System, if the institution is a member of the Federal Reserve System (other than a bank referred to in clause (A));

(C) the Board of Directors of the Federal Deposit Insurance Corporation, if the institution is a bank the deposits of which are insured by such corporation (other than a bank referred to in clause (A) or (B)) or a mutual savings bank, as defined in the Federal Deposit Insurance Act;

(D) the Federal Home Loan Bank Board, if the institution is a member of a Federal home loan bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; and

(E) the Administrator of the National Credit Union Administration, if the institution is a credit union the accounts of which are insured by the Administrator.

MODIFICATION OF ORDER APPOINTING EX OFFICIO CONFEREES ON S. 1081

Mr. JACKSON. Mr. President, I ask unanimous consent that the order of

September 7, 1973, appointing the Senators from Alaska (Mr. STEVENS and Mr. GRAVEL) as ex officio conferees on S. 1081, the so-called Alaska pipeline bill, be modified to provide that they shall have full participation in the conference but without the right to vote. This is in keeping with the understanding I had with the Senators before the appointments were made.

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

ORDER OF BUSINESS

Mr. SPARKMAN addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, may we have order while the Senator from Alabama speaks.

The PRESIDING OFFICER. Will Senators please be seated.

The Senator from Alabama is recognized.

Mr. SPARKMAN. Mr. President, I would like to get some information. I have heard the order of business announced. We had been told that we would be expected to call up a conference report at this time. Of course, a conference report is a privileged matter. Now, upon coming to the Chamber with all of my material in connection with the presentation of that conference report I am told that it is to be displaced by the present proposed legislation.

I am interested in the legislation that has just been laid before the Senate. I intend to be here in connection with it, but I had no notice that we should not call the conference report up at this time. No one has spoken to me about it. I had a conversation with the majority leader yesterday afternoon. He said it would be the intention of the leadership to call it up today and he asked me about setting a time. I told him I had no objection to a limitation of time, that I had not discussed it with the ranking minority member (Mr. TOWER). The Senator from Texas (Mr. TOWER) did come around about that time and he said he had no objection. The majority leader asked me if I knew of anyone that might have some question about it and would object to the time limitation.

I told him I did not know of anyone; that no one had spoken to me; that I had seen a letter that was put out during the adjournment of Congress, addressed "Dear Colleague," pertaining to that particular matter; and that the first Senator's name on it was that of the Senator from Florida. I said I thought we should talk with the Senator from Florida and ask how he felt about a limitation of time.

Not another word did I hear from him until I came to the Chamber for this rollcall. I simply do not understand that kind of procedure.

I understand that the request is that the conference report go over; in fact, I asked the majority leader if anyone had a "hold" on it. He reminded me that it was a privileged matter and that no one had a right to a "hold" on it.

Then I told him about the "Dear Colleague" letter and that I was the first to be contacted.

I was told when I came in that that had been done; that the Senator from Florida (Mr. CHILES), my good friend, had asked that the conference report go over until next week, but not on Monday. I happen to have some obligations, too. I plan to be here on Monday, Tuesday, and Wednesday. Then I am supposed to be here on Thursday to attend a meeting of the International Monetary Fund and the World Bank. So I have obligations.

Mr. TOWER. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield.

Mr. TOWER. I might note that Mr. Shultz, Mr. Simon, and Mr. Flanagan are all currently in Japan, involved in rather sensitive negotiations.

I think the House, since, has already acted by an overwhelming majority. It becomes incumbent upon the Senate to act with as much dispatch as possible. We cannot be in a very good bargaining position if Congress seems to be dragging its feet on the creation of a Council on International Economic Policy.

I am wondering whether Senators who are interested in this matter could agree, perhaps, to acting on it on Friday. I know we had not anticipated a session on Friday, but I would be glad to come in on Friday to dispose of the matter, because next week is going to get pretty crowded.

Mr. SPARKMAN. I can only say that it is crowded for me, although I was going to add this: As far as I am concerned, if we can work out a time limitation and deal with the matter on either Tuesday or Wednesday, and be certain that we bring it to a conclusion on the date that it is set for, I would not object.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Alabama yield?

Mr. SPARKMAN. I yield.

Mr. ROBERT C. BYRD. The Senator from Alabama has correctly stated the litany of events that led up to the present moment. In talking with me yesterday, he indicated that possibly Mr. CHILES ought to be contacted about the conference report on which we were seeking to get a time agreement.

Mr. SPARKMAN. If the Senator will allow me to interrupt him, I hope he will not say "possibly." The Senator from Florida was the first on the "Dear Colleague" letter.

Mr. ROBERT C. BYRD. The Senator is correct. So I sought to get in touch with the Senator from Florida but was unable to do so. I thereafter propounded a unanimous consent request and conditioned it on the approval of the Senator from Florida (Mr. CHILES), stating that this was not a procedure which the leadership felt to be desirable, and that only under extenuating circumstances did we seek time agreements and condition them on the approval of a Senator who was absent from the Senate at the time.

The Senator from Florida had contacted me—and I am not absolutely positive; I cannot find the letter, but I thought it was directed to me—at some time or other, orally or in writing, and said that before this conference report was taken up he would like to be contacted. So I based the consent agreement on his approval.

In talking with him this morning—I think I am correctly stating what the Senator told me; he is on the floor and can speak for himself—as I recall, he indicated he would have no objection to the time agreement, but that he would like for the conference report to be put over until next week. He and Mr. STEVENS were not prepared at the moment to voice their objections to the report and possibly to offer motions in connection therewith.

I said to the Senator that, of course, conference reports are privileged matters. They can be brought up at any time by the Senator from Alabama or any other Senator; but in view of the fact that we have a tentative time agreement on it, I would try to get the report put over until next week in order to preserve the time agreement on it. I said, "How about Monday?" The Senator from Florida said Monday would not be a good day for him because, I believe, he had other engagements and could not be here Monday. If I am incorrect, the Senator can correct me.

I said Tuesday, Wednesday, Thursday, and Friday are going to be difficult because there is going to be a glut of bills on the floor, but that I would attempt to work it out.

So I take the whole responsibility, Mr. President, for having stated that the conference report would not be called up until next week. In doing so, I committed an oversight. I did it inadvertently. I should have contacted the distinguished manager of the bill and cleared it with him, because he is the manager and he—as well as the able ranking minority Members—has to carry the responsibility for the conference report. He has to carry the responsibility through the hearings, he has to carry the responsibility for managing a bill on the floor, of carrying the bill in conference, and bringing the conference report back to the floor. I know he also has many other responsibilities calendarwise. The same must be said for the distinguished floor manager on the other side, Mr. TOWER.

So I take the responsibility for having erred in this instance in not letting both Senators know that this was being considered. I hope they will forgive me. It is my fault for saying on the floor that the agreement was not conditional any longer and that the matter would be taken up next week. So I can only confess my sins in public and hope that I will be forgiven.

Mr. SPARKMAN. Mr. President, I am certainly not going to try to interpose any objection to the plan that is now submitted.

Just for my own learning, I would like to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SPARKMAN. This conference report has been around here since about the 3d of August. A conference report is a privileged matter. Now, despite the announcement made by the majority leader, if we insisted upon bringing this conference report up as a privileged matter, could we do so?

The PRESIDING OFFICER. The Senator is correct. The conference report still remains a privileged matter and can

be called up at any time as a privileged matter.

Mr. SPARKMAN. I just wanted that on record to show that it was not due to our dereliction. The Senator from West Virginia confesses his fault and asks for forgiveness. I could not hold anything against the Senator from West Virginia, regardless of what he did. He does not have to have forgiveness, but I did want the record to be clear that we could bring the conference report up.

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield.

Mr. AIKEN. I hope the Senator is not forgetting there is a very important executive meeting of the Foreign Relations Committee set for next Tuesday. No one knows how long it will last, and the presence of the Senator from Alabama is almost necessary. Also, there is a meeting Monday at which the Senator from Alabama is expected to be present. So I wonder what is the use of making rules most of us rely on if those rules can be set aside because a single Member of the Senate wants to be gone for some reason or another to some part of the world or some part of this country.

I am simply saying to the Senator from Alabama I hope he does not agree to anything which makes his presence at these foreign relations executive committee meetings impossible.

Mr. SPARKMAN. I will be at those meetings, because I have to be. As the Senator knows, the Senator from New Jersey (Mr. CASE) and I served as a two-man subcommittee on very important matters, and we have to make a report.

Mr. AIKEN. If we set aside the rules because a single Member of this body wants the rules set aside, then there is no use in having any rules at all.

Mr. SPARKMAN. Mr. President, I am not going to interpose any objection. I just want to make it clear that I believe when a committee has a privileged matter to present and it has been set, it ought not be changed until the particular Senators engaged in that privileged matter could be consulted.

I would not have interposed any objection if I had known anything about it, but here is material that we have been working on during the morning; staff members are on the outside waiting permission to enter the Chamber; and so forth. It is perfectly all right to me.

I am glad the Senator from Vermont (Mr. AIKEN) reminded me that we do have some very important meetings before the Foreign Relations Committee on Monday and Tuesday. I hope sometime by Wednesday we will be able to work out something.

Mr. AIKEN. Mr. President, if the Senator will yield again, I might remind the Senate that if, as a result of the executive meetings of the Foreign Relations Committee on Monday and Tuesday, the committee gives its approval to a nominee to be Secretary of State, then it is almost imperative that that nomination be acted upon by the whole Senate. I do not know how much debate there will be on it. We know there is opposition to it. But he is slated to make a speech for the United States on the following Monday, which leaves just next week to get this work all done and get him all cleared, or else find out he is not going to be cleared. That is about as important as anything we have right now.

Mr. SPARKMAN. The Senator is right. I will just say that I will cooperate with the Senator from Florida (Mr. CHILES) or anybody else, and with the leadership. I know my friend from Texas will be in the same attitude in working out a satisfactory time.

Mr. TOWER. Mr. President, will the Senator yield?

Mr. SPARKMAN. I yield.

Mr. TOWER. I will be perfectly willing to bring it up tomorrow or Friday or Monday. I have a speaking engagement Monday, but I will cancel it in order to be here and participate in the consideration of this legislation, because I see us facing a tremendous crunch next week, and we have important business which should be disposed of.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me once more?

Mr. SPARKMAN. I yield.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Florida is here on the floor. In view of the fact that, as the distinguished manager of the conference report (Mr. SPARKMAN) has correctly stated, a conference report can be called up at any time, if that conference report were to be called up I would think, out of courtesy to the Senator from Florida (Mr. CHILES) and to the Senator from Illinois (Mr. STEVENSON), the time agreement which was entered into conditionally ought to be vitiated, and it may be that the distinguished Senator from Florida would be willing to proceed at any time with that understanding. He knows that that conference report can be called up by the Senator from Alabama after we complete action on the consumer products warranty bill. It could not be called up prior to that because an order has been entered. Once we dispose of that bill the Senator could call up the conference report. Perhaps we ought to vitiate the time agreement on the report. I thought perhaps the Senator from Florida (Mr. CHILES) would have some suggestion as to what we ought to do about that.

Mr. SPARKMAN. Mr. President, I would agree with that. And let us, when we do decide to call it up, work up a time agreement. I assure the Senator from Florida that I will not call it up at a time not acceptable to him.

Mr. ROBERT C. BYRD. Mr. President, may I say as a postscript that we cannot call it up on Friday for various reasons as far as the leadership is concerned. It could be called up later today, tomorrow, or Monday. However, we could not consider it on Friday.

Mr. SPARKMAN. Let me say, Mr. President, that I would not call it up and interfere with any planned absence of the Senator from Florida.

Mr. GRIFFIN. Mr. President if the Senator would yield very briefly, just so that we have all of the circumstances clear and so that we are not working under any misapprehension, the Senator will recall that while there was a unanimous consent agreement that the Senate proceed to the consumer's warranty bill, it is my understanding that there is no unanimous consent agreement covering debate or a limitation of time on amendments or anything of that kind in connection with the bill.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. GRIFFIN. That being the case, I would propose a parliamentary inquiry.

The PRESIDING OFFICER (Mr. BIDEN). The Senator will state it.

Mr. GRIFFIN. Mr. President, even though the consumer's warranty bill is the pending business, would it not be possible for the chairman of the committee or for some other Member of the Senate, if he got recognition, to call up the conference report as a privileged matter?

The PRESIDING OFFICER. (Mr. BIDEN). The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, the Senator is correct. I had forgotten that there is no time agreement limiting debate on the consumer's warranty bill. Under the existing order, we would only proceed to the consideration of the consumer's warranty bill. The Senator from Michigan is quite correct.

Mr. GRIFFIN. Mr. President, I thought there might be a misunderstanding. And I wanted to be sure that all Senators realized the situation.

Mr. SPARKMAN. Mr. President, I yield to the Senator from Florida.

Mr. CHILES. Mr. President, I want to say that I had notified the office of the Senator from West Virginia as well as the Democratic Policy Committee that I did want to be notified if any unanimous consent agreements were going to be entered into in this matter.

Mr. President, I wanted to be notified, if I could, some time in advance of when this matter was going to be called up. I am sorry that I could not be contacted on yesterday. As a number of Senators have pointed out, there are occasions when some of us has some business, whether it be committee business, or some other senatorial business, that makes it hard to do something on a particular day.

I do not believe that the junior Senator from Florida has been on the floor too many times holding up the work of the Senate and trying to put a burden on another Senator or trying to delay the business of the Senate. And I do not intend to do that now.

I say to the distinguished Senator from Alabama that I want to work with him in any way I possibly can to see that this matter comes up at a time that is completely convenient to him and in no way inconveniences the Senator from Texas.

I want to do that now. And I see no reason why we could not come up with a mutually satisfactory time that would be satisfactory to all Senators concerned. I do not want to hold up the work of the Senate. This conference report has been on the calendar for a long time. I have not kept it there. I have only asked that I be notified in advance when the matter was going to be called up, and in advance of any unanimous consent agreement so that I could have my input into that agreement.

Mr. ROBERT C. BYRD. Mr. President, I had no opportunity to contact the Senator from Florida prior to yesterday with reference to the conference report because I had no knowledge until yesterday that the manager and the ranking minority member of the committee were ready to call it up. I could not contact the Senator prior to yesterday.

Mr. CHILES. Mr. President, I can certainly understand that. However, it has not been the junior Senator from Florida who has kept the conference report on the calendar during this period of time. My request has been that I be notified in advance of when it was going to be called up and in advance of any unanimous-consent agreement so that I could have my input into that agreement.

Mr. SPARKMAN. Mr. President, may I say that a number of weeks have been taken up by the August recess. We had no particular time to call up the conference report. I just wanted to take a convenient time for the Senate. We have been ready ever since we came back from recess. However, we had considerable pressing business, and we wanted to wait until there was a gap in the legislative business. There is no fixation in my mind with reference to today or any other day. I am sure that we can work out a satisfactory time.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Alabama has been very gracious in this matter, as he always is. He was entitled to be notified, and so was the distinguished ranking minority member of the committee, when there was any disposition on the part of the leadership to put this conference report over to next week.

I confess that I am chagrined that I unconsciously or subconsciously never thought of doing so, but took it for granted that it would be all right.

The Senator from Alabama was entitled to notification, and the Senator from Texas was also entitled to notification. This was my error. I regret it. And I do appreciate the kind attitude in which both Senators have accepted the situation.

Mr. TOWER. Mr. President, I certainly do not imply any criticism of my distinguished friend, the Senator from West Virginia. I think that he does an excellent job. However, I think we ought to get this matter pinned down now so that we will know when we are going to consider the conference report. It is of enormous importance.

Mr. ROBERT C. BYRD. Could we do that at this time?

Mr. SPARKMAN. Mr. President, I am not ready to work it out at this time, because as the Senator from Vermont (Mr. AIKEN) has pointed out, we have a very heavy schedule before the Foreign Relations Committee on both Monday and Tuesday, and perhaps on Wednesday. However, we will watch the time, and any time when it may appear that we can call it up and get a limitation of time, we will try to work it out. I hope that we can do so. I also hope that my friend, the distinguished Senator from West Virginia, will not feel chagrined. If I have any way of erasing his chagrin, I will do all I can to erase it.

Mr. ROBERT C. BYRD. Mr. President, my chagrin is brought about by my own failure, and has not been inflicted by the distinguished Senator.

Mr. CHILES. Mr. President, I apologize if I have caused the Senator from West Virginia to feel chagrined.

Mr. ROBERT C. BYRD. Mr. President, it was an inadvertence on my part. The Senator owes me no apology. If the distinguished Senator would agree, before the day is over perhaps we can agree on when the conference report will be called up after consultation with all parties.

Mr. SPARKMAN. The pinch I am in, as the Senator from Vermont has indicated, is because we have some matters before the Foreign Relations Committee that we are going to have to take care of. We do not know how much time they will take. However, if we can find any time when the Senator from Texas, the Senator from Florida, and the Senator from Illinois will be free, I will agree to take it up at that time.

Mr. TOWER. Mr. President, I am available any day except Saturday.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators. I want to apologize to the distinguished manager of the consumers warranty bill, Mr. Moss, for imposing on his good nature and on his time.

Mr. MOSS. That is quite all right.

MESSAGES FROM THE PRESIDENT

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

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. 8917) making appropriations for the Department of the Interior and related agencies 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 Mrs. HANSEN of Washington, Mr. YATES, Mr. MCKAY, Mr. LONG of Maryland, Mr. EVANS of Colorado, Mr. MAHON, Mr. MCDADE, Mr. WATT, Mr. VEYSEY, and Mr. CEDERBERG were appointed managers on the part of the House at the conference.

The message also announced that the House had rejected the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7645) to authorize appropriations for the Department of State, and for other purposes; and that, subsequently, the House receded from its disagreement to the amendment of the Senate to the bill and concurred therein, with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had passed a bill (H.R. 2096) to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in wine, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 2096) to prohibit the imposition by the States of discriminatory burdens upon interstate commerce in winter, and for other purposes, was read twice by its title and referred to the Committee on Finance.

MAGNUSON-MOSS WARRANTY—FEDERAL TRADE COMMISSION IMPROVEMENT ACT

The Senate continued with the consideration of the bill (S. 356) to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; and for other purposes.

The PRESIDING OFFICER (Mr. BIDEN). The question is on agreeing to the amendment of the Committee on Banking, Housing and Urban Affairs to the substitute amendment of the Committee on Commerce.

Mr. MOSS. Mr. President, I ask unanimous consent that during the consideration of S. 356 and any amendments thereto, Mr. Pankopf, Mr. Clanton, Mr. Sutcliffe, Mr. Merlis, and Mr. Allison of the staff of the Commerce Committee be permitted to be present on the floor.

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

Mr. MOSS. I yield to my colleague for a unanimous-consent request.

Mr. TOWER. I thank the Senator.

Mr. President, I ask unanimous consent that Mr. Mike Burns of the staff of the Committee on Banking, Housing and Urban Affairs be permitted to be present on the floor during the consideration of this measure.

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

Mr. MOSS. Mr. President, I ask unanimous consent that Mr. Tom Adams of the Commerce Committee minority staff also be included among the members of the staff permitted to be present on the floor.

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

Mr. MAGNUSON. Mr. President, today the Senate will be considering one of the most important pieces of legislation in the consumer field this session—The Magnuson-Moss Warranty — Federal Trade Commission Improvement Act. This bill would both bring fairness and rationality to consumer product warranties and provide the Federal Trade Comcission with much needed tools so it can better police the marketplace for unfair or deceptive acts or practices.

The major provisions of this bill are not new to the Senate; they have passed this body twice, last time by a vote of 76 to 2.

The Senate Commerce Committee, which I chair, has for a number of years now been exploring the consumer headaches associated with warranty practices. The committee continues to receive a seemingly never ending flood of complaints from consumers throughout the United States—complaints on auto-

mobiles, televisions, washers, dryers, and other basic consumer products. In the 91st Congress the committee held extensive hearings and formulated a comprehensive products warranty act designed to deal with the problems stemming from consumer product warranties.

Although that badly needed bill passed the Senate almost 3 years ago, today we still have no comprehensive Federal warranty legislation. In the 92d Congress, substantially similar warranty provisions were incorporated into the consumer product warranties and Federal Trade Commission Improvements Act of 1971. That bill passed this body in the 92d Congress by a vote of 72 to 2. The problems surrounding warranties that led to the passage of the warranty reform provisions of this bill in the Senate during the 91st and 92d Congress are still with us; the need for reform is now greater than ever, and I urge my colleagues to put themselves once again on record in favor of this vitally needed measure. This Congress, I think the House will act.

Title I of this bill deals with warranties on consumer products. Essentially, it is designed to make warranties understandable to consumers, and to insure that the promises made in warranties are lived up to. As chairman of the Commerce Committee, I have seen that it is a relatively frequent occurence that the consumer's understanding of what a warranty means does not always coincide with the legal meaning; as a result, warranties have for many years confused, misled, and frequently angered American consumers. It seems to me that some anger is expectable when purchasers of consumer products discover that the warranty of that product may cover a 25-percent part but not the $100 labor charge or that there is full coverage on a piano so long as it is shipped at the purchaser's expense to the factory. Title I is designed to eliminate these sorts of misunderstanding. It will also assist the consumer in knowing such essential items of information as where to take his warranted defective product for repair, how soon repair or replacement can be expected, and what his responsibilities are after notification.

Title II of this legislation is designed to improve the Federal Trade Commission's ability to serve as a viable consumer protection agency.

As early as 1938, a minority of the House committee reporting the Wheeler-Lea Act criticized the inadequacy of the limited enforcement powers of the Federal Trade Commission. The recent awakening of the agency to its consumer protection responsibilities has made this lack of adequate regulatory tools even more apparent. This bill would give the Commission the tools it needs.

First, the bill provides the Commission with the power to seek a preliminary injunction so that the whistle can be blown at the moment a violation of the Federal Trade Commission Act is detected—before consumers are damaged. By allowing the FTC to stop immediately an alleged unfair act or practice, it can do a much better job of protecting consumers.

The bill also enables the Commission to levy realistic penalties against those suppliers of consumer goods who commit unfair or deceptive practices. The Commission's own attorneys could seek civil penalties against those suppliers of consumer goods who commit unfair or deceptive practices. The Commission's attorneys could seek civil penalties against those who knowingly violate the Federal Trade Commission Act, and these penalties will provide a more realistic deterrent, with a $10,000 maximum per violation.

The provisions of title II which dealt with the Commission's power to promulgate trade regulation rules defining specific unfair or deceptive acts or practices has been deleted. We were delighted that the second circuit has now held that the Commission already possesses ample, unfettered rulemaking powers.

The bill would also grant the Commission authority to provide specific remedial relief to consumers injured by suppliers who committed unfair deceptive acts or practices. Thus, this bill would allow the Commission to order specific redress for injured consumers; no longer would it have to rely merely upon a slap of the violator's wrist to maintain fair play in the marketplace, and, if the Commission pursues the matter, the consumer may have his injury made whole. A mere cease-and-desist order has frequently let a wrongdoer keep his ill-gotten gains.

I am aware of two amendments that wil be proposed to this bill. The first amendment deals with section 212, and has been proposed by the Committee on Banking, Housing and Urban Affairs Their amendment can be accepted by sponsors if that proposal can be perfected. Senator Moss and I have an amendment prepared which is designed to do this. I am also advised that Senator HARTKE has an amendment prepared that deals with the warranty provisions of title I as they relate to sales of used cars. This is also acceptable to the managers of the bill.

Mr. MOSS. Mr. President, I would like to offer some comments on S. 356, the Magnuson-Moss Warranty Federal Trade Commission Improvements Act. Since the act under consideration this morning is not substantially different from S. 986 of the 92d Congress which was passed by the Senate by a vote of 76 to 2 on November 8, 1971 and similar to S. 3074 of the 91st Congress on which I delivered comments to the Senate on July 1, 1970, the CONGRESSIONAL RECORD for those dates should also be consulted.

The legislation has been designed to provide necessary safeguards in the use of warranties, and to provide the Federal Trade Commission with the adequate enforcement tools it needs to deal with commerce in the 20th century.

Title I of this bill brings about the warranty reform that has been needed for years. One of the most important effects of the legislation will be its ability to relieve consumer frustration by promoting understanding and by providing meaningful remedies. The bill should also foster intelligent consumer decisions by making warranties understandable. At the same time, warranty competition should be fostered, since consumers would be able to judge accurately the content and differences between warranties for competing consumer products.

Most importantly the bill provides the consumer with an economically feasible private right of action, so that when a warrantor breaches his warranty or service contract obligations the consumer can obtain effective redress. The bill has been refined to place only a minimum burden on the courts by requiring as a prerequisite to suit that the purchaser give the supplier reasonable opportunity to settle the dispute out of court, including the use of fair, informal dispute settlement mechanisms which the bill encourages suppliers to set up under the auspices of the Federal Trade Commission. A greater likelihood of warrantor performance is also assured through prohibition of express disclaimers of implied warranties.

As Mrs. Virginia Knauer characterized the problem confronting a consumer attempting to have product repaired under a present style warranty, "the bold print giveth, and the fine print taketh away." For many years warranties have confused and misled American consumers. A warranty is a complicated legal obligation whose full essence lies buried in myriads of legal decisions, reported and unreported, and in complicated state codes of commercial law. The consumer's understanding of what a warranty on a particular product means to him is not likely to coincide with the legal meaning of the words.

One of the most important and long range effects of the legislation will arise from its attempt to promote better product reliability. The bill does not mandate any particular life-span or reliability quotient for consumer products, but instead attempts to organize the rules of the warranty game in such a fashion as to stimulate manufacturers to produce more reliable products for competitive reasons. This is accomplished by the use of market pressure, by first arming the consumer with sufficient information and understanding about warranties to enable him to look to the warranty duration as a guide to product reliability.

Unfortunately when a consumer brings a defective product in for service under a present style warranty, he is invariably in for a rude shock—discovering that the "warranty" he has received at the time of purchase could be more accurately described as a limitation on the manufacturer's liability. The consumer's rights are usually diminished rather than increased by the "warranty" now given. The implied warranties were arrived at by the common law courts as being what reasonable men would expect to believe the results of the purchase and sale of items in the marketplace would imply. Unfortunately the present law allows a seller to renounce these implied warranties. Where this is done between merchants, this may be acceptable. But when it is forced on a consumer who lacks effective purchasing power to command better terms of sale it is outrageous. The Magnuson-Moss Act would give new life to the principles derived by the common law from hundreds of years of commercial experience by prohibiting the rejec-

tion of implied warranties in the retail market.

In operation, the act might work in this manner: Upon purchasing an automobile, for instance, the warranty would be designated on its face as being either a "full" warranty—one which would have to cover all parts and labor for the time period designated—or a "partial" warranty—one which does not require repair or replacement without charge. All warranties which are not "full warranties" would have to indicate their limitations prominently.

For example, a seller who was only willing to provide parts and not labor for a period of 1 year would designate his warranty "One Year Parts Only Warranty."

Now in commenting on title II of S. 356, I would like to quote from the American Bar Association's report and recommendations, referring to S. 986, the bill passed by the Senate in the 92d Congress, which is virtually identical to S. 356, the pending measure:

The Committee [of the American Bar Association] recommends the adoption of federal legislation [S. 986]—which can effectively utilize federal enforcement agencies; which will provide for swift and efficient relief to injured consumers harmed by significant abuses; which will obviate complex and protracted private proceedings; and which can be harmonized with existing and proposed statutory controls on the state levels.

Machinery would be established within the framework of the Federal Trade Commission for the most prompt and uncomplicated recovery of actual damages by consumers who are injured by such practices.

Mr. President, the need for this legislation is urgent. We have dangled the carrot before the public on previous occasions. In the 91st Congress we passed the Warranty measure. In the 92d Congress we passed a virtual duplicate of S. 356. On both of these occasions the House failed to act. It is early in the 93d Congress; the House Committee on Interstate and Foreign Commerce is working full speed on this measure; I am confident that we will see meaningful consumer product warranty legislation coupled with improvements in the machinery of the Federal Trade Commission enacted into law this session.

Over the 6 years that this legislation has been considered, the Consumer Subcommittee has spent many hours fashioning the bill. We have held many days of hearings on the legislation. We have spent many hours reviewing the legislation in executive session. I would like to note that the ranking minority member of the subcommittee, the Senator from Kentucky (Mr. COOK), contributed a great deal to make this measure a better consumer protection measure. I urge prompt passage of this legislation today.

Mr. President, I yield to my colleague from Texas for a brief unanimous-consent request.

Mr. TOWER. Mr. President, I ask unanimous consent that the following staff members of the Committee on Banking, Housing and Urban Affairs be allowed the privilege of the floor during the consideration of this measure: Mr. Dudley O'Neal, Mr. Gerald Allen, Mr. Ken McLean, Mr. Steve Paradise, Mr. Mike Burns, Mr. Tony Cluff, and Mr. T. J. Oden.

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

Mr. MOSS. Mr. President, the distinguished Senator from Indiana (Mr. HARTKE) has an amendment which is printed and is now before the Senate. The Senator from Indiana cannot be in the Chamber at this time and, therefore, on his behalf, I offer his amendment to the bill and ask that it be stated. It is No. 474.

The PRESIDING OFFICER (Mr. BIDEN). The committee amendment must be acted on prior to the amendment of the Senator from Indiana.

Mr. MOSS. 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. MOSS. 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. MOSS. Mr. President, I understand that the committee amendment is before the Senate at this time; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. MOSS. Mr. President, this bill was referred to the Banking, Housing and Urban Affairs Committee to work out the way in which federally regulated financial institutions such as banks and savings and loans institutions would be regulated to prevent the commission of unfair and deceptive acts and practices. That committee has proposed an amendment to the proposal of the Senate Commerce Committee which was earlier worked out with the Banking Committee.

In essence, the Banking Committee would propose to prevent federaly regulated financial institutions from engaging in unfair or deceptive acts or practices by authorizing the Federal Reserve Board to adopt rules against unfair and deceptive acts or practices. These rules would then be enforced by the various agencies responsible for regulating the federally regulated financial institutions.

For the most part I think the proposal of the Banking Committee makes sense and is acceptable. But there is one area that still troubles me. The FTC might decide that a particular practice of a finance company was unfair or deceptive to consumers and promulgate a rule outlawing such practice. A bank or Federal credit union engaging in the same practice would be able to continue such practices until the Federal Reserve Board adopted a similar regulation.

I think it is necessary to coordinate the activities of the Federal Reserve Board and the FTC to assure fair treatment for the consumer. Therefore, I would propose a perfecting amendment to the Banking Committee amendment which requires the Federal Reserve Board to issue a regulation substantially similar to a regulation issued by the FTC to cover activities which federally regulated financial institutions might engage in.

This amendment would not get the FTC into the regulation of banks or savings and loans.

The Federal Reserve Board is only required to issue "substantially similar" regulations. And the enforcement of those regulations is left to the Federal agencies which regulate the financial institutions.

Now someone might argue that the FTC is not the source of all wisdom and power. What if they promulgate a rule which the Federal Reserve Board does not think is unfair or deceptive to consumers? In that case the Federal Reserve Board can make such a finding and publish its reasons and it is relieved of its responsibility to issue substantially similar rules.

I send to the desk an amendment which would do what I have spoken of. I have discussed this amendment with the representatives of the Banking Committee.

Mr. TOWER. Mr. President, will the Senator yield?

Mr. MOSS. I yield.

Mr. TOWER. Mr. President, I ask that the clerk read the amendment in its entirety, so that we know that we have all the agreed-upon modifications in order.

Mr. MOSS. I agree.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

On page 64, line 15, insert the following: "In carrying out its responsibilities under this section, the Board shall issue substantially similar regulations proscribing acts or practices of financial institutions which are substantially similar to those proscribed by rules or regulations of the Commission within sixty days of the effective date of such Commission rules or regulations unless the Board finds that such acts or practices of financial institutions are not unfair or deceptive to consumers or it finds that implementation of similar regulations with respect to financial institutions would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register."

Mr. TOWER. Mr. President, the amendment as modified has been worked out between members of the Committee on Commerce and members of the Committee on Banking, Housing and Urban Affairs, and I believe it is satisfactory to all hands. Therefore, I think I can say on behalf of the Banking Committee that we accept this amendment as modified.

The Banking Committee amendment to the consumer products warranties bill, S. 356, is a step designed to preserve the full ability of the Federal Reserve Board to effectuate monetary policy through the banking system, while at the same time carrying out a major purpose of the bill to strengthen the protection of the consumer in the credit field.

The bill, as reported by the Commerce Committee, would bring commercial banks and other financial institutions under the jurisdiction of the FTC as to "unfair or deceptive" acts affecting consumers. While I do not oppose the general purpose of the bill, I do believe that the proper locus of authority over the consumer and his credit relationship with a depository financial institution lies in the central banking organization

and the other regulatory agencies with jurisdiction over depository institutions. This is appropriate because of the uniquely important role of monetary policy in our economy and in the economic welfare of American citizens. Monetary policy is carried out through a fractional reserve banking system, operated through the instrument of the commercial banks of this country. By acting on this banking system through reserve requirements, open market security operations and discount policy, the Fed is able to govern within broad limits the level of credit within the economy.

Because the actual impact of these policies depends to a significant extent upon the nature of the credit instruments and practices involved in commercial banking, laws, and regulations affecting such credit instruments and practices affect the efficacy of monetary policy. For example, if the FTC had jurisdiction over consumer practices of banks and decided to change drastically the attributes of consumer credit instruments by abolishing the holder in due course doctrine, the very nature of consumer "money" will be changed and to cope with that change monetary policy must be altered in some as yet unforeseeable manner. If the bank credit card is no longer able to be used as a substitute for pure purchasing power, but instead the traditionally neutral function of the bank is converted into one of a substantive party to the consumer transaction being financed, various unintended side effects could occur. Merchants might find that it is less costly and less troublesome to offer substantial cash discounts in order to avoid entanglements with banks over warranty-type questions. This could lead to a dramatic shift away from credit card use and into cash transactions—with a consequent reduction in the reserves of the banking system and a consequent contraction of credit.

Of course, it may be possible for the Fed to counteract some specific impacts on the monetary system of such actions with relatively little effort; perhaps in other situations it would be difficult, or the effect of an FTC credit rule might leave monetary conditions in simply a less stable state which would complicate the already tremendously complicated job of managing our credit system. Not being an economist or monetary expert myself, I would have difficulty in trying to list here every type of troublesome situation that could develop by having an agency without monetary expertise taking actions which can affect and impair the policies of the central bank. I do know that Dr. Burns is very concerned about the impairment of the Fed's ability to set and carry out monetary policy in the face of the Commerce Committee bill, as is Dr. Brimmer who testified before us and the other members of the Fed. The members of the other financial regulatory agencies are equally concerned about the problem of meeting their respective legislated responsibilities in the face of the proposed FTC authority to determine the nature of the creditor-consumer relationship.

By adopting the Banking Committee amendment the Senate is not in any sense voting against the consumer. The consumer is still covered by the protective powers of the financial regulatory agencies, who will have the power from this bill and other existing statutes to assure that individual consumer rights and complaints vis-a-vis depository institutions are fully taken care of. Yet these agencies and especially the Federal Reserve Board also have the longer-run economic viability of this Nation and the economic well-being of every one of its citizens at stake within their scope of responsibility. It is not meant as a criticism of the FTC to say that in consumer matters it will tend to take a short-run, pocketbook-oriented viewpoint of the consumer's interest, while the Fed has to be looking at the longer-range, structural economic situation in the country in shaping monetary policy, for the ultimate employment and income benefit of all of our citizens. Maintenance of the Fed's discretion to deal with consumer relationships with respect to depository institutions and to meld this into a coherent policy with fundamental economic concerns seems to me to be essential in a well-managed modern economy.

I would hope therefore that the Senate will adopt the Banking Committee amendment, recognizing that there are fundamental economic concerns of this Nation which must be coordinated with our consumer policies, if the overall interests of our citizens are to be properly cared for.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

Mr. TOWER. Mr. President, I move to reconsider the vote by which the modified amendment was agreed to.

Mr. MOSS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PROXMIRE. Mr. President, I support the amendment offered by the Senator from Utah to provide for uniform regulation between banks and other creditors. I believe that this amendment preserves the essential recommendations of the Senate Banking Committee. At the same time, it insures that all creditors will be subject to reasonably uniform regulations and that all consumers will receive substantially the same protections—whether they borrow from a bank or a nonbank creditor. The Senator's amendment represents an effective compromise between the Commerce Committee version and the Banking Committee version of the legislation and I congratulate him for offering it.

Under the original Commerce Committee bill, the FTC was empowered to write rules and regulations to prevent all business firms including banks and other financial institutions from engaging in unfair or deceptive credit practices. These regulations would have been enforced by the FTC and by the appropriate bank regulatory agencies with respect to the institutions under their supervision.

Under the Banking Committee version of the bill, the rulemaking power would be split between the FTC and the Federal Reserve Board. The Board would be empowered to write rules and regulations affecting banks and other financial institutions. The FTC would be given rulemaking authority over all other creditors including finance companies and retailers.

I have been critical of the Banking Committee version of the legislation because I do not believe the divided regulatory approach is workable. It is possible and indeed probable that creditors under the FTC's jurisdiction will be subject to one set of rules while banks and other financial institutions will be subject to a less stringent set of rules. A consumer who borrows from a bank would thus receive less protection than if he borrowed from a finance company or retailer.

I do not believe it is fair to consumers or to the credit industry to have two sets of rules. At the same time, I can sympathize with the strong desires of financial institutions to be regulated by a single Federal agency familiar with the unique problems of their industry. These divergent objectives would be reconciled by the Magnuson-Moss compromise amendment.

Under the compromise amendment, banks and other financial institutions would continue to be under the rulemaking authority of the Federal Reserve Board as recommended by the Banking Committee. However, in exercising its responsibilities, the Board is directed to provide for substantially similar regulation as compared to the regulations issued by the FTC. This will insure that banks and other financial institutions are subject to substantially the same regulations, while permitting the Board to exercise some flexibility to take into account the unique situation of banks and other financial institutions in our economy. For example, if the FTC issued a regulation on debt collection practices, the Board would be required to issue a similar regulation although it would not have to be precisely identical to the FTC regulation. The Board also has the option of issuing no regulation if it determined that the particular act or practice was not unfair or deceptive and published its reasons for such a finding. At the same time, nothing in the amendment would prevent the Board from issuing regulations on its own initiative in areas where the FTC has not acted. For example, the Board could issue a "truth in savings" regulation prescribing uniform interest rate computation methods if it determined such a regulation to be in the public interest.

I would expect that in most cases the FTC and the Federal Reserve Board would reach agreement and issue identical regulations. However, there may be a few areas where modifications are necessary. In such cases, the Federal Reserve Board is given sufficient latitude to prescribe appropriate modifications.

Mr. President, I believe the Senator from Utah has offered a fair and reasonable compromise amendment and I urge its adoption.

Mr. BROCK. Mr. President, I rise in support of the Banking Committee's amendment to S. 356.

Section 212 of the Commerce Committee's bill contains a grant of power to the Federal Trade Commission to promulgate rules with respect to financial institutions as to matters involving "unfair or deceptive acts or practices." This section eliminates the exemption that banks have enjoyed from the Federal Trade Commission so far as unfair and deceptive practices are concerned.

The Banking Committee's amendment will strike section 212 and add a new title to confer this rulemaking authority upon the Federal Reserve Board, instead of the Federal Trade Commission. It will also establish a separate division of consumer affairs within each financial regulatory agency to receive and act upon consumer complaints.

Before taking this action, the Consumer Credit Subcommittee heard and received reports from the bank regulatory agencies including the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, the Federal Reserve Board, and the Treasury Department. These agencies were unanimous in their view that the responsibility for the regulation of the financial institutions should be left in the specialized agencies. A number of sound reasons were advanced for this.

In dealing with the financial institutions, there is a need for expertise in the financial area and in the functioning of the monetary system. The Nation's monetary and payments system is very complex requiring a great deal of specialization on the part of those regulatory agencies having the responsibility for its functioning. Action taken in this area can have an adverse effect on the entire economy as well as segments of the economy such as the housing market.

It can place in jeopardy the safety of deposits in the institution.

It can inhibit the proper functioning of the check payments system.

We should not lose sight of the fact that consumers consist not only of borrowers from the institution but also depositors and persons using the payments system.

Here we are talking about the small businessman who relies on the commercial banks for services and the retired person with savings in a savings and loan association or credit union.

The interest of these consumers should not be neglected.

Another point is that financial institutions are currently in a transitional stage. They are moving away from the using of checks for settlement and much more toward reliance on the electronic payments mechanism. These innovations would be beneficial to consumers and the best way to assure that this comes about is to provide rulemaking authority in the banks' supervisory agencies familiar with and deeply concerned with the evolution of the payments mechanism.

The President has recently sent to Congress recommendations for vast and revolutionary changes in the structure of financial institutions. It is my understanding that the Financial Institution Subcommittee will be looking at these recommendations this fall. It would be far better to postpone any alterations of the regulatory framework over financial institutions than to take a piecemeal approach as is now being advocated.

Another problem is that the banks and other financial institutions are already among the most regulated forms of business in the country today. We should proceed cautiously before we impose an additional layer of regulations by bringing in an agency such as the Federal Trade Commission.

A number of arguments have been advanced favoring giving regulatory authority over the financial institutions to the Federal Trade Commission.

It is said that only in this way will there be uniformity in regulation over consumer credit. But if simple uniformity is the sole objective, then we would abolish all of the regulatory agencies—the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission and a host of others—and place their authority for regulating business practices in the Federal Trade Commission. Obviously, this would not work because there is a need for expertise in the regulatory agencies to carry out the public policy assigned to them by Congress. This is equally true so far as the financial institutions are concerned.

Another argument advanced is that the bank supervisory agencies are not interested in the consumer but in protecting the solvency of the financial institutions. This argument overlooks the basic fact that depositors as well as borrowers are consumers. In addition, the recent record of the Federal Reserve Board in promulgating regulations under the Truth in Lending Act is exemplary. In fact, the Senate thought so highly of this record that it recently passed by unanimous vote the Truth in Lending Act amendments vesting new powers in the Federal Reserve Board to write consumer credit regulations.

In sum, the approach taken by the Senate Banking Committee is a sound one. It will protect not just one class of consumers but all consumers who utilize the banking system. I urge Senators to support the Banking Committee's amendment.

Mr. MOSS. Mr. President, the Banking Committee amendment, as amended, is before the Senate. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MOSS. Mr. President, I move that the Banking Committee amendment, as amended, be adopted.

The PRESIDING OFFICER. The question is on agreeing to the Banking Committee amendment, as amended.

The Banking Committee amendment, as amended, was agreed to.

Mr. MOSS. Mr. President, I move to reconsider the vote by which the Banking Committee amendment was agreed to.

Mr. TOWER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 474

Mr. MOSS. Mr. President, it is my understanding that the bill is open to further amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MOSS. Therefore, Mr. President, I send to the desk an amendment proposed by the Senator from Indiana (Mr. HARTKE) to the Commerce Committee substitute amendment.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. MOSS. I yield.

Mr. COTTON. I am sure that the distinguished Senator from Utah's explanation will be full and lucid. Is it a long amendment?

Mr. MOSS. It is not of great length. It is about four pages.

Mr. COTTON. Then, I ask that the amendment be read in full, because I have not seen it.

Mr. MOSS. I have no objection to that.

The PRESIDING OFFICER. The amendment will be read.

The legislative clerk read as follows:

TITLE IV—USED CAR WARRANTIES

DEFINITIONS

SEC. 401. As used in this title—

(1) "Dealer" means any supplier selling used motor vehicles to a consumer.

(2) "Mechanical defect" includes any damage, malfunction, or failure, in whole or in part, which affects the safety or normal use of the used motor vehicle.

(3) "Motor vehicle" means any vehicle propelled by mechanical power, manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(4) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, American Samoa, or any other territory or possession of the United States.

(5) "Used motor vehicle" means any motor vehicle which is offered for sale to a consumer after—

(A) such vehicle had previously been sold to a consumer; or

(B) such vehicle had been used by a dealer or any other person for the personal transportation of persons, or as a rental, driver-education, or demonstration motor vehicle and driven more than two hundred and fifty miles or so used for more than fifteen days.

WARRANTY REQUIREMENT

SEC. 402. (a) No dealer shall sell or offer for sale a used motor vehicle to a consumer without a written warranty which conforms to the requirements of this title and this Act, except as provided in subsection (b) of this section.

(b) A dealer may sell or offer for sale a used motor vehicle to a consumer without a written warranty if the contract for sale of such used motor vehicle contains the following notice in conspicuous type: "ALL REPAIRS ARE THE RESPONSIBILITY OF THE BUYER." If such contract is not written in the English language, then such notice shall be expressed in the same language as the contract. In addition, the dealer shall orally disclose to the purchaser that all repairs are the responsibility of the buyer.

(c) A written warranty shall meet the requirements of section 103 of this Act.

DISCLOSURE OF INFORMATION

SEC. 403. (a) No dealer shall sell a used motor vehicle unless he furnishes to the purchaser a written statement which contains the information required by subsection (b) of this section. The statement shall be

furnished prior to the signing of any contract of sale by such purchaser.

(b) The statement required by subsection (a) of this section shall contain—

(1) a complete description of such used motor vehicle, including, but not necessarily limited to—

(A) the make, model, year of manufacture, and any identification of serial numbers of such vehicle;

(B) a statement of any mechanical defects known to such dealer on the basis of his examination and evaluation of the vehicle prior to his acquisition of such vehicle or which otherwise becomes known to him while in his possession, and any repairs made by or under the direction of such dealer following his acquisition of such used motor vehicle;

(C) a statement of the written warranty coverage of the used motor vehicle, except that if the used motor vehicle is sold without a written warranty, the dealer shall enter the words "As Is—all repairs are the responsibility of the buyer" in the space provided for warranty coverage;

(D) the date on which such vehicle will be delivered to such purchaser and the maximum number of miles which will appear on the odometer on such date;

(2) if the vehicle is sold with a written warranty, the name, address, and telephone number of each facility within a radius of fifty miles of the place of business of such dealer where such vehicle may be brought to have repairs, replacement of parts, and other service under the warranty performed;

(3) if the vehicle is sold with a written warranty, the mileage and the date on which the warranty will terminate.

(c) If the vehicle is sold with a written warranty, the dealer shall warrant that such vehicle can pass any applicable State inspection requirements.

(d) At the request of a bona fide prospective purchaser of a used motor vehicle, the dealer shall furnish such purchaser the name and address of the previous registered owner of such vehicle (for purposes other than resale), whether such vehicle was used principally as a passenger vehicle or was commercially or publicly owned, and the type of sale, transfer, or other means through which the dealer acquired such vehicle, to the extent such information is reasonably available to such dealer. When such previous registered owner sells such vehicle to a new or used motor vehicle dealer, such owner may request that his name be withheld from the subsequent purchaser.

APPLICABILITY OF TITLE I

SEC. 404. The provisions of title I of this Act are applicable to the extent not inconsistent with a provision of this title.

Mr. ROBERT C. BYRD. On behalf of the Senator from Indiana (Mr. HARTKE) I ask unanimous consent that the name of the Senator from Rhode Island (Mr. PASTORE) be added as a cosponsor of amendment No. 474 to S. 356.

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

Mr. MOSS. Mr. President, it is the feeling of the members of the subcommittee that the amendment of the Senator from Indiana does prescribe warranty guidelines for the sale of used motor vehicles and that it would be acceptable as an amendment. Although I believe the provision of title I would generally apply to the used motor vehicle market, this amendment specifically addresses a problem which has a long history of plaguing consumers. Under the amendment, a used car dealer would have the option of warranting the vehicle that he sells. However, regardless of whether or not such dealer chooses to offer a warranty, whenever a dealer sells any used motor vehicle, the purchaser is entitled to be supplied with certain information about the vehicle which he purchases. I believe that this amendment takes a giant step forward in easing the burden on purchasers of used motor vehicles, and I commend the Senator for his efforts in protecting the consumer.

Mr. President, the substitute amendment before this body is subject to further amendment or perfecting amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. MOSS. Mr. President, I send to the desk a modification of the Hartke amendment to the substitute amendment, which is now pending, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

In section 403(c), strike the "." and add "in the State where such vehicle is sold.".

In section 403(d) strike the last sentence and insert in lieu thereof the following: "The name and address of such previous registered owner shall not be released to the subsequent purchaser without the express written consent of such owner. The dealer who purchases such vehicle from the previous registered owner shall solicit such consent at the time of sale in a manner that will clearly disclose to the previous registered owner his rights under this subsection."

Mr. MOSS. Mr. President, this is a perfecting amendment that has been worked out by the staff of the majority and the minority.

It is clear that this amendment would, first, preserve the right of privacy if an owner does not wish to have his name used; and, second, it avoids the abuse that has been common in this field of passing on to a prospective buyer the name of an owner who is thought to have been respectable or careful, or some other desirable trait, and using that as a tool to sell the automobile, when it may not be an accurate representation.

This amendment would give this needed protection we seek. If the perfecting amendment were agreed to, we think the Hartke amendment would be acceptable and I would move its passage.

Mr. COTTON. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. MOSS. Certainly. I yield.

Mr. COTTON. The yeas and nays have not been requested on the original amendment. I therefore believe the Senator has a perfect right to modifying his amendment.

Mr. MOSS. I thank the Senator. I will await the ruling of the Chair to see if that is correct.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

Mr. MOSS. I thank the Presiding Officer and I thank my colleague for bringing this matter to our attention.

Mr. President, if the amendment is modified as the modifying amendment provides I would then be ready to vote on the Hartke amendment as modified.

Mr. COTTON. Mr. President, will the distinguished Senator from Utah yield so that I may address two or three questions to him?

Mr. MOSS. Certainly. I yield.

Mr. COTTON. I am an ex officio member of the Consumer Subcommittee that dealt with the pending bill. I know that the majority staff of the subcommittee seasonably notified and gave information to the minority staff of the contents of this amendment. Then, together apparently they prepared the perfecting amendment.

However, I think the procedure provided for in the amendment is rather complicated. For example, a portion of the amendment sets forth specific disclosure requirements which must be set forth in a written statement, and if sold without a warranty, then on the contract for sale. It is rather complicated and I therefore think the record should show that this amendment was never presented to either the subcommittee or to the full committee.

Mr. MOSS. I think that is correct. The amendment was drafted and sent in after the bill was reported.

Mr. COTTON. I am informed, however, that a representative or representatives of the National Automobile Dealers Association had an opportunity to examine this amendment and have indicated it is something they can live with. Is that correct?

Mr. MOSS. That is correct. This amendment has been discussed with the National Automobile Dealers Association and they have indicated that they could live with it, yes.

Mr. COTTON. Did they indicate that by letter?

Mr. MOSS. The National Automobile Dealers Association has indicated that they do not object.

Mr. COTTON. The reason I wanted to get this on the RECORD and make sure about it is that there is one point about this amendment that troubles me. This concerns the fact that, as I listened to it read and examined it briefly in the hands of the minority counsel, it seemed to me that the process of information disclosure—the written statement, the warranty, and all the other steps to be taken—might prove to be so complicated that the amendment is in danger of defeating its own laudable purpose of protecting the consumer from deceptive practices in the used car field.

In view of the fact that, unless the dealer sells the used car "as is," he has to go through such an involved process and assume so much responsibility, the Senator from New Hampshire is of the opinion that more and more dealers will sell such cars without a warranty, informing the buyer he has to take his own chances.

We have already written into the law that no longer can a dealer falsify the mileage of a car. This amendment restates this law, but then adds a great many other requirements.

I think the purpose of the amendment is entirely laudable. But, I also believe it is not the best legislative practice to offer an amendment with all the requirements that this one has without giving interested parties, such as the used car deal-

ers an opportunity to be heard, either in the subcommittee or in the full committee, before bringing the bill to the floor. However, since a used car can be sold without a written warranty and avoid the whole thing, which is perhaps more of a defect than a safeguard, I am not disposed to really oppose this amendment. I do so, however, with some reluctance. I hope that in the future amendments of this kind will be presented either in the subcommittee or the full committee, so that members of the committee can have full opportunity to consider the provisions. Also, if members of the committee, or the chairman of either the subcommittee or the full committee, feels it is necessary, some opportunity for a hearing can be presented.

I have the feeling that we may, regardless of whatever assurance may have been given privately by representatives of the Used Cars Dealers Association, have some outcry from used cars dealers because of the duties and probable "redtape" imposed upon them by this amendment.

Mr. MOSS. I thank the distinguished Senator from New Hampshire for his comments. Certainly I agree with a good part of them. I agree that it would be desirable to have a timely introduction to this sort of thing, so that hearings could be held and more discussion had.

But I reiterate my response made earlier that the National Automobile Dealers Association, which is covered by the bill and is very much involved in both the sale of new and used cars has indicated that the bill is acceptable to them. I cannot give that assurance about the Used Cars Dealers Association, which is a smaller group and is confined to used cars.

In answer to the Senator's comments about there being some redtape, perhaps it does have some redtape. But, at the same time, this language applies to the person selling a car. If he wants to use the warranty as a tool for selling the car, he has to be prepared to measure up to the provisions in the bill. If he does not want to take the risk of doing so, then he has to sell it without a warranty. The bill does not say he must sell it with a full warranty or with a partial warranty.

Mr. COTTON. If I may interrupt for a second, this amendment does not apply, as I understand it, to transactions between individuals. If I sell my car to the Senator from Utah, I am not considered a dealer. Is that correct?

Mr. MOSS. That is correct. If a dealer who is in business to sell used cars, or cars of any kind, wants to use a warranty as a part of his selling pitch, as a tool for selling, then he has to live up to certain requirements.

Mr. COTTON. I recognize fully that the dealer does not have to give a written warranty. He can simply sell the car "as is" and so indicate.

Mr. MOSS. No, he is not prohibited from selling without a warranty. A warranty is something in writing. The bill does not protect buyers in that way.

Mr. COTTON. Can the dealer sell it simply by his own word? I thought, as I heard the amendment read, that the dealer had to pass some kind of paper to the buyer that indicated that the buyer was buying with knowledge.

Mr. MOSS. That is correct. A warranty has to be in writing.

The dealer could say to the buyer, "This is a perfectly clean car. A little old lady down the street had it all these years." In spite of what he wants to say orally, he can still sell the car "As Is." If the buyer accepts that sales pitch and buys the car, he has to beware, because the old maxim caveat emptor still applies in the marketplace.

But if the dealer wants to put it in writing and say that the car is warranted, he has to live up to certain requirements.

Mr. COTTON. I do not think I made my question quite clear. Does not the amendment provide that if a dealer desires to sell a car and does not give a written warranty, then he must sell it to a buyer, who will take his own risk, other than the odometer requirement now in the law about mileage? I thought it was in the amendment that the dealer must, not only orally, but also in writing, inform the purchaser that he is buying it at his own risk.

Mr. MOSS. Mr. President, the Senator is correct. And if the Senator will recall, one of the thrusts of the pending measure is that warranties have been used heretofore in many instances to disclaim any implied warranty and to actually take from the purchaser some of the warranties implied in the sale of the vehicle.

Mr. COTTON. I remember all of that. I think that we are covering a lot of ground here. I just wanted to make sure, and the Senator may correct me if I am wrong, that the dealer cannot sell a used car, if this bill passes and has this amendment incorporated in it, without a written warranty. In other words, he still has to deliver something in writing to the buyer that there is no warranty.

Mr. MOSS. The Senator is correct. On the bill of sale or whatever paper he uses to transfer the car, he marks "As Is."

Mr. COTTON. Section 403(b)(1)(C) says that there must be "a statement of written warranty coverage of the used motor vehicle, except that if the used motor vehicle is sold without a written warranty, the dealer shall enter the words "As Is—all repairs are the responsibility of the buyer" in the space provided for warranty coverage."

Mr. MOSS. That is on the bill of sale, the Senator is correct.

Mr. COTTON. It says "in the space provided for warranty coverage."

Mr. MOSS. This is on the written statement that accompanies the bill of sale. He simply indicates that on there.

Mr. COTTON. If he is going to use a written warranty, that goes in. And, if he is not going to do so, this statement clearly indicating this to the purchaser of the car has to be attached.

Mr. MOSS. The Senator is correct.

Mr. COTTON. Well, as far as the Senator from New Hampshire is concerned, now that those matters have been cleared, the Senator from New Hampshire still feels that this may cause more used cars to be sold without warranty than with one. However, although the Senator from New Hampshire is not quite satisfied with this, he is not disposed to raise the issue and oppose it.

I want it clearly understood that in all that the Senator from New Hampshire has said, he has not suggested for one moment that his good friend, the Senator from Utah, has not dealt fully and fairly with the committee. Others have informed members of my staff, and they have informed me. We knew about it. However, I still feel that it is a rather unfortunate matter to legislate in this manner. But I am not going to raise the issue.

Mr. MOSS. Mr. President, I thank the Senator from New Hampshire.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. MOSS. Mr. President, I yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, may I inquire whether existing law, on the bill as it comes from the committee, deals in any way with anything other than new products?

Mr. MOSS. Yes. It does deal with articles sold to consumers. It is not restricted to new products.

Mr. CURTIS. Mr. President, does it relate to the first sale?

Mr. MOSS. If it goes through a dealer, it is for resale. The only matter excluded is a trade between two private individuals. If a man wants to sell a car to his neighbor and talk to him over the back fence, he can do so.

Mr. CURTIS. Mr. President, on page 33, lines 15 to 16, of the bill, it states:

"Consumer" means the first buyer at retail of any consumer product . . .

What does that mean?

Mr. MOSS. Mr. President, if the Senator goes to line 20, it states:

. . . any other person who is entitled by the terms of such written warranty or service contract or by operation of law to enforce the obligations of such warranty or service contract.

Mr. CURTIS. Mr. President, does that not refer back to the written warranty on a new product? Are we not talking about a new product when a warranty is given and that product is sold to another person before the warranty expires?

Mr. MOSS. No.

Mr. CURTIS. Is that not the purport of lines 15 through 22?

Mr. MOSS. Mr. President, as it defines consumer, but it goes on and expands it to any other person.

Mr. CURTIS. Mr. President, it talks about a warranty given on a new product and some other person, a consumer, acquires that product before the warranty has expired. Is that not correct?

Mr. MOSS. A warranty may be given on a used product, not only on a new product. Any dealer who wants to use the warranty as a tool to make the sale has to live up to certain conditions. It can be the sale of a new product or a used product. But if he wants to give a warranty, he must live up to the terms of the warranty.

Mr. CURTIS. This proposal would extend this law to used automobiles. So far as I know, it may be a good proposal and in the public interest. However, I would

like to inquire why the committee did not incorporate the amendment in the bill.

Mr. MOSS. We thought we had covered this situation generally, as I have indicated in my statement here, because this amendment had some additional guidelines about where he may come and bring his car, if he is given a warranty, to obtain service. It would add something to it, and we were willing to accept it on that basis.

Mr. CURTIS. Mr. President, how many days of hearings did the committee have on the proposal that this act apply specifically to used automobiles?

Mr. MOSS. Mr. President, that is a very hard question for me to answer. This matter, as the Senator realizes, has been before us for about 6 years.

Mr. CURTIS. Mr. President, did the committee have any witness appear before it who specifically talked about used cars and asked specifically that they be brought under the bill?

Mr. MOSS. Mr. President, I do not believe that we can say we were asked to have used cars under the bill. However, we were dealing with all products. And among other parties appearing before the committee, we had the National Automobile Dealers Association. And as I have indicated, the dealers say that they can live with it.

Mr. CURTIS. Mr. President, is that statement contained in the hearings?

Mr. MOSS. I am not sure. I would have to look and see. However, they have appeared before the committee and have had many consultations with us. And they have testified before the committee.

Mr. CURTIS. Mr. President, it is not true that this proposal which specifically applied this jurisdiction to used cars in the manner set forth in the proposed amendment was never heard by the committee and that the committee did not give notice that it was going to take up such a matter and that no one appeared and testified against the proposal.

Mr. MOSS. I do not think that used cars were ever pinpointed. However, automobiles formed a good part of our discussions, and the warranty game, as it is called, was played with automobiles perhaps more than with any other type of product.

Mr. CURTIS. Mr. President, how much of that discussion concerned new cars and how much concerned used cars?

Mr. MOSS. Well, of course, I cannot answer that. I have made no study of the time spent in hearings on each portion of the bill.

Mr. CURTIS. My distinguished friend was chairman of the committee.

Mr. MOSS. That is correct, and I held many of the hearings.

Mr. CURTIS. What is difficult about that simple question? Did the committee take up this proposal of extending jurisdiction to used automobiles, notify the public, and have any testimony?

Mr. MOSS. No, nor we did not take up used vacuum cleaners, used hair dryers, or used anything else, because they were all consumer products covered by the bill.

Mr. CURTIS. Is the distinguished Senator going to offer an amendment relating to the used vacuum sweepers and the other items he has mentioned?

Mr. MOSS. No, I think they are covered. I think the bill would also have covered used automobiles, except for the fact that it added some guidelines which we think are acceptable, and therefore we are willing to take the amendment.

Mr. CURTIS. It might well be that we need some Federal legislation on used cars. I do not know. But here is one Senator who would prefer that the appropriate committee hold some hearings on the matter, and that notice be given that such a proposal is pending, so that the interested parties—consumers, dealers, mechanics, and all others—would know about it, and could come in with their recommendations and their ideas on the subject. I dislike this method of legislation.

I suppose some conversation has occurred between the distinguished chairman or the staff and some people who purport to represent used car dealers. But I do not think that a very high percentage of these car dealers are informed of what is going on. They may or may not support their national organization.

I feel that the Senator ought to, if he thinks strongly on this matter, take it back to his committee and hold some hearings, but not ask to extend this legislation dealing with consumer product warranties to used cars, a specific class of product, without some hearings.

Again, I repeat, it may well be true that we need some legislation. But I am not rising to propose legislation. I am rising to suggest before any committee comes in and asks for the enactment of something as broad as this, they owe it to the Senate to give notice of what they are doing, hold some hearings, and take the testimony of the most appropriate individuals who can be located.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. MOSS. I will be happy to respond to the Senator's statement.

Mr. CURTIS. I am happy to yield, if I have the floor.

Mr. GRIFFIN. To add to what the Senator from Nebraska has just said, and also the Senator from New Hampshire, both of whom have made some very valid points, at least as far as the legislative process is concerned, I think it is unfortunate that consumer groups and others besides used car dealers who might be affected and interested in this matter did not have an opportunity to come in and present testimony. I think it has already been expressed here by the Senator from New Hampshire and others that if there is any field where there probably is some need for legislation, it is in the sole of used cars.

How do we know that the amendment goes far enough, in terms of protecting the consumer, without any hearings and without any opportunity for those who are concerned about it to come in and testify specifically about standards that should relate to used cars? Because there is a different situation, I think, than that which applies to the new car dealer. I can see very easily that the new car dealers who will be covered by these warranties would not particularly be concerned, perhaps, if it extended in terms of their sales to used cars. But I think that when you have others involved who will not be covered by the warranties, and apply it to sales not originally contemplated, it would seem to me that it would have been useful and would have provided better protection to the consumer if we could have had hearings.

Mr. CURTIS. I thank the Senator for his concern.

I raise some further questions about lines 15 to 22 on page 33. The Senator from Utah says that extends the legislation to used products. I am not so sure that it does. Let us look at it:

"Consumer" means the first buyer at retail of any consumer product; any person to whom such product is transferred for use for personal, family, or household purposes during the effective period of time of a written warranty or service contract which is applicable to such product; and any other person who is entitled by the terms of such written warranty or service contract or by operation of law to enforce the obligations of such warranty or service contract.

To me that means this: The consumer is the first buyer at retail of a product, which would imply a new product. If that product is transferred to another person during the period of its warranty, any other person as mentioned in line 2 stands in his shoes to enforce it, and I submit that if that gives jurisdiction to this act over the sale of used products generally, the language needs some correction, because to say the least it is very hazy, indefinite, and ambiguous.

I believe if we are going to have this measure cover the sale of used products, the language should specifically say so.

Mr. MOSS. Mr. President, if the Senator will yield, he is correct in pointing out that the consumer is defined as meaning the first buyer at retail of any consumer product. So we must go back to the definition of "consumer product," which is paragraph 2:

"Consumer product" means any tangible personal property which is normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property regardless of whether it is so attached or installed. Notwithstanding the foregoing, the provisions of sections 102 and 103 of this title affecting consumer products apply only to consumer products each of which actually costs the purchaser more than five dollars.

So a consumer product is not limited to a new product. It is any tangible personal property. What I perhaps did not make clear, in responding to the Senator from New Hampshire and others, is that we did discuss automobiles at great length, and we discussed used automobiles and new automobiles. There is no distinction intended.

Mr. CURTIS. But here the Senator comes with an amendment, rather lengthy in nature, specifically addressed to used automobiles, and according to his own statement, he gave no notice that that was going to be included, he conducted no hearings dealing specifically with used automobiles; neither the dealers, the mechanics, the public, nor anyone else appeared and testified on how to write a good law relating to used automobiles.

I feel that the committee has such an obligation, before they come in here and ask that it be passed. Again I repeat, I am not opposing the committee.

Mr. MOSS. If the Senator will yield——

Mr. CURTIS. It may be necessary, but we are entitled to hearings.

Mr. COTTON. Mr. President, will the Senator yield first to the Senator from Utah, and then to the Senator from New Hampshire?

Mr. MOSS. In the first place, I did not offer an amendment, because I believe that used cars are covered. Neither did the chairman bring the amendment. It was brought by the Senator from Indiana (Mr. HARTKE), who is not in the Chamber today.

Mr. CURTIS. Does the Senator advocate the amendment?

Mr. MOSS. I am willing to accept it, that is what I am saying, for the committee; and we have conferred with the staff. We think that it is in harmony with the general tenor of the bill.

Mr. CURTIS. I am sure the committee has a very good and dedicated staff, and I believe the Senator; but I also believe that a matter this involved, that people have to live under, should have notice that there are going to be hearings.

Mr. MOSS. In the first place, we did have extensive hearings over a period of 6 years in which automobile dealers of all kinds reported to us. Let me read the last paragraph——

Mr. CURTIS. I will ask the Senator again, did you have a single used car dealer there?

Mr. MOSS. Yes, we did.

Mr. CURTIS. Exclusively a used car dealer?

Mr. MOSS. We never had a distinction between used and new cars. We just talked about automobiles.

Mr. CURTIS. Who was the used car dealer?

Mr. MOSS. I do not know. I cannot give the Senator the name. I did not come prepared with that.

Mr. CURTIS. Are not the hearings indexed?

Mr. MOSS. Let me read the last paragraph of the statement prepared by the Senator from Indiana (Mr. HARTKE).

He says:

> Mr. President, I would also like to inform my colleagues that I have had extensive discussions over the past several months with representatives of the National Automobile Dealers Association and the National Independent Auto Dealers Association which is a group of used car dealers. While neither group has endorsed amendment No. 474, both support its objectives and realize the need for greater consumer protection in this area.

So the Senator from Indiana says he has been in contact for several months. I am sure that he has been working on his amendment for some time. But it was never felt by the committee that there needed to be this distinction. Now the Senator thinks it should. I think, because he has had some guidelines that are acceptable, I am willing to accept them. That is my position.

Mr. COTTON. Mr. President, will the Senator yield for a moment?

Mr. CURTIS. I yield the floor.

Mr. COTTON. I should like to speak to the Senator from Nebraska for one moment before he leaves on the matter which he has raised, concerning the interpretation of the words as regarding a "first buyer at retail" and the used product sale. I am not talking about automobiles now, but the general language questioned by the Senator from Nebraska.

Although I was not present at the subcommittee deliberations, I was present when it was discussed in the full committee.

It is my understanding—and the Senator from Utah will correct me if I am wrong—that this bill—forgetting about automobiles—was clearly stated to apply to the first purchase of a product. But, if a supplier desired to sell a used product with a written warranty, then he had to do so in compliance with the bill's provisions. But, it was designed for the first purchase. There is, however, provision if a supplier wants to offer a written warranty.

Mr. MOSS. The Senator is correct, yes.

Mr. CURTIS. The Senator is not talking about the Hartke amendment now?

Mr. COTTON. No.

Mr. CURTIS. What does the Hartke amendment do in that regard?

Mr. COTTON. Mr. President, as to the Hartke amendment, I do not know anything about what took place in the hearings. I do not know anything about what took place in the subcommittee. But, when the full committee considered this matter, I was present. So far as I can remember, not one word was said about used cars. The point was not even raised. Personally, I never considered that used cars were treated any different than any other article in this bill until I learned of this amendment.

My only objection now to the amendment is that I remember very well a used car dealer in my home city who gave a young man just back from Vietnam a job selling used cars. The dealer told him that he could tell every customer the law required that the odometer could not be tampered with, and was, so far as the dealer knew, absolutely accurate.

Now, if he is going to employ that young man to go out and sell used cars after adoption of this amendment, then he has got to be able to fill out all these disclosure requirements, such as the names of the garages available within a certain radius where the vehicle can be repaired, and so forth. He has to take care of all of those representations.

If he goes back to his boss, his boss will say, "Forget all that stuff. I cannot bother with it. Tell the customer the odometer is correct, and to take the car 'As Is.' We will only sell it to him 'As Is.' So fill in the forms that way."

To that extent, I insist, this amendment in its present form will cause less use of the warranties rather than more.

Mr. MOSS. I may suggest, this is an advantage, that if that dealer in that town wants to say, "I warrant all my cars and I will give a written warranty," he had better have it written out if he is going to give a written warranty. So, therefore, he says, "Young man, you can go out and say to all these people, 'If you buy a car from me, you will get a written warranty and it will protect you.'"

So he is using that as a sales technique and he is entitled to use it, provided he will stand behind the warranty. If he does not want to give a warranty he might say: "I have a good car that has not been abused. The speedometer is correct." If the person is persuaded and says he wants the car, he will get a written statement that says all repairs are the responsibility of the buyer. This is the distinction to make.

The thrust of the bill is to prevent the warranty process from being abused. Many dealers, sales people, and advertisers have held warranties out to consumers as something to protect him, when really, the warranty limits his rights and hurts him rather than helps him.

Mr. COTTON. Mr. President, I thank the Senator for his observations.

Let me add this brief word. In the first place, the distinguished Senator from Utah (Mr. Moss) is completely sincere and wholly blameless in this matter. The amendment was handed to him by the Senator from Indiana to offer on his behalf, and he saw nothing objectionable to it.

Now, I have no wish to make a controversy of this matter and force it to a vote. A Senator might vote against the amendment because he did not like this way of legislating and thought the committee had not had sufficient opportunity to consider this particular amendment. But, in so casting his vote, he will be pointed to by anyone back home as voting against the consumer and voting in favor of other interested parties. I would not be a party to putting any Senator in this body in that situation.

I therefore am not going to oppose the amendment. I am for the bill. But, the next time we have an amendment of this kind dropped in our laps on the floor of the Senate without having been discussed, brought up, or considered in the committee, without hearings, I think I will be disposed, as I believe the Senator from Utah would be disposed, to oppose it. I think the Senator from Utah is not entirely happy about this method of arriving at this amendment.

Mr. MOSS. The Senator is correct. I appreciate his discussion of this point and his cooperation. He has been most fair in his discussion and has pointed out that this matter was not timely brought to attention, as I said. My only explanation has to be that I think it is compatible with the rest of the bill and does add some guidelines. That is the reason why I am willing to accept the amendment.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. MOSS. I yield.

Mr. MAGNUSON. I merely want to say that I appreciate what the Senator from New Hampshire has said. I thought the Hartke amendment would be voted up or down. That is not unusual. Senators present amendments on almost every major bill on the floor of the Senate on which there have not been hearings or somebody has not spoken about them. We vote them up or down.

In this case, I think it is wise to do what we are doing here today; namely, accept the amendment. I believe it fits the objectives of the bill, which are mainly that if you are going to sell anything and you put a warranty on it, I do not care whether it is second-hand or new, it belongs there and you have to live up to it.

Mr. COTTON. Mr. President, will the Senator yield?

Mr. MAGNUSON. I yield.

Mr. COTTON. I think the distinguished chairman agrees with us and agrees with me.

Mr. MAGNUSON. I do.

Mr. COTTON. I must leave at this time to attend a session of the Appropriations Committee. I just wanted to make sure the Senator did not say anything about me after I left. [Laughter.]

Mr. MAGNUSON. I merely wanted to compliment the members of the committee, who worked so long on this bill. It has been a long time objective of the committee, and I am glad we are getting it done now, in this session, in the hope that it will be enacted. I suspect that an amendment of this kind might occur in the Senate, anyway, if it were brought up and discussed.

Mr. MOSS. Mr. President, I move the adoption of the amendment as modified.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. MOSS. Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement by the distinguished Senator from Indiana, together with several insertions.

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

The statement and insertions read as follows:

STATEMENT OF SENATOR HART

Mr. HARTKE. Mr. President, as we become more aware of the need for legislation to protect the American consumer, we are finding ourselves inundated with worthy subjects for our attention. One particular subject, however, which has been a popular recepticle of public scorn for many years has been the used car business. There are hundreds of highly reputable used car dealers; unfortunately, they are far outnumbered by the disreputable ones. Tens of thousands of complaints are filed with Government agencies each year about the sale of used cars. Some pertain to odometer turnbacks; others pertain to failure on the part of the dealer to perform under the car warranty; still others pertain to mechanical defects which were not made known to the purchaser.

A year ago it came to my attention that cars sold at public auction in the District of Columbia were being taken to other States and resold at substantial profits. While news media reports indicated that most of these cars had been auctioned at $50 each, they were being resold for as much as $500. Unfortunately, no major repairs were performed on these cars and at least six were subsequently rendered inoperative within a month of their resale.

While many dealers purchase cars cheaply and then make several hundred dollars worth of repairs, the dealers in the case of the six cars in question apparently made no such permanent repairs. They merely rendered the cars operative so that, to an untrained purchaser, they appeared to be in good condition. This is a familiar practice of unscrupulous dealers who then sell the car "as is", without a warranty, and then claim no responsibility for the car's defects.

Upon learning of these deceptive practices, I surveyed consumer protection officials in all fifty States and the Commonwealth of Puerto Rico. The responses which I received from officials in forty-one States, including Puerto Rico, read as follows:

TABULATION OF RESPONSES TO STATE OFFICES OF ATTORNEYS GENERAL AND LOCAL CONSUMER PROTECTION OFFICIALS

	Yes	No	Don't know or no answer
1. Has your State monitored the relationship between used cars and automobile accidents?	3	34	4
2. Does your State have any laws regulating the sale of used cars?	23	15	3
3. Are you aware of any municipalities in your State which make a practice of selling abandoned cars at auctions?	26	8	7
If so, is any effor made to monitor the subsequent use of cars sold at such auctions?		18	23
4. Are you aware of any significant number of complaints involving used cars?	35	2	4

I believe that there is a relationship between the age of a vehicle and vehicle accidents. There is no current uniform set of standards for motor vehicles in use. Some states included in my survey had no vehicle inspection program whatsoever. Among the others which did, not all required that the inspection be performed prior to the sale of the used vehicle.

Two deficiencies result from this state of affairs. First, the highways of this nation are populated with unsafe vehicles. A study performed in 1968 by Operations Research Inc., under contract for the National Highway Safety Bureau, indicated that all vehicles degrade with use and, therefore, ultimately operate with safety-related defects on public highways. The same study found that an estimated forty percent of the almost 100 million vehicles then on the road had at least one safety defect.

The second deficiency is that used car purchasers are buying cars which contain safety defects of which they are unaware. In states with no inspection program, they may not become aware of the defect until an accident occurs. In states with inspection programs which do not require an inspection prior to the sale of the car, the purchaser must pay the cost of repairing a defect of which he was unaware.

My survey of consumer protection officials—exhibit A—indicates that few states have monitored the relationship between the age of vehicles in use and automobile accidents. It also indicates that nearly thirty-seven percent of the respondents to my questionnaire indicated that their state had no special laws to deal with the sale of used cars. Those which did often limited their attention to the licensing of used car dealers or prohibition against the turnback of odometers. The result is that consumers have limited recourse against the deceptive practices of used car dealers.

The depth of this problem is indicated in a second survey which I undertook late last year. A questionnaire was sent to approximately 300 lawyers who work with indigent clients. The poor are often the ones most victimized by unscrupulous consumer practices. One need only look at the geographic placement of used car lots to know that this group of people is looked upon as a prime market for used cars. As of this date, 100 responses to my questionnaire have been received.

The following is the tabulation of these responses.

TABULATION OF RESPONSES TO USED CAR QUESTIONNAIRE

Total number of questionnaires tabulated, 100.

Total number of questionnaires mailed, 300.

Responses Expressed as Percent:

Question 1a. Does the average consumer receive a warranty with the purchase of his used car?

Yes, 27.
No, 45.
Sold as is (1), 28.

Question 1b. If so, what type of warranty?

Less than 30 days, 3.
30 days, 62.
30–90 days, 19.
More than 90 days, 0.
Don't know, 16.

What is its scope?

Parts & Labor, 3.
Parts only, 15.
Partial parts, 3.
Labor only, 3.
Partial labor, 3.
Part parts & all labor, 3.
Part labor & all parts, 3.
Part parts & part labor, 55.
Don't know, 9.

Question 2. In your opinion, what is the practical value of used car warranties currently in use?

None, 42.
Little, 41.
Some, 4.
Much, 0.
No answer or don't know, 13.

Question 3. Are buyers informed of any repairs made by the dealer prior to the sale of the used car?

Never, 61.
Rarely, 28.
Usually, 2.
Always, 0.
Don't know, 9.

Question 4. If the used car is covered by a warranty, is the buyer informed of where the necessary repairs may be during the warranty period?

Yes, 44.
Yes, but only with difficulty, 5.
No, 34.
No answer or don't know, 17.

Question 5a. Under a normal warranty, is it possible for a buyer to return a purchased vehicle and receive a full refund if not satisfied with the vehicle?

Yes, 2.
No, 77.
Only with Lawyer's assistance, 14.
No answer or don't know, 7.

Question 5b. Is recission of contract possible?

Yes, 3.
No, 54.
Only with a lawyer's assistance, 36.
No answer or don't know, 7.

Question 6. How frequently do you handle complaints involving odometer turnbacks?

None, 39.
Some, 52.
Many, 5.
No answer, 4.

Question 7a. Is the buyer usually informed whether a car offered for sale by a used car dealer has been involved in an accident?

Yes, 0.
No, 90.
Don't know, 10.

Question 7b. To what extent do consumer complaints involve the failure to inform the buyer of this information?

None, 20.
Some, 35.
Many, 13.
Don't know, 32.

Question 8a. How extensive is the problem of double financing?

Not prevalent, 12.
Somewhat prevalent, 20.
Very prevalent, 56.
Don't know, 12.

Question 8b. Are buyers informed of the fact that dealers may sell their note to a bank or other institution when credit is extended to the buyer by the dealer and that the buyer may not have any legal recourse against the dealer?

Yes, 4.
Not always, 7.
Never, 56.
Told only in the written contract, 13.
Don't know or no answer, 20.

Question 9a. Does State law require used cars to pass an established inspection procedure prior to its sale by a dealer?

Yes, 24.
No, 70.
Don't know, 6.

Question 9b. If not, is it customary for the used car dealer to pay for any repairs necessary to pass inspection if there is a post-sale inspection program?

Yes, 0.
Sometimes, 10.
No, 36.
No answer or don't know, 54.

Question 10a. Are you aware of any cities in your area that engage in the practice of selling abandoned cars at auctions?

Yes, 36.
No, 64.

Question 10b. If so, is any attempt made to monitor the subsequent use of cars sold at such auctions?

Yes, 1.
No, 29.
No answer or don't know, 70.

(1) "As Is" vehicles are those vehicles sold without warranty in purchases where the purchaser specifically acknowledges that he buys the car without a warranty.

I contacted the officials of Fairfax County, Virginia, when I noticed that that county had conducted a public auction of vehicles last year. My purpose was to determine if any effort was made to follow up on the use to which these vehicles were put following their sale at the auction. Although the county made no such followup effort, they did provide me with the names of the purchasers of the vehicles sold at that auction.

I subsequently made my own followup effort by contacting each of the purchasers by letter. Each was asked to answer five basic questions about the vehicle he purchased. Although there were approximately 125 cars involved in the auction, many purchasers bought more than one car. Nevertheless, I received only eight responses to my questionnaire. Despite the lack of statistical significance to this survey, I believe that it is important because, to my knowledge, it represents the first effort in the Nation to follow up on the uses to which vehicles are put after they are sold at public auction.

The questionnaire reads as follows:

SURVEY OF POST-AUCTION SALE USE OF USED VEHICLES SOLD IN FAIRFAX COUNTY—JUNE 6, 1972

1. Was the vehicle purchased at the June 6th auction retained for personal use or resold?

Personal use	5
Resold	3

2. If the vehicle was retained for personal use, was the vehicle stripped for parts or left intact and used for transportation?

Parts	0
Transportation	5

3. If the vehicle was retained for personal use, were any repairs made on the car?

Yes	4
No	1

4. If the vehicle was resold, was it stripped and sold as parts?

Yes	1
No	2

5. If the vehicle was resold, was it sold to be used as transportation?

Yes	1
No	1
No answer	1

The used car amendment which I offer today is designed to recitfy many of the problems uncovered in my year-long investigation specifically, it would do the following:

WARRANTY REQUIREMENTS

The amendment requires that all used cars be sold with a written warranty unless the contract or sale for the vehicle contains the following notice in conspicuous type: "All repairs are the responsibility of the buyer." The dealer must orally bring this same notice to the attention of the buyer.

In short, used cars can continue to be sold without any written warranty, but the dealer must make it clear to the buyer that there is no written warranty. This provision of the amendment eliminates one of the most frequent causes for consumer complaint pertaining to used cars.

Written warranties must meet the requirements of section 103 of S. 356. If the dealer gives a full warranty, then that warranty must cover any malfunctioning or defective part within a reasonable time and at no charge. Most used car warranties, however, limit the liability of the warrantor and require the purchaser to pay a portion of the cost. S. 356 requires all such warranties to be conspicuously designated.

DISCLOSURE OF INFORMATION

Dealers who sell used cars must furnish the purchaser with a written statement containing the following information:

1. A complete description of the used car, including:

A. The make, model, year of manufacture, and any identification or serial numbers of the vehicle;

B. A statement of any mechanical defects known to the dealer on the basis of his examination and evaluation of the vehicle prior to his acquisition of the car or which otherwise becomes known to him while the car is in his possession. (The purpose of this amendment is to require the dealer to disclose to the purchaser what he knows about the vehicle. What it says is, in the course of his evaluation of the car prior to the time he acquires it, or during any work which he does on the car after he acquires it, if he discovers any defect in the car—as that term is defined in my amendment—he must disclose it to the purchaser. Mechanical defect includes any damage, malfunction, or failure, in whole or in part, which affects the safety or normal use of the car. If the dealer knows the car has defective brakes, he must tell the purchaser before the contract of sale is signed.)

C. A statement of any repairs made by or under the direction of the dealer after he acquired the car.

D. A statement of the written warranty coverage of the used motor vehicle. If there is no written warranty, then the words "as is—all repairs are the responsibility of the buyer" are entered in the appropriate space on the statement.

E. If the vehicle is sold with a written warranty, the name, address and telephone number of each facility within a radius of 50 miles of the place of business of such dealer where the car can be brought to have repairs performed.

F. If the vehicle is sold with a written warranty, the mileage and the date on which the warranty will terminate.

2. If the vehicle is sold with a written warranty, the dealer is required to warrant that the vehicle can pass any applicable State inspection. Only 13 States now have inspection programs, but other States require an inspection at the time title to a car is transferred. Many used car purchasers complain that they cannot get their cars past inspection. This provision of my amendment means that, if the car does not pass inspection, the dealer must make any repairs necessary to assure that it will pass inspection.

3. The amendment also establishes a procedure whereby a bona fide potential purchaser of a used car can get the name of the previous registered owner of that vehicle. I believe that such information can often be useful, but I am also sensitive to dangers posed by this invasion of privacy of the previous registered owner. For that reason, I have restricted access to such information only to those persons who are bona fide potential purchasers—a person with a serious interest in the vehicle. The amendment also includes a provision which enables the previous owner to request that his name be withheld from a subsequent purchaser.

This amendment is needed now. It fits hand in glove with S. 356. Its provisions are nothing new to reputable used car dealers—they already meet the requirements of the amendment. It is the dishonest and disreputable car dealer who will be forced to change his practices. That is what my amendment accomplishes, and I urge my colleagues to give it their full support.

I would also like to inform my colleagues that I have extensive discussions over the past several months with representatives of the National Automobile Dealers Association and the National Independent Auto Dealers Association which is a group of used car dealers. While neither group has endorsed amendment #474, both support its objectives and realize the need for greater consumer protection in this area.

Mr. COOK. Mr. President, as a member of the Senate Commerce Committee which reported out S. 356, I believe it is an excellent bill and one which I think will probably accomplish as much for consumers as any action the Senate can take this year. Comments from manufacturers, suppliers, consumer groups, and advertisers were elicited by the committee, and subsequently compiled, synthesized, and debated with many of the suggestions finding their incorporation in the bill.

I am pleased that this version of the warranty bill is absent several provisions which I strongly objected to last year. Basic objection was the rulemaking power of the FTC, which has now been resolved by court decision, and that I can support and embrace its principal objectives which will protect the American consumer both collectively and individually.

Mr. DOLE. Mr. President, the legislation before us this afternoon, S. 356, the Warranty-Federal Trade Commission Improvement Act, adds the necessary fine tuning to the body of Federal law which is needed for effective consumer protection in the 20th century.

The need for this legislation is pressing, as it has been over the past 6 years, since the Senate first considered the leg-

islation. The need for economic methods of adjudication for the consumer is still wanting. The warranty provision of S. 356 is designed to meet four basic needs: the need for consumer understanding, the need for minimum warranty protection for consumers, the need for assurance of warranty performance, and the need for better product reliability.

CONSUMER UNDERSTANDING

Frequently, suppliers of consumer products fail to communicate to consumers what in fact they have offered in their warranty. There is a great need to supply consumers with a clear and honest disclosing of the terms and conditions of the warranty, along with what to do if the product becomes defective.

BASIC PROTECTIONS

Unfortunately, purchasers of consumers products do not always know the meaning of words in an express warranty which state limits on the warranty on its merchantability of fitness. There is a great need in this area for consumers to know what basic protections are provided and that it is not taken away in the fine print or in words which are not understood.

ENFORCEMENT

There is a need to insure warrantor performance by monitarily penalizing the warrantor for nonperformance. One way made available by this new legislation would be to allow reasonable attorneys' fees and court costs to successful consumer litigants. This may also develop informal dispute settlement procedures for the settlement of consumer complaints.

RELIABLE PRODUCTS

Under present marketing conditions, the consumer has little information about product reliability. It is hoped that the ability to differentiate should produce economic rewards for increased sales and reduced service costs for the producer of more reliable products.

The PRESIDING OFFICER. The question is on agreeing to the Commerce Committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, 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, was read the third time, and passed, as follows:

S. 356

An act to provide disclosure standards for written consumer product warranties against defect or malfunction; to define Federal content standards for such warranties; to amend the Federal Trade Commission Act in order to improve its consumer protection activities; 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 "Magnuson-Moss Warranty-Federal Trade Commission Improvement Act".

TITLE I—CONSUMER PRODUCT WARRANTIES

DEFINITIONS

SEC. 101. As used in this title—

(1) "Commission" means the Federal Trade Commission.

(2) "Consumer product" means any tangible personal property which is normally used for personal, family, or household purposes, including any such property intended to be attached to or installed in any real property regardless of whether it is so attached or installed. Notwithstanding the foregoing, the provisions of sections 102 and 103 of this title affecting consumer products apply only to consumer products each of which actually costs the purchaser more than five dollars.

(3) "Consumer" means the first buyer at retail of any consumer product; any person to whom such product is transferred for use for personal, family, or household purposes during the effective period of time of a written warranty or service contract which is applicable to such product; and any other person who is entitled by the terms of such written warranty or service contract or by operation of law to enforce the obligations of such warranty or service contract.

(4) "Reasonable and necessary maintenance" consists of those operations which the purchaser reasonably can be expected to perform or have performed to keep a consumer product operating in a predetermined manner and performing its intended function.

(5) "Repair" may, at the option of the warrantor include replacement with a new, identical or equivalent consumer product or component(s) thereof.

(6) "Replacement" or "to replace", as used in section 104 of this title, means in addition to the furnishing of a new, identical or equivalent consumer product (or component(s) thereof), the refunding of the actual purchase price of the consumer product—

(1) if repair is not commercial practicable; or

(2) if the purchaser is willing to accept such refund in lieu of repair or replacement. If there is replacement of a consumer product, the replaced consumer product (free and clear of all liens and encumbrances) shall be made available to the supplier.

(7) "Supplier" means any person (including any partnership, corporation, or association) engaged in the business of making a consumer product or service contract available to consumers, either directly or indirectly. Occasional sales of consumer products by persons not regularly engaged in the business of making such products available to consumers shall not make such persons "suppliers" within the meaning of this title.

(8) "Warrantor" means any supplier or other party who gives a warranty in writing.

(g) "Warranty" includes guaranty; to "warrant" means to guarantee.

(10) "Warranty in writing" or "written warranty" means a warranty in writing against defect or malfunction of a consumer product.

(A) "Full warranty" means a written warranty which incorporates the uniform Federal standards for warranty set forth in section 104 of this title.

(B) "Limited warranty" means written warranty subject to the provisions of this title which does not incorporate at a minimum the uniform Federal standard for warranty set forth in section 104 of this title.

(11) A "warranty in writing against defect or malfunction of a consumer product" means:

(A) any written affirmation of fact or written promise made at the time of sale by a supplier to a purchaser which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing to refund, repair, replace, or take other remedial action with respect to the sale of a consumer product if such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise, or undertaking becomes part of the basis of the bargain between the supplier and the purchaser.

(12) "Without charge" means that the warrantor(s) cannot assess the purchaser for any costs the warrantor or his representatives incur in connection with the required repair or replacement of a consumer product warranted in writing. The term does not mean that the warrantor must necessarily compensate the purchaser for incidental expenses. However, if any incidental expenses are incurred because the repair or replacement is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the purchaser as a condition of securing repair or replacement, then the purchaser shall be entitled to recover such reasonable incidental expenses in any action against the warrantor for breach of warranty under section 110(b) of this title.

DISCLOSURE REQUIREMENTS

SEC. 102. (a) In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, the Commission is authorized to issue rules, in accordance with section 109 of this title, which may—

(1) prescribe the manner and form in which information with respect to any written warranty shall be clearly and conspicuously presented or displayed when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing; and

(2) require the inclusion in any written warranty, in simple and readily understood language, fully and conspicuously disclosed, items of information which may include, among others:

(A) clear identification of the name and address of the warrantor;

(B) identity of the class or classes of persons to whom the warranty is extended;

(C) the products or parts covered;

(D) a statement of what the warrantor will do in the event of a defect or malfunction—at whose expense—and for what period of time;

(E) a statement of what the purchaser must do and what expenses he must bear;

(F) exceptions and exclusions from the terms of the warranty;

(G) the step-by-step procedure which the purchaser should take in order to obtain performance of any obligation under the warranty, including the identification of any class of persons authorized to perform the obligations set forth in the warranty;

(H) on what days and during what hours the warrantor will perform his obligations;

(I) the period of time within which, after notice of malfunction or defect, the warrantor will under normal circumstances repair, replace, or otherwise perform any obligations under the warranty;

(J) the availability of any informal dispute settlement procedure offered by the warrantor and a recital that the purchaser must resort to such procedure before pursuing any legal remedies in the courts; and

(K) a recital that any purchaser who successfully pursues his legal remedies in court may recover the reasonable costs incurred, included reasonable attorneys' fees.

(b) Nothing in this title shall be deemed to authorize the Commission to prescribe the duration of warranties given or to require that a product or any of its components be warranted, except that the Commission may prescribe rules pursuant to section 553 of title 5, United States Code, that the term of a warranty or service contract shall be extended to correspond with any period in excess of a reasonable period (not less than ten days) during which the purchaser is deprived of the use of a product by reason of a defect or malfunction. Except as provided in section 104 of this title, nothing in this title shall be deemed to authorize the Commission to prescribe the scope or substance of written warranties.

(c) No warrantor of a consumer product may condition his warranty of such product on the consumer's using, in connection with such product, any article or service which is directly or indirectly identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if it finds that the imposition of such a condition is reasonable and in the public interest.

DESIGNATION OF WARRANTIES

SEC. 103. (a) Any supplier warranting in writing a consumer product shall clearly and conspicuously designate such warranty as provided herein unless exempted from doing so by the Commission pursuant to section 109 of this title:

(1) If the written warranty incorporates the uniform Federal standards for warranty set forth in section 104 of this title, and does not limit the liability of the warrantor for consequential damages, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar meaning. If the written warranty incorporates the uniform Federal standards for written warranty set forth in section 104 of this title and limits or excludes the liability of the warrantor for consequential damages as permitted by applicable State law, then it shall be conspicuously designated as "full (statement of duration)" warranty, guaranty, or word of similar import. "(Liability for consequential damages limited; remedy limited to free repair or replacement within a reasonable time, without charge)", or as otherwise prescribed by the Commission pursuant to section 109 of this Act.

(2) If the written warranty does not incorporate the Federal standards for warranty set forth in section 104 of this title, then it shall be designated in such manner so as to indicate clearly and conspicuously the limited scope of the coverage afforded.

(b) Written statements or representations, such as expressions of general policy concerning customer satisfaction which are not subject to any specific limitations shall not be deemed to be warranties in writing for purposes of sections 102, 103, and 104 of this title but shall remain subject to the provisions of the Federal Trade Commission Act and section 110 of this title.

UNIFORM FEDERAL STANDARDS FOR WRITTEN WARRANTY

SEC. 104. (a) Any supplier warranting in writing a consumer product must undertake at a minimum the following duties in order to be deemed to have incorporated the uniform Federal standards for written warranty—

(1) to repair or replace any malfunctioning or defective consumer product covered by such warranty;

(2) within a reasonable time; and

(3) without charge.

In fulfilling the above duties, the warrantor shall not impose any duty upon a purchaser as a condition of securing such repair or replacement other than notification unless the warrantor can demonstrate that such a duty is reasonable. In a determination by the Commission or a court of whether or not any such additional duty or duties are reasonable, the magnitude of the economic burden necessarily imposed upon the warrantor (including costs passed on to the purchaser) shall be weighed against the magnitude of the burdens of inconvenience and expense necessarily imposed upon the purchaser.

(b) If repair is necessitated an unreasonable number of times during the warranty period the purchaser shall have the right to demand and receive replacement of the consumer product.

(c) The above duties extend from the warrantor to the consumer.

(d) The performance of the duties enumerated in subsection (a) of this section shall not be required of the warrantor if he can show that damage while in the possession of the purchaser or unreasonable use (including failure to provide reasonable and necessary maintenance) caused any warranted consumer product to malfunction or become defective.

FULL AND LIMITED WARRANTIES OF A CONSUMER PRODUCT

SEC. 105. Nothing in this title shall prohibit the selling of a consumer product which has both full, full (with limitation of liability for consequential damages) and limited warranties if such warranties are clearly and conspicuously differentiated.

SERVICE CONTRACTS

SEC. 106. Nothing in this title shall be construed to prevent a supplier from selling a service contract to the purchaser in addition to or in lieu of a warranty in writing if the terms and conditions of such contract are fully and conspicuously disclosed in simple and readily understood language. The Commission is authorized to determine, in accordance with section 109 of this title, the manner and form in which the terms and conditions of service contracts shall be clearly and conspicuously disclosed.

DESIGNATION OF REPRESENTATIVES

SEC. 107. Nothing in this title shall be construed to prevent any warrantor from making any reasonable and equitable arrangements for representatives to perform duties under a written warranty except that no such arrangements shall relieve the warrantor of his direct responsibilities to the purchaser nor necessarily make the representative a cowarrantor.

LIMITATION ON DISCLAIMER OF IMPLIED WARRANTIES

SEC. 108. (a) There shall be no express disclaimer of implied warranties to a purchaser if any written warranty or service contract in writing is made by a supplier to a purchaser with regard to a consumer product.

(b) For purposes of this title, implied warranties may not be limited as to duration expressly or impliedly through a designated warranty in writing or other express warranty.

FEDERAL TRADE COMMISSION

SEC. 109. The Commission is authorized to establish rules pursuant to section 553 of title 5, United States Code, upon a public record after an opportunity for an agency hearing structured so as to proceed as expeditiously as practicable to—

(a) prescribe the manner and form in which information with respect to any written warranty shall be disclosed and the items of information to be included in any written warranty as provided in section 102 of this title;

(b) prescribe the manner and form in which terms and conditions of service contracts shall be disclosed as provided in section 106 of this title;

(c) determine when a warranty in writing does not have to be designated in accordance with section 103 of this title;

(d) define in detail the disclosure requirements in paragraph (2) of subsection (a) of section 103 of this title; and

(e) define in detail the duties set forth in subsections (a), (b), and (c) of section 104 of this title and their applicability to warrantors of different categories of consumer products with "full" warranties.

PRIVATE REMEDIES

SEC. 110. (a) Congress hereby declares it to be its policy to encourage suppliers to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms. Such informal dispute settlement procedures should be created by suppliers in cooperation with independent and governmental entities pursuant to guidelines established by the Commission. If a supplier incorporates any such informal dispute settlement procedure in any written warranty or service contract, such procedure shall initially be used by any consumer to resolve any complaint arising under such warranty or service contract. The bona fide operation of any such dispute settlement procedure shall be subject to review by the Commission on its own initiative or upon a written complaint filed by any injured party.

(b) Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under a written warranty or service contract in writing subject to this title may bring suit for breach of such warranty or service contract in an appropriate district court of the United States subject to the jurisdictional requirements of section 1331 of title 28, United States Code. Any purchaser damaged by the failure of a supplier to comply with any obligations assumed under an express or implied warranty or service contract subject to this title may bring suit in any State or District of Columbia court of competent jurisdiction. Prior to commencing any legal proceeding for breach of warranty or service contract under this section, a purchaser must have afforded the supplier a reasonable opportunity to cure the alleged breach and must have used the informal dispute settlement mechanisms, if any, established under subsection (a) of this section. Nothing in this subsection shall be construed to change in any way the jurisdictional or venue requirements of any State.

(c) Any purchaser who shall finally prevail in any suit or proceeding for breach of an express or implied warranty or service contract brought under section (b) of this section shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by such purchaser for or in connection with the institution and prosecution of such suit or proceeding unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(d) (1) For the purposes of this section, an "express warranty" is created as follows:

(A) Any affirmation of fact or promise made by a supplier to the purchaser which relates to a consumer product or service and becomes part of the basis of the bargain creates an express warranty that the consumer product or service shall conform to the affirmation or promise.

(B) Any description of a consumer product which is made part of the bargain creates an express warranty that the con-

sumer product shall conform to the description.

(C) Any sample or model which is made part of the basis of the bargain creates an express warranty that the consumer product shall conform to the sample or model.

It is not necessary to the creation of an express warranty that the supplier use formal words such as "warranty" or "guaranty" or that he have a specific intention to make a warranty. An affirmation merely of the value of the consumer product or service or a statement purporting to be merely the supplier's opinion or commendation of the consumer product or service does not by itself create a warranty.

(2) Only the supplier actually making an affirmation of fact or promise, a description, or providing a sample or model shall be deemed to have created an express warranty under this section and any rights arising thereunder may only be enforced against such supplier and no other supplier.

GOVERNMENT ENFORCEMENT

SEC. 111. (a) It shall be unlawful and a violation of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) for any person (including any partnership, corporation, or association) subject to the provisions of this title to fail to comply with any requirement imposed on such person by or pursuant to this title or to violate any prohibition contained in this title.

(b)(1) The district courts of the United States shall have jurisdiction to restrain violations of this title in an action by the Attorney General or by the Commission by any of its attorneys designated by it for such purpose. Upon a proper showing, and after notice to the defendant, a temporary restraining order or preliminary injunction shall be granted without bond: *Provided, however,* That if a complaint is not filed within such period as may be specified by the court after the issuance of the restraining order or preliminary injunction, the order or injunction may, upon motion, be dissolved. Whenever it appears to the court that the interests of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2)(A) Whenever the Attorney General has reason to believe that any person under investigation may be in possession, custody, or control of any documentary material, relevant to any violation of this title, he may, prior to the institution of a proceeding under this section cause to be served upon such person, a civil investigative demand requiring such person to produce the documentary material for examination.

(B) Each such demand shall—

(i) state the nature of the conduct alleged to constitute the violation of this title which is under investigation;

(ii) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(iii) prescribe a return date which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(iv) identify the custodian to whom such material shall be furnished.

(C) No demand shall—

(i) contain any requirement which would be held to be unreasonable if contained in a subpena *duces tecum* issued by a court of the United States in a proceeding brought under this section; or

(ii) require the production of any documentary evidence which would be privileged from disclosure if demanded by a subpena *duces tecum* issued by a court of the United States in any proceeding under this section.

(D) Any such demand may be served at any place within the territorial jurisdiction of any court of the United States.

(E) Service of any such demand or of any petition filed under subparagraph (G) of this subsection may be made upon any person, partnership, corporation, association, or other legal entity by—

(i) delivering a duly executed copy thereof to such person or to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such person, partnership, corporation, association, or entity;

(ii) delivering a duly executed copy thereof to the principal office or place of business of the person, partnership, corporation, association, or entity to be served; or

(iii) depositing such copy in the United States mails, by registered or certified mail duly addressed to such person, partnership, corporation, association, or entity at its principal office or place of business.

(F) A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(G) The provisions of sections 4 and 5 of the Antitrust Civil Process Act (15 U.S.C. 1313, 1314) shall apply to custodians of material produced pursuant to any demand and to judicial proceedings for the enforcement of any such demand made pursuant to this section: *Provided, however,* That documents and other information obtained pursuant to any civil investigative demand issued hereunder and in the possession of the Department of Justice may be made available to duly authorized representatives of the Commission for the purpose of investigations and proceedings under this title and under the Federal Trade Commission Act subject to the limitations upon use and disclosure contained in section 4 of the Antitrust Civil Process Act (15 U.S.C. 1313).

SAVING PROVISION

SEC. 112. Nothing contained in this title shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined as an Antitrust Act.

SCOPE

SEC. 113. (a) The provisions of this title and the powers granted hereunder to the Commission and the Attorney General shall extend to all sales of consumer products and service contracts affecting interstate commerce: *Provided, however,* That such provisions and powers shall not be exercised in such a manner as to interfere with warranties applicable to consumer products, or components thereof, created and governed by other Federal law.

(b) Labeling, disclosure, or other requirements of a State with respect to written warranties and performance thereunder, not identical to those set forth in section 102, 103, or 104 of this title or with rules and regulations of the Commission issued in accordance with the procedures set forth in section 109 of this title, or with guidelines of the Commission, shall not be applicable to warranties complying therewith. However, if, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with the Federal Trade Commission Act, as amended) that any requirement of such State (other than a labeling or disclosure requirement) covering any transaction to which this title applies—

(1) affords protection to consumers greater than the requirements of this title; and

(2) does not unduly burden interstate commerce, then transactions complying with any such State requirement shall be exempt from the provisions of this title to the extent specified in such determination for so long as such State continues to administer and enforce effectively any such greater requirement.

(c) Nothing in this title shall be construed to supersede any provision of State law regarding damages for injury to the person or any State law restricting the ability of a warrantor to limit his liability for consequential damages.

EFFECTIVE DATE

SEC. 114. (a) Except for the limitations in subsection (b) of this section, this title shall take effect six months after the date of its enactment but shall not apply to consumer products manufactured prior to such effective date.

(b) Those requirements in this title which cannot be reasonably met without the promulgation of rules by the Commission shall take effect six months after the final publication of such rules which shall be published (subject to future amendment or revocation) as soon as possible but no later than one year after the date of enactment of this Act: *Provided,* That the Commission, for good cause shown, may provide designated classes of suppliers up to six months additional time to bring their written warranties into compliance with rules promulgated under this title.

(c) The Commission shall promulgate initial rules for initial implementation of this title, including guidelines for the establishment of informal dispute settlement procedures pursuant to section 110(a) of this title, as soon as possible after enactment but in no event later than one year after the date of enactment of this Act.

TITLE II—FEDERAL TRADE COMMISSION IMPROVEMENTS

SEC. 201. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "affecting commerce".

SEC. 202. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (6) as amended by section 212 of this title the following new paragraph:

"(7) The Commission may initiate civil actions in the district courts of the United States against persons, partnerships, or corporations engaged in any act or practice which is unfair or deceptive to a consumer and is prohibited by subsection (a)(1) of this section with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by subsection (a)(1) of this section, to obtain a civil penalty of not more than $10,000 for each such violation. The Commission may comprise, mitigate, or settle any action for a civil penalty if such settlement is accompanied by a public statement of its reasons and is approved by the court."

SEC. 203. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by inserting after paragraph (7) as added by section 202 of this title the following new paragraph:

"(8) After an order of the Commission to cease and desist from engaging in acts or practices which are unfair or deceptive to consumers and proscribed by section 5(a)(1) of this Act has become final as provided in subsection (g) of this section, the Commission, by any of its attorneys designated by it for such purpose, may institute civil actions in the district courts of the United States to obtain such relief as the court shall find necessary to redress injury to consumers caused by the specific acts or practices which were the subject of the proceeding pursuant to subsection (b) of this section and the resulting cease-and-desist order, including, but not limited to, rescission or reformation of contracts, the refund of money or return of property, public notification of the viola-

tion, and the payment of damages, except that nothing in this section is intended to authorize the imposition of any exemplary or punitive damages. The court shall cause notice to be given reasonably calculated, under all of the circumstances, to apprise all consumers allegedly injured by the defendant's acts of the pendency of such action. No action may be brought by the Commission under this subsection more than two years after an order of the Commission upon which such action is based has become final. Any action initiated by the Commission under this subsection may be consolidated as the court deems appropriate with any other action requesting the same or substantially the same relief upon motion of a party to any such action."

SEC. 204. Section 5(1) of the Federal Trade Commission Act (15 U.S.C. 45(1)) is amended by striking subsection (1) and inserting in lieu thereof the following new paragraph:

"(1) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than $10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States or by the Commission in its own name by any of its attorneys designated by it for such purpose. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission."

SEC. 205. Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) is amended by adding at the end thereof the following new subsection:

"(m) Whenever in any civil proceeding involving this Act the Commission is authorized or required to appear in a court of the United States, or to be represented therein by the Attorney General of the United States, the Commission may elect to appear in its own name by any of its attorneys designated by it for such purpose."

SEC. 206. Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or whose business affects commerce".

SEC. 207. Section 9 of the Federal Trade Commission Act (15 U.S.C. 49) is amended by—

(a) deleting the word "corporation" in the first sentence of the first unnumbered paragraph and inserting in lieu thereof the word "party";

(b) inserting after the word "Commission" in the second sentence of the second unnumbered paragraph the phrase "acting through any of its attorneys designated by it for such purpose", and

(c) deleting the fourth unnumbered paragraph and inserting in lieu thereof the following:

"Upon the application of the Attorney General of the United States or of the Commission, acting through any of its attorneys designated by it for such purpose, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the Commission issued under this Act."

SEC. 208. Section 10 of the Federal Trade Commission Act (15 U.S.C. 50) is amended by deleting the third unnumbered paragraph and inserting in lieu thereof the following:

"If any corporation required by this Act to file any annual or special report shall fail to do so within the time fixed by the Commission for filing such report, then, if such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure. Such forfeiture shall be payable into the Treasury of the United States and shall be recoverable in a civil suit brought by the Attorney General or by the Commission, acting through any of its attorneys designated by it for such purpose, in the district where the corporation has its principal office or in any district in which it does business."

SEC. 209. Section 12 of the Federal Trade Commission Act (15 U.S.C. 52) is amended by striking out the words "in commerce" wherever they appear and inserting in lieu thereof "in or having an effect upon commerce".

SEC. 210. Section 13 of the Federal Trade Commission Act (15 U.S.C. 53) is amended by redesignating "(b)" as "(c)" and inserting the following new subsection:

"(b) Whenever the Commission has reason to believe—

"(1) that any person, partnership, or corporation is engaged in, or is about to engage in, any act or practice which is unfair or deceptive to a consumer, and is prohibited by section 5, and

"(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final within the meaning of section 5, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint under section 5 is not filed within such period as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction may be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and, after proper proof, the court may issue a permanent injunction. Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

SEC. 211. Section 16 of the Federal Trade Commission Act (15 U.S.C. 56) is amended to read as follows:

"SEC. 16. Whenever the Federal Trade Commission has reason to believe that any person, partnership, or corporation is liable to a penalty under section 14 or under subsection (1) of section 5 of this Act, it shall—

"(a) certify the facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of such section or subsection; or

"(b) itself cause such appropriate proceedings to be brought."

TITLE III—FINANCIAL INSTITUTIONS

SEC. 301. (a) In order to prevent unfair or deceptive acts or practices affecting commerce (including acts or practices which are unfair or deceptive to a consumer) by financial institutions, each Federal regulatory agency of financial institutions shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by financial institutions subject to its jurisdiction. The Board of Governors of the Federal Reserve System shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices. In carrying out its responsibilities under this section, the Board shall issue substantially similar regulations proscribing acts or practices of financial institutions which are substantially similar to those proscribed by rules or regulations of the Commission within sixty days of the effective date of such Commission rules or regulations unless the Board finds that such acts or practices of financial institutions are not unfair or deceptive to consumers or it finds that implementation of similar regulations with respect to financial institutions would seriously conflict with essential monetary and payments systems policies of the Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(b) Compliance with the requirements imposed under this section shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than banks referred to in clause (A)), by the division of consumer affairs established by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in clause (A) or (B)) and mutual savings banks, as defined in the Federal Deposit Insurance Act, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the division of consumer affairs established by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions; and

(3) the Federal Credit Union Act, by the division of consumer affairs established by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this section shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this section, any other authority conferred on it by law.

(d) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this section does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this section.

(e) Each agency exercising authority under this section shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this section during the preceding calendar year.

(f) As used in this section—

(1) the term "financial institution" means—

(A) any bank the deposits of which are insured by the Federal Deposit Insurance Corporation and any mutual savings bank, as defined in the Federal Deposit Insurance Act;

(B) any savings and loan association the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

(C) any thrift or home financing institution which is a member of a Federal home loan bank; and

(D) any credit union the accounts of which are insured by the Administrator of the National Credit Union Administration; and

(2) the term "Federal regulatory agency of financial institutions" means—

(A) the Comptroller of the Currency, if the institution is a national bank or a bank operating under the Code of Law of the District of Columbia;

(B) the Board of Governors of the Federal Reserve System, if the institution is a member of the Federal Reserve System (other than a bank referred to in clause (A));

(C) the Board of Directors of the Federal Deposit Insurance Corporation, if the institution is a bank the deposits of which are insured by such corporation (other than a bank referred to in clause (A) or (B)) or a mutual savings bank, as defined in the Federal Deposit Insurance Act;

(D) the Federal Home Loan Bank Board, if the institution is a member of a Federal home loan bank or the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; and

(E) the Administrator of the National Credit Union Administration, if the institution is a credit union the accounts of which are insured by the Administrator.

TITLE IV—USED CAR WARRANTIES

DEFINITIONS

SEC. 401. As used in this title—

(1) "Dealer" means any supplier selling used motor vehicles to a consumer.

(2) "Mechanical defect" includes any damage, malfunction, or failure, in whole or in part, which affects the safety or normal use of the used motor vehicle.

(3) "Motor vehicle" means any vehicle propelled by mechanical power, manufactured primarily for use on the public streets, roads, and highways, except any vehicle operated exclusively on a rail or rails.

(4) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Canal Zone, American Samoa, or any other territory or possession of the United States.

(5) "Used motor vehicle" means any motor vehicle which is offered for sale to a consumer after—

(A) such vehicle had previously been sold to a consumer; or

(B) such vehicle had been used by a dealer or any other person for the personal transportation of persons, or as a rental, driver-education, or demonstration motor vehicle and driven more than two hundred and fifty miles or so used for more than fifteen days.

WARRANTY REQUIREMENT

SEC. 402. (a) No dealer shall sell or offer for sale a used motor vehicle to a consumer without a written warranty which conforms to the requirements of this title and this Act, except as provided in subsection (b) of this section.

(b) A dealer may sell or offer for sale a used motor vehicle to a consumer without a written warranty if the contract for sale of such used motor vehicle contains the following notice in conspicuous type: "ALL REPAIRS ARE THE RESPONSIBILITY OF THE BUYER." If such contract is not written in the English language, then such notice shall be expressed in the same language as the contract. In addition, the dealer shall orally disclose to the purchaser that all repairs are the responsibility of the buyer.

(c) A written warranty shall meet the requirements of section 103 of this Act.

DISCLOSURE OF INFORMATION

SEC. 403. (a) No dealer shall sell a used motor vehicle unless he furnishes to the purchaser a written statement which contains the information required by subsection (b) of this section. The statement shall be furnished prior to the signing of any contract of sale by such purchaser.

(b) The statement required by subsection (a) of this section shall contain—

(1) a complete description of such used motor vehicle, including, but not necessarily limited to—

(A) the make, model, year of manufacture, and any identification or serial numbers of such vehicle;

(B) a statement of any mechanical defects known to such dealer on the basis of his examination and evaluation of the vehicle prior to his acquisition of such vehicle or which otherwise becomes known to him while in his possession, and any repairs made by or under the direction of such dealer following his acquisition of such used motor vehicle;

(C) a statement of the written warranty coverage of the used motor vehicle, except that if the used motor vehicle is sold without a written warranty, the dealer shall enter the words "As Is—all repairs are the responsibility of the buyer" in the space provided for warranty coverage;

(D) the date on which such vehicle will be delivered to such purchaser and the maximum number of miles which will appear on the odometer on such date;

(2) if the vehicle is sold with a written warranty, the name, address, and telephone number of each facility within a radius of fifty miles of the place of business of such dealer where such vehicle may be brought to have repairs, replacement of parts, and other service under the warranty performed;

(3) if the vehicle is sold with a written warranty, the mileage and the date on which the warranty will terminate.

(c) If the vehicle is sold with a written warranty, the dealer shall warrant that such vehicle can pass any applicable State inspection requirements in the State where such vehicle is sold.

(d) At the request of a bona fide prospective purchaser of a used motor vehicle, the dealer shall furnish such purchaser the name and address of the previous registered owner of such vehicle (for purposes other than resale), whether such vehicle was used principally as a passenger vehicle or was commercially or publicly owned, and the type of sale, transfer, or other means through which the dealer acquired such vehicle, to the extent such information is reasonably available to such dealer. The name and address of such previous registered owner shall not be released to the subsequent purchaser without the express written consent of such owner. The dealer who purchases such vehicle from the previous registered owner shall solicit such consent at the time of sale in a manner that will clearly disclose to the previous registered owner his rights under this subsection.

APPLICABILITY OF TITLE I

SEC. 404. The provisions of title I of this Act are applicable to the extent not inconsistent with a provision of this title.

Mr. MOSS. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MAGNUSON. I move to lay that motion on the table.

The motion was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRANSACTION OF ROUTINE MORNING BUSINESS

Mr. ROBERT C. BYRD. Mr. President, for the information of the Senate, there will be no more rollcall votes today.

I ask unanimous consent that there now be a period for the transaction of routine morning business, for not to exceed 30 minutes, with statements therein limited to 3 minutes.

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

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER FOR A BILL TO BE PRINTED IN THE RECORD AND TO LIE AT THE DESK WITHOUT REFERRAL TO COMMITTEE

Mr. CRANSTON. Mr. President, I ask unanimous consent that a bill I have just sent to the desk be printed in the RECORD and that it lie temporarily at the desk, without referral to committee.

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

Mr. GRIFFIN subsequently said: Mr. President, I ask unanimous consent that a unanimous-consent order requested by Senator CRANSTON with regard to a bill introduced be vacated.

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

REMOVAL OF INJUNCTION OF SECRECY ON EXECUTIVE Q, R, AND S—93D CONGRESS, 1ST SESSION

Mr. ROBERT C. BYRD. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Protocol, dated at Vienna, July 7, 1971, relating to an amendment to article 56 of the Convention on International Civil Aviation (Ex. Q, 93d Cong., 1st sess.); the Statutes of the World Tourism Organization done at Mexico City on September 27, 1970 (Ex. R, 93d Cong., 1st sess.); and the Treaty on Extradition between the United States of America and the Republic of Paraguay, signed at Asuncion on May 24, 1973 (Ex. S, 93d Cong., 1st sess.). These treaties were transmitted to the Senate today by the President of the United States, and I ask that they be referred, with accompanying papers, to

the Committee on Foreign Relations and ordered to be printed, and that the President's messages be printed in the RECORD.

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

The messages are as follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Treaty on Extradition between the United States of America and the Republic of Paraguay, signed at Asuncion on May 24, 1973. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Treaty.

The Treaty significantly updates the extradition relations between the United States and Paraguay and adds to the list of extraditable offenses narcotics offenses, including those involving psychotropic drugs, and aircraft hijacking.

This Treaty will make a significant contribution to the international effort to control narcotics traffic. I recommend that the Senate give early and favorable consideration to the Treaty and give its advice and consent to ratification.

RICHARD NIXON.

THE WHITE HOUSE, *September 12, 1973.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Protocol, dated at Vienna July 7, 1971, relating to an amendment to Article 56 of the Convention on International Civil Aviation.

Article 56 of the Convention relates to the composition of the Air Navigation Commission and provides that it shall be composed of twelve members. The present Protocol would increase the membership of the Commission to fifteen members. I transmit, for the information of the Senate, the report received from the Department of State with respect to the Protocol.

I recommend that the Senate give early and favorable consideration to the Protocol submitted herewith and give its advice and consent to ratification.

RICHARD NIXON.

THE WHITE HOUSE, *September 12, 1973.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Statutes of the World Tourism Organization done at Mexico City on September 27, 1970. The report of the Department of State is enclosed for the information of the Senate.

The Statutes establish the World Tourism Organization as an international organization of intergovernmental character replacing the International Union of Official Travel Organizations, a non-governmental organization.

The World Tourism Organization will continue the activities of the International Union of Official Travel Organizations in promoting and facilitating international tourism. Additionally, because of the World Tourism Organization's intergovernmental character and close association with the United Nations system, it is anticipated that it will become an even more effective organization. I recommend that the Senate give early and favorable consideration to the Statutes and give its advice and consent to ratification.

RICHARD NIXON.

THE WHITE HOUSE, *September 12, 1973.*

AMENDMENT OF THE PUBLIC HEALTH SERVICE ACT TO PROVIDE FOR THE DEVELOPMENT OF COMPREHENSIVE AREA EMERGENCY MEDICAL SERVICES SYSTEMS

Mr. CRANSTON. Mr. President, I ask unanimous consent that a bill I have sent to the desk be printed in the RECORD. I am not introducing the bill at this time, but I serve notice that I shall introduce it subsequently.

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

LIST OF COSPONSORS

Mr. Cranston (for himself, Mr. Kennedy, Mr. Schweiker, Mr. Williams, Mr. Javits, Mr. Beall, Mr. Dominick, Mr. Eagleton, Mr. Hathaway, Mr. Hughes, Mr. Mondale, Mr. Nelson, Mr. Pell, Mr. Randolph, Mr. Magnuson, Mr. Stevenson, and Mr. Taft.

S. —

A bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency medical services systems

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Emergency Medical Services Systems Act of 1973".

EMERGENCY MEDICAL SERVICES SYSTEMS

SEC. 2. (a) The Public Health Service Act is amended by adding at the end thereof the following new title:

"TITLE XII—EMERGENCY MEDICAL SERVICES SYSTEMS

"DEFINITIONS

"SEC. 1201. For purposes of this title:

"(1) The term 'emergency medical services system' means a system which provides for the arrangement of personnel, facilities, and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions (occurring either as a result of the patient's condition or of natural disasters or similar situations) and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system.

"(2) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"(3) The term 'modernization' means the alteration, major repair (to the extent permitted by regulations), remodeling, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

"(4) The term 'section 314(a) State health planning agency' means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a).

"(5) The term 'section 314(b) areawide health planning agency' means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b), and the term 'section 314(b) plan' means a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b).

"GRANTS AND CONTRACTS FOR FEASIBILITY STUDIES AND PLANNING

"SEC. 1202. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for projects which include both studying the feasibility of establishing (through expansion or improvement of existing services or otherwise) and operating an emergency medical services system, and (2) planning the establishment and operation of such a system.

"(b) If the Secretary makes a grant or enters into a contract under this section for a study and planning project respecting an emergency medical services system for a particular geographical area, the Secretary may not make any other grant or enter into any other contract under this section for such project, and he may not make a grant or enter into a contract under this section for any other study and planning project respecting an emergency medical services system for the same area or for an area which includes (in whole or substantial part) such area.

"(c) Reports of the results of any study and planning project assisted under this section shall be submitted to the Secretary and the Interagency Committee on Emergency Medical Services at such intervals as the Secretary may prescribe, and a final report of such results shall be submitted to the Secretary and such Committee not later than one year from the date the grant was made or the contract entered into, as the case may be.

"(d) An application for a grant or contract under this section shall—

"(1) demonstrate to the satisfaction of the Secretary the need of the area for which the study and planning will be done for an emergency medical services system;

"(2) contain assurances satisfactory to the Secretary that the applicant is qualified to plan an emergency medical services system for such area; and

"(3) contain assurances satisfactory to the Secretary that the planning will be conducted in cooperation (A) with each section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area, and (B) with any emergency medical services council or other entity responsible for review and evaluation of the provision of emergency medical services in such area.

"(e) The amount of any grant under this section shall be determined by the Secretary.

"GRANTS AND CONTRACTS FOR ESTABLISHMENT AND INITIAL OPERATION

"SEC. 1203. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for the establishment and initial operation of emergency medical services systems.

"(b) Special consideration shall be given to applications for grants and contracts for systems which will coordinate with statewide emergency medical services systems.

"(c)(1) Grant and contracts under this section may be used for the modernization of facilities for emergency medical services systems and other costs of establishment and initial operation.

"(2) Each grant or contract under this section shall be made for costs of establishment and operation in the year for which the grant or contract is made. If a grant or contract is made under this section for a system, the Secretary may make one additional grant or contract for that system if he

determines, after a review of the first nine months' activities of the applicant carried out under the first grant or contract, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan contained in his application (pursuant to section 1206 (b) (4)) for the first grant or contract.

"(3) No grant or contract may be made under this section for the fiscal year ending June 30, 1976, to an entity which did not receive a grant or contract under this section for the preceding fiscal year.

"(4) Subject to section 1206(f)—

"(A) the amount of the first grant or contract under this section for an emergency medical services system may not exceed (i) 50 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs for such year; and

"(B) the amount of the second grant or contract under this section for a system may not exceed (i) 25 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 50 per centum of such costs for such year.

"(5) In considering applications which demonstrate exceptional need for financial assistance, the Secretary shall give special consideration to applications submitted for emergency medical services systems for rural areas (as defined in regulations of the Secretary).

"GRANTS AND CONTRACTS FOR EXPANSION AND IMPROVEMENT

"SEC. 1204. (a) The Secretary may make grants to and enter into contracts with eligible entities (as defined in section 1206(a)) for projects for the expansion and improvement of emergency medical services systems, including the acquisition of equipment and facilities, the modernization of facilities, and other projects to expand and improve such systems.

"(b) Subject to section 1206(f), the amount of any grant or contract under this section for a project shall not exceed 50 per centum of the cost of that project (as determined pursuant to regulations of the Secretary).

"GRANTS AND CONTRACTS FOR RESEARCH

"SEC. 1205. (a) The Secretary may make grants to public or private nonprofit entities, and enter into contracts with private entities and individuals, for the support of research in emergency medical techniques, methods, devices, and delivery.

"(b) No grant may be made or contract entered into under this section for amounts in excess of $35,000 unless the application therefor has been recommended for approval by an appropriate peer review panel designated or established by the Secretary. Any application for a grant or contract under this section shall be submitted in such form and manner, and contain such information, as the Secretary shall prescribe in regulations.

"(c) The recipient of a grant or contract under this section shall make such reports to the Secretary as the Secretary may require.

"GENERAL PROVISIONS RESPECTING GRANTS AND CONTRACTS

"SEC. 1206. (a) For purposes of sections 1202, 1203, and 1204, the term 'eligible entity' means—

"(1) a State,

"(2) a unit of general local government,

"(3) a public entity administering a compact or other regional arrangement or consortium, or

"(4) any other public entity and any nonprofit private entity.

"(b) (1) No grant or contract may be made under this title unless an application therefor has been submitted to, and approved by, the Secretary.

"(2) In considering applications submitted under this title, the Secretary shall give priority to applications submitted by the entities described in clauses (1), (2), and (3) of subsection (a).

"(3) No application for a grant or contract under section 1202 may be approved unless—

"(A) the application meets the application requirements of such section;

"(B) in the case of an application submitted by a public entity administering a compact or other regional arrangement or consortium, the compact or other regional arrangement or consortium includes each unit of general local government of each standard metropolitan statistical area (as determined by the Office of Management and Budget) located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted;

"(C) in the case of an application submitted by an entity described in clause (4) of subsection (a), such entity has provided a copy of its application to each entity described in clauses (1), (2), and (3) of such subsection which is located (in whole or in part) in the service area of the emergency medical services system for which the application is submitted and has provided each such entity a reasonable opportunity to submit to the Secretary comments on the application;

"(D) the—

"(i) section 314(a) State health planning agency of each State in which the service area of the emergency medical services system for which the application is submitted will be located, and

"(ii) section 314(b) areawide health planning agency (if any) whose section 314(b) plan covers (in whole or in part) the service area of such system,

have had not less than thirty days (measured from the date a copy of the application was submitted to the agency by the applicant) in which to comment on the application;

"(E) the applicant agrees to maintain such records and make such reports to the Secretary as the Secretary determines are necessary to carry out the provisions of this title; and

"(F) the application is submitted in such form and such manner and contains such information (including specification of applicable provisions of law or regulations which restricts the full utilization of the training and skills of health professions and allied and other health personnel in the provision of health care services in such a system) as the Secretary shall prescribe in regulations.

"(4) (A) An application for a grant or contract under section 1203 or 1204 may not be approved by the Secretary unless (i) the application meets the requirements of subparagraphs (B) through (F) of paragraph (3), and (ii) except as provided in subparagraph (B) (ii), the applicant (I) demonstrates to the satisfaction of the Secretary that the emergency medical services system for which the application is submitted will, within the period specified in subparagraph (B) (i), meet each of the emergency medical services system requirements specified in subparagraph (C), and (II) provides in the application a plan satisfactory to the Secretary for the system to meet each such requirement within such period.

"(B) (i) The period within which an emergency medical services system must meet each of the requirements specified in subparagraph (A) is the period of the grant or contract for which application is made; except that if the applicant demonstrates to the satisfaction of the Secretary the inability of the applicant's emergency medical services system to meet one or more of such requirements within such period, the period (or periods) within which the system must meet such requirement (or requirements) is such period (or periods) as the Secretary may require.

"(ii) If an applicant submits an application for a grant or contract under section 1203 or 1204 and demonstrates to the satisfaction of the Secretary the inability of the system for which the application is submitted to meet one or more of the requirements specified in subparagraph (C) within any specific period of time, the demonstration and plan prerequisites prescribed by clause (ii) of subparagraph (A) shall not apply with respect to such requirement (or requirements) and the applicant shall provide in his application a plan, satisfactory to the Secretary, for achieving appropriate alternatives to such requirement (or requirements).

"(C) An emergency medical services system shall—

"(i) include an adequate number of health professions, allied health professions, and other health personnel with appropriate training and experience;

(ii) provide for its personnel appropriate training (including clinical training) and continuing education programs which (I) are coordinated with other programs in the system's service area which provide similar training and education, and (II) emphasize recruitment and necessary training of veterans of the Armed Forces with military training and experience in health care fields and of appropriate public safety personnel in such area;

(iii) join the personnel, facilities, and equipment of the system by a central communications system so that requests for emergency health care services will be handled by a communications facility which (I) utilizes emergency medical telephonic screening. (II) utilizes, or, within such period as the Secretary prescribes will utilize, the universal emergency telephone number 911, and (III) will have direct communication connections and interconnections with the personnel, facilities, and equipment of the system and with other appropriate emergency medical services systems;

"(iv) include an adequate number of necessary ground, air, and water vehicles and other transportation facilities to meet the individual characteristics of the system's area—

"(I) which vehicles and facilities meet appropriate standards relating to location, design, performance, and equipment, and

"(II) the operators and other personnel for which vehicles and facilities meet appropriate training and experience requirements;

"(v) include an adequate number of easily accessible emergency medical services facilities which are collectively capable of providing services on a continuous basis, which have appropriate nonduplicative and categorized capabilities, which meet appropriate standards relating to capacity, location, personnel, and equipment, and which are coordinated with other health care facilities of the system;

"(vi) provide access (including appropriate transportation) to specialized critical medical care units in the system's service area, or, if there are no such units or an inadequate number of them in such area, provides access to such units in neighboring areas if access to such units is feasible in terms of time and distance;

"(vii) provide for the effective utilization of the appropriate personnel facilities, and equipment of each public safely agency providing emergency services in the system's service area;

"(viii) be organized in such a manner that provides persons who reside in the system's

service area and who have no professional training or financial interest in the provision of health care with an adequate opportunity to participate in the making of policy for the system;

"(ix) provide, without prior inquiry as to ability to pay, necessary emergency medical services to all patients requiring such services;

"(x) provide for transfer of patients to facilities and programs which offer such followup care and rehabilitation as is necessary to effect the maximum recovery of the patient;

"(xi) provide for a standardized patient recordkeeping system meeting appropriate standards established by the Secretary, which records shall cover the treatment of the patient from initial entry into the system through his discharge from it, and shall be consistent with ensuing patient records used in followup care and rehabilitation of the patient;

"(xii) provide programs of public education and information in personnel facilities, and equipment of each public safety agency the system's service area (taking into account the needs of visitors to, as well as residents of, that area to know or be able to learn immediately the means of obtaining emergency medical services) which programs stress the general dissemination of information regarding appropriate methods of medical self-help and first-aid and regarding the availability of first-aid training programs in the area;

"(xiii) provide for (I) periodic, comprehensive, and independent review and evaluation of the extent and quality of the emergency health care services provided in the system's service area, and (II) submission to the Secretary of the reports of each such review and evaluation;

"(xiv) have a plan to assure that the system will be capable of providing emergency medical services in the system's service area during mass casualties, natural disasters, or national emergencies; and

"(xv) provide for the establishment of appropriate arrangements with emergency medical services systems or similar entities serving neighboring areas for the provision of emergency medical services on a reciprocal basis where access to such services would be more appropriate and effective in terms of the services available, time, and distance.

The Secretary shall by regulations prescribe standards and criteria for the requirements prescribed by this subparagraph. In prescribing such standards and criteria, the Secretary shall consider relevant standards and criteria prescribed by other public agencies and by private organizations.

"(c) Payments under grants and contracts under this title may be made in advance or by way of reimbursement and in such installments and on such conditions as the Secretary determines will most effectively carry out this title.

"(d) Contracts may be entered into under this title without regard to sections 3648 and 3709 of the Revised Statute (31 U.S.C. 529; 41 U.S.C. 5).

"(e) No funds appropriated under any provision of this Act other than section 1207 or title VII may be used to make a new grant or contract in any fiscal year for a purpose for which a grant or contract is authorized by this title unless (1) all the funds authorized to be appropriated by section 1207 for such fiscal year have been appropriated and made available for obligation in such fiscal year, and (2) such new grant or contract is made in accordance with the requirements of this title that would be applicable to such grant or contract if it was made under this title. For purposes of this subsection, the term 'new grant or contract' means a grant or contract for a program or project for which an application was first submitted after the date of the enactment of the Act which makes the first appropriations under the authorizations contained in section 1207.

"(f) (1) In determining the amount of any grant or contract under section 1203 or 1204, the Secretary shall take into consideration the amount of funds available to the applicant from Federal grant or contract programs under laws other than this Act for any activity which the applicant proposes to undertake in connection with the establishment and operation or expansion and improvement of an emergency medical services system and for which the Secretary may authorize the use of funds to carry out a grant or contract under section 1203 and 1204.

"(2) The Secretary may not authorize the recipient of a grant or contract under section 1203 or 1204 to use funds under such grant or contract for any training program in connection with an emergency medical services system unless the applicant filed an application (as appropriate) under title VII or VIII for a grant or contract for such program and such application was not approved or was approved but for which no or inadequate funds were made available under such title.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 1207. (a) (1) For the purpose of making payments pursuant to grants and contracts under sections 1202, 1203, and 1204, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1974, and $60,000,000 for the fiscal year ending June 30, 1975; and for the purpose of making payments pursuant to grants and contracts under sections 1203 and 1204 for the fiscal year ending June 30, 1976, there are authorized to be appropriated $70,000,000.

"(2) Of the sums appropriated under paragraph (1) for any fiscal year, not less than 15 per centum shall be made available for grants and contracts under this title for such fiscal year for emergency medical services systems which serve or will serve rural areas (as defined in regulations of the Secretary under section 1203(c)(5)).

"(3) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1974, or the succeeding fiscal year—

"(A) 15 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1202 (relating to feasibility studies and planning) for such fiscal year.

"(B) 60 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1203 (relating to establishment and initial operation) for such fiscal year, and

"(C) 25 per centum of such sums for each such fiscal year shall be made available only for grants and contracts under section 1204 (relating to expansion and improvement) for such fiscal year.

"(4) Of the sums appropriated under paragraph (1) for the fiscal year ending June 30, 1976—

"(A) 75 per centum of such sums shall be made available only for grants and contracts under section 1203 for such fiscal year, and

"(B) 25 per centum of such sums shall be made available only for grants and contracts under such section 1204 for such fiscal year.

"(b) For the purpose of making payments pursuant to grants and contracts under section 1205 (relating to research), there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1974, and for each of the next two fiscal years.

"ADMINISTRATION

"SEC. 1208. The Secretary shall administer the program of grants and contracts authorized by this title through an identifiable administrative unit within the Department of Health, Education, and Welfare. Such unit shall also be responsible for collecting, analyzing cataloging, and disseminating all data useful in the development and operation of emergency medical services systems, including data derived from reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204.

"INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES

"SEC. 1209. (a) The Secretary shall establish an Interagency Committee on Emergency Medical Services. The Committee shall evaluate the adequacy and technical soundness of all Federal programs and activities which relate to emergency medical services and provide for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and shall make recommendations to the Secretary respecting the administration of the program of grants and contracts under this title (including the making of regulations for such program).

"(b) The Secretary or his designee shall serve as Chairman of the Committee, the membership of which shall include (1) appropriate scientific, medical, or technical representation from the Department of Transportation, the Department of Justice, the Department of Defense, the Veterans' Administration, the National Science Foundation, the Federal Communications Commission, the National Academy of Sciences, and such other Federal agencies and offices (including appropriate agencies and offices of the Department of Health, Education, and Welfare), as the Secretary determines administer programs directly affecting the functions or responsibilities of emergency medical services systems, and (2) five individuals from the general public appointed by the President from individuals who by virtue of their training or experience are particularly qualified to participate in the performance of the Committee's functions. The Committee shall meet at the call of the Chairman, but not less often than four times a year.

"(c) Each appointed member of the Committee shall be appointed for a term of four years, except that

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

"(2) of the members first appointed, two shall be appointed for a term of four years, two shall be appointed for a term of three years, and one shall be appointed for a term of one year, as designated by the President at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

"(d) Appointed members of the Committee shall receive for each day they are engaged in the performance of the functions of the Committee compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(e) The Secretary shall make available to the Committee such staff, information (including copies of reports of reviews and evaluations of emergency medical services systems assisted under section 1203 or 1204), and other assistance as it may require to carry out its activities effectively.

"ANNUAL REPORT

"SEC. 1210. The Secretary shall prepare and submit annually to the Congress a report on the administration of this title. Each report shall include an evaluation of the adequacy of the provision of emergency medical serv-

ices in the United States during the period covered by the report, an evaluation of the extent to which the needs for such services are being adequately met through assistance provided under this title, and his recommendations for such legislation as he determines is required to provide emergency medical services at a level adequate to meet such needs. The first report under this section shall be submitted not later than September 30, 1974, and shall cover the fiscal year ending June 30, 1974."

(b) (1) Section 1 of the Public Health Service Act is amended by striking out "Titles I to XI" and inserting in lieu thereof "Titles I to XII".

(2) The Act of July 1, 1944 (58 Stat. 682), as amended, is further amended by renumbering title XII (as in effect prior to the date of enactment of this Act)as title XIII, and by renumbering sections 1201 through 1214 (as in effect prior to such date), and references thereto, as sections 1301 through 1314, respectively.

TRAINING ASSISTANCE

SEC. 3. (a) Part E of title VII of the Public Health Service Act is amended by inserting after section 775 the following new section:

"TRAINING IN EMERGENCY MEDICAL SERVICES

"SEC. 776. (a) The Secretary may make grants to and enter into contracts with schools of medicine, dentistry, osteopathy, and nursing, training centers for allied health professions, and other appropriate educational entities to assist in meeting the cost of training programs in the techniques and methods of providing emergency medical services (including the skills required in connection with the provision of ambulance service), especially training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act.

"(b) No grant or contract may be made or entered into under this section unless (1) the applicant is a public or nonprofit private entity, and (2) an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

"(c) The amount of any grant or contract under this section shall be determined by the Secretary. Payments under grants and contracts under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary finds necessary. Grantees and contractees under this section shall make such reports at such intervals, and containing such information, as the Secretary may require.

"(d) Contracts may be entered into under this section without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5).

"(e) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974."

(b) Section 772(a) of such Act (42 U.S.C. 295f–2(a)) is amended—

(1) by striking out "or" at the end of paragraph (12),

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; or", and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) establish and operate programs in the interdisciplinary training of health personnel for the provision of emergency medical services, with particular emphasis on the establishment and operation of training programs affording clinical experience in emergency medical services systems receiving assistance under title XII of this Act."

(c) Section 774(a)(1)(D) of such Act (42 U.S.C. 295f–4(a)(1)(D)) is amended by inserting "(including emergency medical services)" after "services" each time it appears.

STUDY

SEC. 4. The Secretary of Health, Education, and Welfare shall conduct a study to determine the legal barriers to the effective delivery of medical care under emergency conditions. The study shall include consideration of the need for a uniform conflict of laws rule prescribing the law applicable to the provision of emergency medical services to persons in the course of travels on interstate common carriers. Within twelve months of the date of the enactment of this Act, the Secretary shall report to the Congress the results of such study and recommendations for such legislation as may be necessary to overcome such barriers and provide such rule.

ORDER FOR THE TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that at the conclusion of the remarks of the Senator from New York (Mr. JAVITS) tomorrow, there be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes.

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

ORDER OF BUSINESS

Mr. GRIFFIN. Mr. President, earlier today, one of our colleagues referred to the distinguished majority whip as the "traffic cop of the Senate floor." He certainly is that, but I want to say that he is much more than that, obviously, as he does his best to schedule legislation and do the work that faces the Senate and Congress.

Here we are, adjourning at 3 o'clock in the middle of the afternoon, in the middle of the week, when I know it would be the wish of the distinguished majority whip and the leadership on both sides that we could be disposing of other matters. It is essential, if we are to move along and make a good record, that there be cooperation among more than just those in the leadership. We need the cooperation of our colleagues.

On both sides of the aisle, we are often requested to accommodate the personal desires and schedules of individual Senators. I want to join in the plea of the distinguished majority whip that from here on out in this session, we would have fewer and fewer of those requests. Senators should expect to have the legislation scheduled as the distinguished dean on our side of the aisle (Senator AIKEN), made plain earlier in his remarks on any day of the calendar week. There are always going to be one or two Senators who will be absent and we are not going to be able to accommodate 100 Senators every day of the week.

So, I commend the distinguished majority whip for what he said. I want to indicate my strong support for it.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Republican whip. May I say, on behalf of the leadership on this side of the aisle, that the leadership, could not hope for or expect finer cooperation than the leadership on this side of the aisle consistently get from the distinguished minority leader, the distinguished minority whip, and the Senators on the other side.

I say that without any reservation. There are times when we have our differences but, being human, I do not see how that can be avoided. We have heavy responsibilities on both sides, as Senators and as representatives of two great political parties. Differences must arise. But I have yet to see a time when I have left this Chamber with any feeling in my heart that the leadership on the other side of the aisle is not being fair, cooperative, or understanding.

I think that I would want to say, if I may continue just briefly that, on the part of the majority leader and myself, we are grateful that we have on the other side of the aisle the leadership in the persons of Senators SCOTT and GRIFFIN.

This Senate has made a remarkable record of achievement this year. It has passed 420 measures——and it has confirmed 37,639 nominations. There have been 383 rollcalls to date.

At least 23 or 46 percent of the 50 bills which the President listed in his message on Monday have already been passed by the Senate. I know of 13 additional bills on the President's list of 50 that are either on the Senate Calendar or are in committee markup or on which hearings have been completed or on which hearings are in progress. This accounts for a total of 72 percent of the 50 bills the President enumerated in his message.

In addition to those 23 bills which have already passed the Senate and which were on the President's list, the Senate has passed a remarkable array of important legislation that originated in the Senate or in the House—397 measures to be exact. I think the membership of the Senate on both sides of the aisle should be complimented for working together in producing this kind of record.

The Senate, I think, is so far along with its work that by the time we pass the defense appropriation bill, we will, I feel confident, have passed easily two-thirds of the bills—maybe more—on the President's list, in addition to those initiated by the Senate and House.

So there will be no question about an October adjournment, if it is left up to the Senate. If we can get the defense procurement bill through conference reasonably soon, I think we can wind up our work for this session in October.

Thus, I am grateful for the splendid cooperation of the membership on both sides of the aisle. We have to debate our differences at times, of course; but, beyond that, we are friends. That is the way it is going to be, so far as I am concerned.

We all work hard. The leadership, really, is in the position of being servants to all the Members of the Senate.

I would want to echo the suggestion made by the distinguished Republican whip, and that is that each of us think of the convenience to the Senate, of the work of the Republic, rather than of our own personal convenience as we go into

these last days of the first session of this Congress. I know that we will get that kind of cooperation, but I would want, on behalf of Mr. MANSFIELD, to state, as we go forward, that the leadership will need flexibility in scheduling bills in order to complete the work of the Senate before it adjourns.

Mr. GRIFFIN. The distinguished majority whip has been so generous and so complimentary that it makes it difficult for me to say anything that would indicate the slightest disagreement. But I would not want the record to indicate satisfaction on my part with the legislative record in this session.

In many instances the Senate has acted, but final passage of important bills has not taken place.

I want to remind the Senate and Congress that here we are, well into the third month of the new fiscal year, and we have only enacted 3 out of the 13 regular appropriation bills.

That is not the first time this has happened. But it is very unfortunate when the agencies and departments of the Government—and, indeed, the local units of government, the school districts, that rely on the appropriations of Congress—have no assurance until well into the fiscal year, sometimes even going the whole fiscal year, knowing what funds they will receive. They cannot plan.

So I do not think we have made a very good record in that field. Let us face it. That is not the fault of the Senate. We cannot pass an appropriations bill until the House passes it.

But in other respects as well, I think we have no reason to be too satisfied with our accomplishments. For example, we are facing an energy shortage.

In this connection, look at the various proposals that are pending before Congress. While we have taken action in both bodies on the Alaska pipeline, a conference report still has not been agreed upon. We have legislation relating to the siting of nuclear powerplants which could be very helpful in terms of speeding up applications for using nuclear power to generate electricity. We need to develop quickly deepwater ports for some of the large oil tankers.

Many people believe that some change in the regulation of the pricing of natural gas has to take place if we are going to encourage more exploration and delivery of natural gas. A proposal is pending for a Department of Energy and Natural Resources, which would bring together the various agencies of the Federal Government which have a bearing on energy decisions.

All these measures still have not been enacted. So we do have a great deal to do in this one field, to say nothing about the challenges that await us in other areas.

However, having said that, I do not detract one iota from the remarks that the Senator from West Virginia, the distinguished majority whip, has made in terms of the efforts of the leadership, and in his appeal to the Members on both sides of the aisle to give us more cooperation so that we can move along faster with legislation.

Mr. PASTORE. Mr. President, will the Senator yield?

Mr. GRIFFIN. I yield.

Mr. PASTORE. I do not want to engage in a dispute with my friend, the distinguished Senator from Michigan. He knows the high regard and the affection I have for him.

I think that much of the fault is on both sides, if any fault is to be found. I am not trying to pat myself or anybody else in the Senate on the back, or the Senate at large. But we have been working hard; there is no question about it. We come in early in the morning. We have to attend hearings. Many of them are behind closed doors; there is no fanfare. It is not like the publicity given the Watergate Committee. It is hard work, sometimes without any publicity.

Referring directly to the question of appropriation bills, as chairman of the subcommittee, I have just reported the appropriation bill that has to do with the State Department, the Justice Department, the Commerce Department, and other allied agencies.

I have heard many witnesses, hour after hour. The bill involves international agencies and commissions, and the bill amounts to approximately $4,555,000,000 to date. Within the bill are the Commerce Department, with its Economic Development Agency, and all the other agencies I have mentioned.

The one thing that has always disturbed me is that while we have terminated our hearings, we receive amendment after amendment after amendment from the administration, so there is no way that we can bring the bill in. I would hope in the future that the administration, once it sends up its estimates and makes its request, sets a deadline, either of June 30 or July 1 or August 30, to the effect that nothing after that date will be sent up to Congress unless it is to appear in a supplemental bill. In that way, we can conclude our work, mark up the bill, and report it to the Senate.

We have gone through that process right now with this bill. As a matter of fact, over and above the original estimate, more than $300 million was requested by the administration in supplemental amendments that were not heard by the House. All these appropriation bills originate in the House, and we have more than $300 million of add-ons that have to be considered originally by the Senate, when under the Constitution the original responsibility and the jurisdiction are in the House.

To return to what I was saying, I think that many times we are at fault, and I think that many times the fault is downtown. But the idea that "I am pure and you are impure" is a philosophy I cannot buy. If anyone is to be blamed, I think we are all to be blamed.

As to the idea that the Senate has been dragging its feet, we have not been dragging our feet. The Senator knows that many of the issues that come before the Senate are very controversial, and many of the votes are very close. Here we have unlimited debate, and everybody has a right to be heard. Sometimes we do talk a little longer than we should. But in the long run, I do not know that I would want to change that, because sometimes, by prolonged debate, we have refined an issue and corrected mistakes that possibly would have been serious if we had not talked them out at length. These things are important.

I do not want to take any credit away from the President, but I do not think the President ought to take any credit away from Congress. I think we have been working hard. I do not have a San Clemente to go to. I do not have a Key Biscayne to go to.

I do not have a Camp David. The only place I can go to is my own back yard, and that is where I spent August. I say, frankly, that when I went back home, I needed the rest.

Mr. AIKEN. That is the best place.

Mr. PASTORE. It certainly is.

As a matter of fact, one will never see housing for the elderly from the veranda of San Clemente. Where I sit, you can see them. You can see the people who need the help. You can see the traffic tieups. You can see the need for a transportation bill. You can see the need for housing for the poor. You can see the need for housing for the elderly. We walk through it every day. We are on the ground. We meet the people who have the complaints.

I go to the supermarket. I do not know whether President Nixon has ever gone to a supermarket, but I go to the supermarket, and I push that little carriage around together with my wife. I am not ashamed of it. I know what is happening in the market. I see sticker after sticker, the price going up with every new sticker; and you say to yourself, "How come." They had that item in stock; they bought it at a price. Why is the same article one price at one time, another price at another and then a third price? The price keeps rising, because the new lot costs a little more. These are the things that should be investigated, just how much the American consumer is being gouged. Who is making this profit?

I picked up the paper the other day and read that in the first quarter of this year as against the first quarter of last year—would the Senator from West Virginia (Mr. ROBERT C. BYRD) believe this?—corporate profits were up 26 percent. Why do they not share this money with the consumer? Why do they keep increasing the price? Because they would rather distribute it in dividend checks so they can sell more stock and make it look good on the board in Wall Street. Fortunately, the majority leader, Mr. MANSFIELD, and I do not own much stock, so we do not have that to worry about.

Some say we are not doing the right things, but I do not think they are doing everything right in the White House, either. It is about time they took a good look at themselves in the mirror to see a little of their own faults.

Mr. President, do you know what we say? We say, Let he who is without sin cast the first stone.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Republican whip mentioned the appropriation bills. For the record, I think it should be stated that the Senate this year has passed three supplemental appropriation bills; one was vetoed. It has passed 8 of the 13 regular appropriation bills. One of the remaining five appropriation bills has been reported to the Senate today. One

of the remaining four appropriation bills will be reported to the Senate the first of the week, leaving three of the regular appropriation bills—military construction, military procurement, and foreign aid—yet to be acted on.

Of course, as all Senators know, the Senate is at the mercy of the other body in that the Senate has to await action by the other body on appropriation bills before we can proceed. But it has to be said to the credit of the chairman of the Senate Committee on Appropriations and the members of that committee—Democrats and Republicans—that the subcommittes proceed every year to conduct hearings on appropriation bills prior to their enactment by the other body and once they are sent over here by the other body the bills are reported expeditiously—often on the same day the bill arrives in this body from the House or within a day or two thereafter.

I want to say again that the record of the Senate, being an excellent one to date, is due in considerable part, it has to be said, to the excellent cooperation that the leadership on this side of the aisle has had from the leadership and the Members on the other side of the aisle.

I want to pay tribute to the Republican whip and others on that side of the aisle for helping the leadership on this side of the aisle in establishing the fine legislative record of the Senate.

Any Senator who joins in criticizing this Senate for its record is to some degree pointing the finger at himself because he is a part of the Senate. While I want to accord every Senator a just and fair share of the tribute for the good record the Senate has made, any Senator who downgrades that record, whoever that Senator may be, downgrades himself.

Mr. GRIFFIN. Mr. President, I wish to make clear, as I indicated in my remarks, that the Senate is limited by the Constitution. We cannot consider appropriation bills until they are passed by the other body.

I would join with the majority whip in commending the members of the Committee on Appropriations of the Senate who work very hard and who have moved along expeditiously in the consideration of these measures.

It is altogether possible, I would say, that we have reached a stage where the appropriation measures now are so complex and take so much time going through both bodies of Congress that we should give serious consideration to moving the fiscal year of the Federal Government to a calendar year basis. It is almost impossible now in many respects for Congress to be expected to pass all the appropriation bills before the beginning of the fiscal year which starts on July 1. Nevertheless, it is still a difficult job for the other branches of Government and, indeed, the other levels of Government who do depend on Federal appropriations, when the fiscal year is half over before we can enact appropriation bills, regardless of perfectly reasonable justifications for the delay.

But that does not detract from the fact that the Senate works hard. We have, as the distinguished majority whip indicated, compiled a very impressive record in terms of the action that has been taken on the appropriation bills.

EMERGENCY MEDICAL SERVICES ASSISTANCE ACT OF 1973

Mr. CRANSTON. Mr. President, I send to the desk a bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive medical emergency assistance and I ask for its first reading.

Mr. GRIFFIN. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, this, of course, is a procedure which the distinguished Senator from California is entitled to take. But as he knows and would expect, I have to object to the immediate consideration of a bill which is of such importance and so complex. If nothing else, it could not be understood at the present time. I understand the request is for the immediate consideration.

Mr. CRANSTON. The Senator is correct.

Mr. GRIFFIN. Of course, my objection will mean that the procedure will be open for the bill to go on the calendar, and I assume it is probably the purpose of the Senator from California to do that, so that the bill would not be referred to a committee. It is perfectly within his rights to take that course, but in my position of leadership on this side of the aisle, I would have to object, regardless of the merits of the bill, and I do object.

The PRESIDING OFFICER. The request was to have the bill read the first time.

Does the Senator object to that?

Mr. GRIFFIN. Mr. President, my objection is to its immediate consideration.

The PRESIDING OFFICER. The bill will be read the first time by title.

The legislative clerk read the bill by title, as follows:

A bill to amend the Public Health Service Act to provide assistance and encouragement for the development of comprehensive area emergency medical services systems.

Mr. CRANSTON. 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. CRANSTON. 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. CRANSTON. Mr. President, I now ask for second reading of the bill.

Mr. GRIFFIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRANSTON. Mr. President, I ask for the immediate consideration of the bill that I have sent to the desk.

Mr. GRIFFIN. As I indicated, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRANSTON. 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.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:45 a.m. Immediately following the recognition of the two leaders or their designees, the distinguished senior Senator from New York (Mr. JAVITS) will be recognized for not to exceed 15 minutes, after which there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes, at the conclusion of which the Senate will proceed to the consideration of the conference report on vocational rehabilitation (H.R. 8070).

There is a time limitation on that conference report of 40 minutes. Whether or not there will be a yea and nay vote on the adoption of the conference report, I cannot say.

At the conclusion of the action on the conference report, the Senate will take up S. 2408, the military construction authorization bill. There is a time limitation on that bill. There may be amendments thereto, and Senators are alerted to the possibility of yea and nay votes thereon.

Mr. President, may I say also that other conference reports are eligible to come up at any time, and the leadership would like Senators to be aware of the possibility that the leadership might have to call up bills from the calendar that have been cleared for action, without prior notice, if circumstances should require.

As we get into what we hope will be the last few weeks of the session, the leadership would want the usual fine cooperation and understanding of Senators on all sides of the aisle, so as to allow the leadership the utmost flexibility under these circumstances to promote the business of the Senate.

Mr. President, I *modify* my statement of the program slightly. Immediately before the close of routine morning business tomorrow the Chair will automatically, under the rule, lay down the Cranston bill for a second reading, and if a Senator objects at that time to any further proceedings the bill will then automatically go on the calendar. Am I correct?

The PRESIDING OFFICER. The Chair is advised that the bill will be laid before the Senate tomorrow for a second reading, and if objection is heard on second reading, the bill will go on the calendar.

Mr. ROBERT C. BYRD. If any objection to further proceedings is made?

The PRESIDING OFFICER. Yes.

Mr. ROBERT C. BYRD. Following

that, morning business will be closed, and at that time the Senate will then proceed to the consideration of the conference report?

The PRESIDING OFFICER. Yes.

Mr. ROBERT C. BYRD. I make the appropriate adjustment in my statement of the program.

ADJOURNMENT TO 9:45 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 9:45 tomorrow morning.

The motion was agreed to; and at 3:30 p.m. the Senate adjourned until tomorrow, Thursday, September 13, 1973, at 9:45 a.m.

NOMINATIONS

Executive nominations received by the Senate September 12, 1973:

DEPARTMENT OF JUSTICE

John R. Bartels, Jr., of New York, to be Administrator of Drug Enforcement vice a new position created by Reorganization Plan No. 2 of 1973, dated March 28, 1973.

John L. Bowers, Jr., of Tennessee, to be U.S. attorney for the eastern district of Tennessee for the term of 4 years. (Reappointment.)

Dean C. Smith, of Washington, to be U.S. attorney for the eastern district of Washington for the term of 4 years. (Reappointment.)

James M. Sullivan, Jr., of New York, to be U.S. attorney for the northern district of New York for the term of 4 years. (Reappointment.)

IN THE AIR FORCE

The following-named officers for promotion in the Air Force Reserve, 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

Ablard, Charles D., xxx-xx-xxxx
Agolia, Richard, xxx-xx-xxxx
Anderegg, Richard D., xxx-xx-xxxx
Anders, William A., xxx-xx-xxxx
Angueira, Raymond G., xxx-xx-xxxx
Aptaker, Edward, xxx-xx-xxxx
Ayers, S. T., xxx-xx-xxxx
Baker, Walter T., xxx-xx-xxxx
Balch, Donald H., xxx-xx-xxxx
Barrett, Lawrence A., xxx-xx-xxxx
Batten, Newton R., xxx-xx-xxxx
Becker, Charles E., Jr., xxx-xx-xxxx
Bemis, Rowland H., xxx-xx-xxxx
Bernhard, George K., Jr., xxx-xx-xxxx
Betts, Donald J., xxx-xx-xxxx
Boyd, Robert J., xxx-xx-xxxx
Brand, Joseph W., xxx-xx-xxxx
Breeden, Earnie K., Jr., xxx-xx-xxxx
Brinson, Edward, xxx-xx-xxxx
Browne, Leslie E. S., xxx-xx-xxxx
Butler, James L., Jr., xxx-xx-xxxx
Calman, Edwin C., Jr., xxx-xx-xxxx
Campbell, Keith H., xxx-xx-xxxx
Casey, Thomas E., xxx-xx-xxxx
Cavaretta, Michael J., xxx-xx-xxxx
Chapman, James E., xxx-xx-xxxx
Clarke, Harold D., xxx-xx-xxxx
Cohen, Sydney M., xxx-xx-xxxx
Collins, Robert L., xxx-xx-xxxx
Cooper, Jay P., xxx-xx-xxxx
Corbley, John F., xxx-xx-xxxx
Cutshaw, Thomas S., xxx-xx-xxxx
Davis, William R., xxx-xx-xxxx
Dismang, Kenneth M., xxx-xx-xxxx
Dolan, Hugh J., xxx-xx-xxxx
Dolbey, Alfred F., xxx-xx-xxxx
Dowds, John P., xxx-xx-xxxx
Duggan, John F., xxx-xx-xxxx
Duguid, Robert, III, xxx-xx-xxxx
Duke, Howard W., xxx-xx-xxxx
Eaton, Curtis A., xxx-xx-xxxx
Ellis, Stanley A., xxx-xx-xxxx
Enmon, William G., xxx-xx-xxxx
Feick, Thomas W., xxx-xx-xxxx
Fletcher, James H., xxx-xx-xxxx
Frye, Pierre A., xxx-xx-xxxx
Galfo, Armand J., xxx-xx-xxxx
Garrett, Howard L., Jr., xxx-xx-xxxx
Gerwin, Arthur, xxx-xx-xxxx
Giesecke, Eberhard, xxx-xx-xxxx
Giesen, Herman M., xxx-xx-xxxx
Gill, Sloan R., xxx-xx-xxxx
Gilroy, John E., xxx-xx-xxxx
Green, Elmer H., xxx-xx-xxxx
Greenfield, Albert D., xxx-xx-xxxx
Gregory, Thomas J., xxx-xx-xxxx
Groux, Richard W., xxx-xx-xxxx
Guest, Buddy R., xxx-xx-xxxx
Guminski, David, xxx-xx-xxxx
Haberman, Leo, xxx-xx-xxxx
Hanak, Walter K., xxx-xx-xxxx
Hanson, Eugene E., xxx-xx-xxxx
Haugen, Donald E., xxx-xx-xxxx
Hay, James C., xxx-xx-xxxx
Healey, William J., Jr., xxx-xx-xxxx
Hile, Richard K., xxx-xx-xxxx
Hill, Rodney F., xxx-xx-xxxx
Hirsch, Paul M., xxx-xx-xxxx
Hollis, Alton B., Jr., xxx-xx-xxxx
Jarvis, Donald B., xxx-xx-xxxx
Jones, Charles E., III, xxx-xx-xxxx
Jordan, William A., xxx-xx-xxxx
Kernan, Clarence B., xxx-xx-xxxx
Kessler, Robert H., xxx-xx-xxxx
Knight, Donald L., xxx-xx-xxxx
Koonce, Andrew M., xxx-xx-xxxx
Kulman, Oscar D., xxx-xx-xxxx
Langdell, Samuel F., xxx-xx-xxxx
Licker, Donald J., xxx-xx-xxxx
Loeb, Leonard L., xxx-xx-xxxx
Lombardo, Michael J., xxx-xx-xxxx
Longenecker, William H. J., xxx-xx-xxxx
Luchsinger, Vincent P., Jr., xxx-xx-xxxx
Lum, Richard W., xxx-xx-xxxx
Lundy, James P., xxx-xx-xxxx
Luongo, John A., xxx-xx-xxxx
Madsen, Albert A., xxx-xx-xxxx
Manning, Stanley J., xxx-xx-xxxx
May, Gayle L., xxx-xx-xxxx
McGoey, John J., xxx-xx-xxxx
McRae, Floyd W., Jr., xxx-xx-xxxx
Meyer, Arthur B., xxx-xx-xxxx
Miller, George W., III, xxx-xx-xxxx
Miller, Thomas S., xxx-xx-xxxx
Milliken, Walter R., xxx-xx-xxxx
Miner, Richard E., xxx-xx-xxxx
Mock, Ralph, xxx-xx-xxxx
Mollnow, Marvin A., xxx-xx-xxxx
Morris, John K., xxx-xx-xxxx
Morse, Marvin H., xxx-xx-xxxx
Munson, Harlow T., xxx-xx-xxxx
Myers, William S., Jr., xxx-xx-xxxx
Nathanson, Philip E., xxx-xx-xxxx
Nott, Joseph G., xxx-xx-xxxx
Orlove, Alan H., xxx-xx-xxxx
Padelford, Edward A., Jr., xxx-xx-xxxx
Palmer, Millard A., xxx-xx-xxxx
Perdzock, Robert C., xxx-xx-xxxx
Pilotte, Ellard J., xxx-xx-xxxx
Plitt, James R., xxx-xx-xxxx
Prettyman, Forrest J., xxx-xx-xxxx
Proctor, Daniel A. K., xxx-xx-xxxx
Rasley, Charles W., xxx-xx-xxxx
Raushenbush, Walter B., xxx-xx-xxxx
Reidy, Edward J., xxx-xx-xxxx
Reig, Raymond W., xxx-xx-xxxx
Rice, William H., Jr., xxx-xx-xxxx
Richardson, Elwood H., Jr., xxx-xx-xxxx
Royals, Thomas F., xxx-xx-xxxx
Russ, Walter H., xxx-xx-xxxx
Rutenbeck, Blaine A., xxx-xx-xxxx
Scorpati, Louis V., xxx-xx-xxxx
Scott, Harrey L., xxx-xx-xxxx
Serio, Bernard M., xxx-xx-xxxx
Shosid, Joseph L., xxx-xx-xxxx
Shuck, Robert E., xxx-xx-xxxx
Siegel, William L., xxx-xx-xxxx
Smith, John H., xxx-xx-xxxx
Stange, Paul W., xxx-xx-xxxx
Stead, David N., xxx-xx-xxxx
Svetlich, William G., xxx-xx-xxxx
Theos, Gregory O., xxx-xx-xxxx
Thomas, Richard B., xxx-xx-xxxx
Thompson, Raymond, xxx-xx-xxxx
Tradd, Ronald J., xxx-xx-xxxx
Troutman, James S., xxx-xx-xxxx
Trudel, Theodore H., xxx-xx-xxxx
True, Edward L., xxx-xx-xxxx
Vanderweide, Sam W., xxx-xx-xxxx
Waltman, Leslie H., xxx-xx-xxxx
Weaver, John E., xxx-xx-xxxx
Wegner, Richard A., xxx-xx-xxxx
Weikert, William P., xxx-xx-xxxx
Weinert, Ronald B., xxx-xx-xxxx
White, Frank W., xxx-xx-xxxx
Whitney, Henry M., xxx-xx-xxxx
Whitton, Roy P., xxx-xx-xxxx
Wilde, Roland J., xxx-xx-xxxx
Wilford, Edward B. III, xxx-xx-xxxx
Williams, Benjamin B., xxx-xx-xxxx
Williams, Earl M., xxx-xx-xxxx
Williams, Robert A., xxx-xx-xxxx
Wong, Howard, xxx-xx-xxxx
Wriggle, Paul A., xxx-xx-xxxx
Young, Francis L., xxx-xx-xxxx

CHAPLAINS

Arrow, Henry D., xxx-xx-xxxx
Clark, John P., xxx-xx-xxxx
Dinkel, Julian G., xxx-xx-xxxx
Grothjan, James K., xxx-xx-xxxx
Hamilton, Philip A., xxx-xx-xxxx
Jones, Henry D., xxx-xx-xxxx
Mathre, Paul G., xxx-xx-xxxx
McCall, Thomas D., xxx-xx-xxxx
Nesbitt, Charles B., xxx-xx-xxxx

DENTAL CORPS

Clements, Robert V., xxx-xx-xxxx
Kihara, Junior T., xxx-xx-xxxx
Roraff, Arthur R., xxx-xx-xxxx
Wilhoit, John W., Jr., xxx-xx-xxxx

MEDICAL CORPS

Fleckner, Alan N., xxx-xx-xxxx
Jordan, William S., xxx-xx-xxxx
Magee, John W., Jr., xxx-xx-xxxx
O'Brien, Eugene T., xxx-xx-xxxx
Severs, Ronald G., xxx-xx-xxxx
Skinner, Odis D., xxx-xx-xxxx
White, Melvin J., xxx-xx-xxxx

NURSE CORPS

Beck, Josephine V., xxx-xx-xxxx
MacFarlane, David J., Jr., xxx-xx-xxxx
McKenna, Madeline A., xxx-xx-xxxx
McKenna, Marion E., xxx-xx-xxxx
Showalter, Anna M., xxx-xx-xxxx
Underwood, Ethel S., xxx-xx-xxxx

MEDICAL SERVICE CORPS

Miller, Russell H., xxx-xx-xxxx
Mudd, Lee S., xxx-xx-xxxx
Pinkus, Alan D., xxx-xx-xxxx
Rasken, Sam A., xxx-xx-xxxx
Raynes, Alfred F., xxx-xx-xxxx

VETERINARY CORPS

Chapman, Neil F., xxx-xx-xxxx
Myatt, Barney A., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Foley, Thomas J., Jr., xxx-xx-xxxx
Hersey, David F., xxx-xx-xxxx

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:

MEDICAL CORPS

Lieutenant colonel to colonel

Olson, Robert M., xxx-xx-xxxx

LINE OF THE AIR FORCE

Major to lieutenant colonel

Arnau, Robert R., xxx-xx-xxxx
Baer, Richard T., xxx-xx-xxxx
Baird, Richard L., xxx-xx-xxxx
Barnum, Charles W., Jr., xxx-xx-xxxx
Beck, Lyle A., xxx-xx-xxxx

Bethea, Herman R., xxx-xx-xxxx
Blair, George A., xxx-xx-xxxx
Bower, James N., xxx-xx-xxxx
Bradach, Bernard, xxx-xx-xxxx
Brog, David, xxx-xx-xxxx
Brookbank, David A., xxx-xx-xxxx
Canney, Paul J., xxx-xx-xxxx
Christensen, Russell N., xxx-xx-xxxx
Cimini, Guido J., xxx-xx-xxxx
Cook, Margaret E., xxx-xx-xxxx
Dixon, David L., Jr., xxx-xx-xxxx
Dodd, William W., xxx-xx-xxxx
Dowell, James E., xxx-xx-xxxx
Dunn, Earl J., Jr., xxx-xx-xxxx
Duval, Herbert J., Jr., xxx-xx-xxxx
Ferrell, Joseph B., xxx-xx-xxxx
Friesen, Merle R., xxx-xx-xxxx
Gilchrist, James, Jr., xxx-xx-xxxx
Gleske, Elmer G., xxx-xx-xxxx
Gooch, Edwin J., Jr., xxx-xx-xxxx
Goschke, Richard R., xxx-xx-xxxx
Hageman, Dwight C., xxx-xx-xxxx
Hancock, William R., xxx-xx-xxxx
Hansen, William, xxx-xx-xxxx
Heiser, Frank W., xxx-xx-xxxx
Hepp, James T., xxx-xx-xxxx
Higgins, Carlos W., xxx-xx-xxxx
Hills, Frank D., xxx-xx-xxxx
Holway, Warren A., xxx-xx-xxxx
Hummer, Walter L., xxx-xx-xxxx
Husak, Johnny R., xxx-xx-xxxx
Jefferson, William J., Jr., xxx-xx-xxxx
Jenkins, James R., xxx-xx-xxxx
Johnson, Donald H., xxx-xx-xxxx
Johnson, Thurmond L., xxx-xx-xxxx
Jope, Howard E., Jr., xxx-xx-xxxx
Kalmar, George E., xxx-xx-xxxx
Keenan, Herbert A., xxx-xx-xxxx
Keeny, James S., xxx-xx-xxxx
Kite, John T., xxx-xx-xxxx
Kop, Dietrich R., xxx-xx-xxxx
Koopman, Howard W., xxx-xx-xxxx
Land, Clarence J., xxx-xx-xxxx
Larson, John H., xxx-xx-xxxx
Lawrence, Rogers W., xxx-xx-xxxx
Leeman, David E., xxx-xx-xxxx
Livingstone, John D., xxx-xx-xxxx
Lockhart, Floyd R., xxx-xx-xxxx
Lord, John F., Jr., xxx-xx-xxxx
Madden, Thomas A. L., Jr., xxx-xx-xxxx
Manly, Donald L., xxx-xx-xxxx
Markalonis, Vincent J., xxx-xx-xxxx
Moroney William P., xxx-xx-xxxx
Morrison, William J., xxx-xx-xxxx
Morton, Norman E., xxx-xx-xxxx
Pascuzzi, Eugene D., xxx-xx-xxxx
Ritter, Joseph L., Jr., xxx-xx-xxxx
Robertson, Bruce M., xxx-xx-xxxx
Rubeor, Russell G., xxx-xx-xxxx
Salem, Harold D., xxx-xx-xxxx
Shelton, John L., xxx-xx-xxxx
Shirley, Millard G., xxx-xx-xxxx
Smiley, Ralph P., xxx-xx-xxxx
Smith, Thomas J., Jr., xxx-xx-xxxx
Solkey, Arthur R., xxx-xx-xxxx
Taylor, Larry L., xxx-xx-xxxx
Teitelbaum, Robert D., xxx-xx-xxxx
Thomas, Robert J., xxx-xx-xxxx
Tinsley, Robert L., xxx-xx-xxxx
Tracy, Robert P., xxx-xx-xxxx
Turner, Thomas H., xxx-xx-xxxx
Walker, James A., xxx-xx-xxxx
Waterman, Donald J., xxx-xx-xxxx
Williams, Arthur B., Jr., xxx-xx-xxxx
Young, Thomas C., xxx-xx-xxxx

CHAPLAINS

Pearson, Roger H., xxx-xx-xxxx

MEDICAL CORPS

Sanders, James G., xxx-xx-xxxx

NURSE CORPS

Brady, Eugene P., xxx-xx-xxxx
Howland, Richard J., xxx-xx-xxxx
Larscheid, Jon L., xxx-xx-xxxx
Morgan, Richard T., Jr., xxx-xx-xxxx
Peterson, Roger M., xxx-xx-xxxx
Schnepper, Patricia A., xxx-xx-xxxx

BIOMEDICAL SCIENCES CORPS

Bottom, Bobby D., xxx-xx-xxxx
Taschner, John C., xxx-xx-xxxx

The following person for appointment in the Reserve of the Air Force and USAF (temporary) (Medical Corps), in the grade of colonel, under the provisions of sections 593, 8444, and 8447, title 10, United States Code and Public Law 92–129, with a view to designation as a medical officer under the provisions of section 8067, title 10, United States Code:

MEDICAL CORPS

To be colonel

Masters, Orlan V. W., xxx-xx-xxxx

IN THE AIR FORCE

The following officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be general

Lt. Gen. Robert J. Dixon xxx-xx-xxxx FR (major general, Regular Air Force), U.S. Air Force.

UNITED NATIONS

The following-named persons to be representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

John A. Scali, of the District of Columbia.
W. Tapley Bennett, Jr., of Georgia.
William F. Buckley, Jr., of Connecticut.

The following-named persons to be alternate representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

Margaret B. Young, of New York.
Mark Evans, of the District of Columbia.
William E. Schaufele, Jr., of Ohio.
Clarence Clyde Ferguson, Jr., of New Jersey.
Richard M. Scammon, of Maryland.

The following-named persons to be representatives of the United States of America to the 28th session of the General Assembly of the United Nations:

Robert N. C. Nix, U.S. Representative from the State of Pennsylvania.
John H. Buchanan, Jr., U.S. representative from the State of Alabama.

WITHDRAWAL

Executive nomination withdrawn from the Senate September 12, 1973:

JUSTICE DEPARTMENT

David J. Cannon, of Wisconsin, to be U.S. attorney for the eastern district of Wisconsin for the term of 4 years, which was sent to the Senate on August 9, 1973.

CONFIRMATION

Executive nomination confirmed by the Senate September 12, 1973:

OFFICE OF ECONOMIC OPPORTUNITY

Alvin J. Arnett, of Maryland, to be Director of the Office of Economic Opportunity.

(The above nomination was approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

EXTENSIONS OF REMARKS

PRESERVATION OF THE STRIPED BASS

HON. ABRAHAM A. RIBICOFF

OF CONNECTICUT

IN THE SENATE OF THE UNITED STATES

Wednesday, September 12, 1973

Mr. RIBICOFF. Mr. President, for years sportsmen from Connecticut and throughout the entire Northeast have enjoyed fishing for striped bass in Long Island Sound. Now there is a serious possibility that New York's Consolidated Edison Storm King powerplant on the Hudson River may destroy the Sound's striped bass.

Many of the striped bass are hatched in the Hudson River. Fishermen fear that the Storm King plant, which will take in 9 million gallons of Hudson River water a minute will also suck in and destroy the bulk of the river's striped bass eggs, larvae, and new born fish.

Because it is such a complex problem, I have asked the Atomic Energy Commission to have its Oak Ridge National Laboratory, which has a model of the site in question, to thoroughly review the issues involved.

I ask unanimous consent that my letter of September 10, 1973, to Dr. Dixie Lee Ray, the Chairman of the AEC, be be printed in the Extensions of Remarks.

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

SEPTEMBER 10, 1973.

Dr. DIXIE LEE RAY,
Chairman, U.S. Atomic Energy Commission,
Washington, D.C.

DEAR DR. RAY: I am writing to request the assistance of the Oak Ridge National Laboratory in getting answers to questions that a number of Connecticut striped bass fishermen have asked me about.

The questions concern the Storm King pumped storage hydroelectric power plant that Consolidated Edison proposed to construct on the Hudson River at Cornwall, New York. Many of the striped bass that are hatched in the Hudson spend their adult lives in Long Island Sound where they provide outstanding and valuable sports fishing for Connecticut anglers. The fishermen fear that the Storm King plant, which will take in nine million gallons of Hudson River water a minute, will also suck in and destroy vast numbers of eggs, larvae and young striped bass and thus cause the fishing in Long Island Sound to decline drastically.

The Storm King plant, which has been licensed by the Federal Power Commission has been the subject of litigation for nearly ten years. Still, the effect of the plant on the fishes of the Hudson, particularly striped bass, remains in dispute. Consolidated Edison maintains that a study shows the Storm King plant would remove only an insignificant three per cent of the yearly striped bass hatch. In rebuttal, fishermen state this claim is based on incorrect mathematics because the equation used in the study to predict mortalities did not include the tides in the Hudson. The fishermen also state that density-induced currents were not treated fully in the study.

The fishermen's assertions would appear to have some substance, inasmuch as W. Mason Lawrence of the New York State Department of Environmental Conservation has admitted by letter, that "the river was treated as if it flowed in one direction only" and thus "tidal